

## **VICTIM ISSUES**

**By Barbara J. Hart, Esq.**

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.

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 PROSECUTION.**

While each battered woman's experience should be recognized as unique, there are many commonalities among battered women victim-witnesses. Perhaps most significantly from the perspective of prosecutors 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 year (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).

Prosecutors 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 prosecutors singularly focused on winning criminal convictions.

### **Victim-blaming attitudes.**

Unlike other victims of violent crime, battered women are often viewed by the prosecutor, judges and jurors 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 by the prosecution as culpable for the crimes inflicted upon them, but battered women frequently report that prosