

BATTERED WOMEN AND THE CRIMINAL JUSTICE SYSTEM

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Domestic violence victims are both similar to and strikingly different from other victims of violent crime. Thus, they require all the information, assistance and input that facilitates the committed, informed participation of other victims and witnesses, but beyond these, they require enhanced protection and advocacy.

Battered women are often similar to other victims of violent crime in that they want perpetrators to stop their conduct, to pay dues for the crimes committed and to compensate victims for the losses sustained as a result of their criminal conduct. They are also similar to other crime victims in that they have interests in justice that may differ from the interests of the justice system. They may want privacy or anonymity in the prosecution process while the criminal justice system values public accountability. They may want speedy disposition while the justice system labors at a snail's pace. They may want input in decisions about plea negotiations and sentencing while the justice system concludes that this inclusiveness precludes the expeditious handling of criminal cases, unduly interferes with prosecutorial discretion or intrudes upon the rights of defendants. They may want sentences for perpetrators that are specifically crafted to protect victims while courts may focus on offender rehabilitation and ignore victim safety. What is also true about battered women, as it is of other victims of violent crime, is that they are not all cut from the same cloth and do not all want the same outcomes. Battered women have varied interests in participation in prosecution process and in outcomes. There is no profile of a battered woman witness that fits all or most battered women.

BARRIERS TO VICTIM PARTICIPATION IN THE CRIMINAL JUSTICE SYSTEM.

While each battered woman's experience should be recognized as unique, there are many commonalities among battered women victim-witnesses. Perhaps the most critical commonality is that battered women confront significant barriers to safe and effective participation as victim-witnesses in the criminal justice process.

Recidivism and retaliation.

Like other victims of violent crime, battered women fear retaliation. Fully 50% of all victims of violent crime report they are fearful that perpetrators will seek reprisal for their participation in prosecution. And like other victim-witnesses who are threatened by the perpetrator (or his agent) during the pendency of prosecution, they are twice as likely to resist participation in prosecution as those not threatened (Davis et al., 1990).

The *National Crime Survey* from 1978 to 1982 showed that an estimated 32% of battered women were re-victimized within six months after the assault giving rise to criminal justice intervention. They were victimized an average of three times each. In contrast, the 1982 *NCS* data on stranger violence showed that only 13% of the victims of stranger crimes were subsequently assaulted during a six month period. Unlike domestic violence victims, victims of stranger crime were assaulted only once during that period (Langan and Innes, 1986).

There are many reasons why battered women appear to be at elevated risk for retaliatory violence. Most other victims of violent crime are not in relationship with the defendant and are not living with (or did not formerly reside with) the defendant. Most have not previously suffered attacks or sustained injury at the hands of the defendant. Most have not been held hostage by the defendant or experienced his terroristic threats, targeted graphically at the victim or members of her family. Most other victim-witnesses are not economically dependent upon the defendant during the pendency of prosecution and, potentially, thereafter. Most will not be compelled into continuing contact with the defendant during the criminal process and after disposition because of shared parenthood. Most other victims of crime are not integrally

interconnected with the criminal assailant. Most other victims of crime are not at elevated risk of violent assault after intervention by the criminal justice system. However, battered women are most often killed when attempting to seek legal redress or when leaving an abusive relationship (Browne, 1987; Sonkin et al., 1985).

Criminal justice system personnel too often believe that battered women will be safer and less exposed to life-jeopardizing violence once they are separated from the offender; once prosecution has commenced. Quite to the contrary, evidence of the gravity of violence inflicted after separation of the couple is substantial. Batterers may, in fact, escalate their violence to coerce a battered woman into "reconciliation," to retaliate for the battered woman's participation in the prosecution process, or to coerce her into seeking termination of the prosecution. If the batterer cannot "recapture" the battered woman as his ally, he may seek retribution for her desertion and for her disloyalty in exposing him to criminal consequences. Although not all batterers engage in escalated violence during the pendency of prosecution, as many as half threaten retaliatory violence (Davis et al., 1990) and at least 30% of batterers may inflict further assaults during the pre-disposition phase of prosecution (Goldsmith, 1991). A battered woman whose prior attempts to seek prosecution or civil protection orders, only to have the perpetrator escalate his violence, may be unwilling to face the risk that prosecution will further endanger, rather than protect her (Family Violence, 1991). Men who batter have kidnapped victims or seriously injured and even killed battered women to prevent their participation as witnesses (Gwinn, 1991; Hart, 1985).

Battered women may, thus, be much more concerned about preventing future violence than about vindicating the state's interest in penalizing the defendant for the crimes previously committed. This orientation of the battered woman toward future safety may create a tension with those in the criminal justice system singularly focused on winning criminal convictions.

Victim-blaming attitudes.

Unlike other victims of violent crime, battered women are often viewed by the police, the prosecutor, judges, jurors and probation/parole staff as responsible for the crimes committed against them; responsible either because battered women are believed to "provoke" the perpetrator into violence or because they are believed to have the power to avoid the criminal assault through accommodating the perpetrator's demands. Other victims of violent crime are not seen as culpable for the crimes inflicted upon them, but battered women frequently report that criminal justice system personnel appear to consider them "unworthy victims" who are clogging up the courts with unimportant family matters. Some, therefore, impose barriers to a battered woman's use of the criminal justice system. Police fail to arrest or file incident reports. Prosecutors delay charging, require substantial corroboration, acquiesce in repeated continuances, or impose fees upon the victim (Ford, 1991). The reluctance of the criminal justice system to vigorously proceed with domestic violence cases quickly erodes victim confidence in the system's alliance with the victim.

Even though justice system actors may eschew victim-blaming attitudes, criminal process may be confounded by similar attitudes embraced by either the defendant or the battered woman, herself. Uniformly, the perpetrator of domestic violence blames the victim for his conduct, claiming that she provoked him so profoundly that his crimes are excusable, if not justifiable. Batterers often persuade battered women of the correctness of this perspective. Beyond this, the battered woman may also blame herself, feeling she should have been smarter and figured out a way to prevent the violence or she should have been more courageous and found a way to safely leave the relationship. This self-blame may go as far as believing that it is not fair to arrest and prosecute the perpetrator.

Systemic resistance to the prosecution of batterers.

Unlike many victims of stranger assault, but like other victims known to defendants, victims of domestic violence may be reluctant witnesses or may be assumed to be so (Cannavale and Falcon, 1976). There are many reasons for this. Many battered women who earnestly seek prosecution find substantial resistance to the appropriate charging of defendants. National data reveal that law enforcement routinely classify domestic assault as misdemeanors even though the criminal conduct involved actually included bodily injury as serious or more serious than 90% of all rapes, robberies and aggravated assaults (Langan and Innes, 1986). When serious assaults are trivialized and charged as misdemeanors or cited as summary offenses, victims of domestic violence may conclude that the costs and risks of prosecution outweigh the potential consequences for assailants. Thus, battered women may lose interest in criminal prosecution. Further, some battered women, initially committed to prosecution, become discouraged with the criminal process; discouraged because of delays (Ford and Burke, 1987), lack of witness protection (Family Violence, 1991), or because of prosecutor indifference or insensitivity (McGuire, 1991; Hart, 1991).

Victim reluctance.

Similar to other victims of crime, when battered women are poor, have few personal or financial resources or find participation in prosecution costly, they may be reluctant to proceed. Rural battered women may not have transportation and may find it impossible to arrange for multiple trips to the courthouse. Women with school age children may have to find expensive and inconvenient child care for all court appearances outside of school hours. Seriously injured battered women may find employers unwilling to accommodate court appearances after they have been considerate about many medical appointments.

Although it is commonly believed that battered women withdraw cooperation because of decisions to reconcile with defendants, research reveals that this is not typically the reason for the request to terminate prosecution. (Ford and Burke, 1987) Some battered women seek to terminate prosecution because the initiation of charges has affected the changes sought in defendant behavior such that victims no longer conclude that prosecution will be necessary to protect them from future abuse (Ford, 1991).

Other battered women who have found that the best protection against a perpetrator's violence has been the protection offered by the community with which the battered woman affiliates, rather than the criminal justice system, may resist prosecution if she concludes that the community will abandon her or withdraw critical support if she pursues prosecution. Women of religious, ethnic and communities of color sometimes identify community abandonment as an untenable, adverse consequence of cooperation with prosecution.

Battered women may be reluctant to expose the father of their children to public accountability because of the attitudes of their children toward the criminal justice system. Others are fearful that prosecution will wreak economic ruin on the family. Even smaller numbers of battered women oppose prosecution for political reasons; believing that the criminal justice system selectively penalizes men of color or other politically unpopular constituencies. Some believe that the exposure of batterers to the criminal justice system and its coercive controls will facilitate, rather than deter, future violence.

An understanding of victim reluctance is critical for informed decision-making about the role of the battered victim in the criminal justice system, strategies to enhance victim cooperation and, ultimately, disposition by the prosecutor or the court.

STRATEGIES TO FACILITATE VICTIM PARTICIPATION.

Despite all these potential barriers to a battered woman's committed participation in criminal process, many battered women and justice system personnel have found that these hurdles can be eliminated with careful attention to the particular requirements of each battered woman. A variety of strategies have been embraced to facilitate the informed, protected and committed participation of battered women in criminal prosecution.

Victim rights and services.

With passage of the Domestic Violence Act in 1979, the legislature mandated that victims be notified of their rights by law enforcement, and that prosecutors expeditiously advise them of prosecutorial decisions. In addition, the Washington State Constitution articulates the rights of crime victims (WA. Const. art. 1, sec. 35, amend. 84 (1984)). This constitutional provision is bolstered by state statute where, among other rights, victims are entitled to the following:

To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved.

To submit a victim impact statement or report to the court.

To present a statement at the sentencing hearing for felony convictions.

To receive an order of restitution in all felony cases, even where the defendant is sentenced to confinement. (RCW 7.69)

Another strategy to enhance victim participation is the provision of adequate and appropriate services for battered women and their children. As reiterated in the *Final Report of the Washington State Domestic Violence Task Force*, "It has been shown that victims are more likely to follow through with a legal process they understand and from which they can gain assistance."

In 1978 the City of Seattle established the Battered Women's Project (now the Family Violence Project) in the Seattle City Attorney's Office. Advocates with the Project assist in misdemeanor domestic violence cases by:

Acting as a liaison between the criminal justice system and the victim.

Providing victims with information concerning the court process and court dates.

Providing information to prosecutors and probation services.

Making referrals for additional advocacy and services to community based domestic violence programs. These rights and services are helpful, but are often not sufficient to engage the cooperation of victims of domestic violence. The following examine additional efforts used to engage the participation of battered women in criminal prosecution.

Outreach and investigation.

Police departments in a few jurisdictions in Washington have established follow-up systems whereby patrol officers or detectives make telephone or house calls to apparent victims of domestic violence in the days immediately following the request for emergency police assistance. When contacting the battered woman, the outreach officer undertakes further investigation into criminal domestic violence, identifies the risks of batterer retaliation that may suggest particular conditions on bail or release, and offers women clarification about legal options to protect them. In completing the outreach interview, the officer gives the victim specific contact information should she have further questions or information to share.

Outreach is effective only when responding officers obtain confidential contact information from battered women at the crime scene; contact information should include a telephone number whereby a message can be left for a victim if she cannot be reached in her own home.

Some domestic violence programs have adopted outreach efforts whereby they attempt to contact battered women by phone the day following police response to an emergency domestic violence call.

Communication by the domestic violence program after the immediate crisis of the criminal incident enables battered women to learn about legal options and community services in a context which is supportive, that fosters an exchange of information, and which engages a battered woman in critical thinking about safety strategies. Outreach, thus, often facilitates victim participation in and commitment to the criminal justice process.

Prosecuting attorneys prioritizing the prosecution of domestic violence cases have undertaken outreach to domestic violence victims immediately after arrest of the perpetrator or arraignment in order to provide victims with notice about charges filed, information about bail and any special conditions thereon, as well as any victim no contact order under R.C.W. 10.99.040. Outreach initiates a dialogue and relationship early in the prosecution process. It enables the victim to consider civil legal remedies and community-based services options for protecting herself and her children during the pendency of prosecution. Outreach often gives prosecutors substantial supplementary information about the crime committed. In other jurisdictions, prosecutors have instituted victim-witness clinics wherein victims learn about the criminal justice system, their role in it and the likely dispositions upon conviction or a guilty plea. They learn how to craft victim impact statements and how to articulate the specific dangers they believe are posed by their assailants. They learn how to become more effective witnesses. Most significantly, they begin to network and bond with other victims, thereby gaining support and eliminating the isolation that domestic violence perpetrators use to dissuade battered women from participation. Clinics often provide child care and are available at times convenient to victim-witnesses.

Victim protection.

Since battered women are at elevated risk of violence during the pendency of prosecution, police, prosecutors, advocates and courts should attend specifically to the safety requirements of victims. Systems should be developed to assess the potential lethality of defendants. Municipal and district court judges should carefully evaluate the continuing threat that the defendant poses to the victim and set bail and conditions thereon that will best safeguard the victim and her family during the pendency of criminal process. The prosecutor and advocate might undertake periodic reviews of victim safety with the battered woman and seek additional protections should they be required. When a victim seeks to maintain the confidentiality of an undisclosed address, the police and the prosecutor should very carefully safeguard any contact information and delete any reference to an address on materials that are disclosed to the public and defense counsel. Beyond this, all criminal justice system personnel should refer battered women to domestic violence programs so that they can carefully construct safety plans to minimize exposure to perpetrators and to engage the community in vigilance for the safety of battered women.

Victim advocacy.

Victim advocacy is a key component in the prosecution of domestic violence. Battered women who find themselves abruptly thrust into the legal system because of the violence of their partners are swamped with new information, sometimes are dislocated, and invariably are confronted with increased demands for family management in this acute crisis situation. It is critical that victims have an identified contact person within the prosecuting attorney's office who can provide information about criminal process and referral to supportive services. For other critical assistance, such as emergency shelter, counseling, safety planning, crisis management and civil legal advocacy, battered victims should be referred to local domestic violence programs.

When battered women engage in legal proceedings, it is critical that they have support from family, friends and employers so that their participation can be diligent and unclouded by anxieties that significant others do not approve of the prosecution. Therefore, domestic violence programs may seek to educate and engage those people most important to the victim so that her investment in the process of prosecution is not confounded by their concerns and so they can help her strategize for safe participation in the criminal justice system.

Specialized Prosecution.

Specialization has improved the success of prosecution in domestic violence cases (Fagan, 1988). Specialized prosecution units have enhanced the relationship of the prosecutors with the victims, by improved investigation and preparation of cases against perpetrators, and have institutionalized the practice of seeking specific safeguards to protect victims from further abuse. Specialized prosecution

enhances the expertise of those handling domestic violence cases and facilitates outcomes satisfactory both to the prosecution and victim witnesses.

Timely prosecution.

Research suggests that timeliness is essential to victim cooperation (Ford & Burke, 1987). RCW 10.99.060 requires that the prosecuting attorney make a decision whether or not to prosecute and notify the victim within five days of receiving the incident report. Prosecutors should investigate domestic violence cases expeditiously and not seek or acquiesce in procedural delay where there is no compelling reason. Domestic violence victims grow weary of prosecution if many lengthy appearances are required; thus the prosecutor should only require victims to attend those proceedings where their testimony is critical to the case. Where feasible, the prosecutor should minimize the time victim-witnesses expend at any court appearance. In scheduling court proceedings where victim attendance is required, the prosecutor might inquire about significant demands on the time and resources of victims which may compete with court attendance; these should be accommodated whenever possible (ABA, 1986).

Victim participation and empowerment.

Prosecutors seeking to upgrade efforts at domestic violence prosecution often employ other victim-engaging strategies. Victim input in plea negotiations and dispositional alternatives is a strategy believed to enhance victim cooperation (Family Violence, 1991; McGuire, 1991). Some prosecutors have developed court schools in which they enable the victim to learn how to be an effective witness. Many battered women report that prosecutors fail to adequately prepare for trial; sometimes it appears that the prosecutors are not even conversant with the documents in the prosecution file as trials are about to begin. Careful and periodic preparation in which the victim is engaged will facilitate successful prosecution and victim investment in the process. As victims understand that they have a vital and respected role in the prosecution, reluctance may subside. Data suggest that the more domestic violence victims are invested in the prosecution process, the more powerful its deterrent effect, the stronger the message to perpetrators that their violence will not be tolerated and that the cost of persistence will far outstrip the benefits of continued violence (Goldsmith, 1991).

Victims should not be penalized for their reluctance to participate in prosecution. Policies should be developed in each prosecutor's office and within the court that limit the use of compulsion in achieving victim participation. Victims of domestic violence should not be incarcerated for refusal to serve as victim-witnesses. Battered women should not be prosecuted for filing false police reports because they seek to terminate prosecution, except in those unusual circumstances where there is independent evidence of false swearing or perjury and the interests of justice will be served thereby. While it is appropriate to issue subpoenas to compel victim appearance at trial, bench warrants should not be issued routinely when victims fail to appear. Rather, continuances should be sought and investigation should be undertaken to ascertain the whereabouts of the battered woman and the reasons for her failure to appear. If reluctance is based on fear or intimidation, strategies should be employed to protect her from the dangers anticipated. Battered women should not be threatened with refusal to prosecute perpetrators for future violence if they fail or refuse to participate in the current prosecution.

Beyond this, prosecutors and courts should be cognizant of the potential adverse ramifications of coercive process with victims of domestic violence. The repercussions of coercive process may be as far-ranging as the loss of custody, the loss of employment, the loss of reputation, eviction from leaseholds, abandonment by significant support persons, and physical assault of the victim and her family members. All efforts should be made to gain the cooperation of domestic violence victims rather than to compel participation.

The interests of justice must seriously consider the interests of victims. Their interests in safety and their reputations as law-abiding citizens should not be compromised in pursuit of prosecution unless there are overriding reasons for subordinating victim interests.

On the other hand, it may be helpful for victims that the public posture of a prosecutor's office is that the City Attorney or County Prosecuting Attorney controls the prosecution. Many in the criminal justice system believe that at least the appearance of no victim discretion on the question of whether the prosecution will proceed reduces batterer intimidation directed at getting charges dropped. This public posture may even enhance victim safety because the perpetrator understands that further violence will not affect a dismissal of the charges but will both result in incarceration during the pendency of the initial prosecution and in additional prosecution for the retaliatory violence. It is important to recognize that prosecution solely controlled by the prosecuting attorney will not universally buttress victim investment or protect victims from retaliatory violence. In those instances where termination of the prosecution is critical to protect victims, the public posture should not preclude such prosecutorial discretion.

Sentencing.

Battered women are entitled to submit a victim impact statement to advise the pre-sentence investigator and the court of the ramifications of the crime(s) for which the offender was convicted on the battered woman and her family. While investigators are usually receptive to hearing about the emotional, physical and financial losses sustained by victims, they are too often resistant to hearing of the dangers that the perpetrator continues to pose to the battered women and children and reluctant to suggest that these risks of violent recidivism should be considered aggravating circumstances supporting longer sentences or factors to be addressed in crafting protective conditions on probation. Thus, sentencing recommendations typically do not fully inform the court of information relevant to sentencing deliberations in many jurisdictions.

Further, prosecutors frequently rely on the pre-sentence report and the statement of the victim at sentencing rather than producing testimony or evidence at a sentencing hearing to buttress arguments in favor of incarceration and victim safeguards. While this prosecutorial advocacy may not be necessary in jurisdictions where the pre-sentence investigator attends carefully to the risks of recidivism, in counties where the court is not otherwise given information about recidivism prediction and the dangers posed by many batterers long after divorce or incarceration, prosecutors should undertake to inform the court of these risks.

Unless battered women believe that sentences comport with justice and effect specific victim safeguards, they will be most reluctant to participate cooperatively in criminal process should their assailants recidivate. When courts craft sentences that clearly call batterers to account and safeguard victims, battered women, the general public and other components in the justice system become confident that criminal justice efforts are meaningful interventions in domestic violence and warrant serious attention.

Restitution and victim compensation.

Advocates for battered women in Washington have reported that neither restitution nor victim compensation has been predictably awarded or achieved in a timely fashion despite the substantial losses sustained as a consequence of domestic violence. Courts should institute policies whereby victim restitution precedes the collection of other court costs and fines. Moreover, courts can impose time tables that are tight and require significant payment at the front end rather than balloon payments at the end of the payment schedule.

As to crime victims' compensation awards, battered women are eligible to receive enhanced benefits as a result of legislative amendments in 1991. However, many prosecuting attorneys offices do not afford victims clerical assistance in the preparation of compensation claims, nor do they proceed to follow up to

advocate for the issuance of awards. If advocacy for compensation occurs during the pendency of prosecution, victims may invest more fully in the prosecution.

The Domestic Violence Prevention Act permits the court to order relief not compensable either through restitution or crime victims' compensation. Therefore, the prosecutor's office may alleviate some of the stress and burden imposed by victim losses if it directs domestic violence victims to the civil courts for enhanced remedies such as child custody and possession of the shared residence, as well as protection. Particular attention to these economic matters and other remedial options renders a great service to victims and simultaneously enhances their investment in prosecution. Both crime victim compensation and protection order relief can be initiated, and sometimes awarded, early in the prosecution process, and thereby have the potential to cement victim cooperation with criminal process.

THE CHALLENGE TO THE CRIMINAL JUSTICE SYSTEM.

Domestic violence victims are increasingly turning to the criminal justice system for assistance in ending the violence that jeopardizes their lives and well-being. They often are uninformed about the criminal justice process and naive about its power to end the violence in their lives. For battered women to be effective, committed participants in the criminal justice system, care must be taken to minimize the barriers to access and investment that have historically impeded empowered participation by battered women. The adoption of protocols attentive to victim issues by every component of the criminal justice system will greatly enhance justice-seeking efforts in domestic violence cases. The strategies outlined in this chapter can be utilized to engage and protect battered women as victim-witnesses and can also greatly advance the success of prosecution and perpetrator accountability.

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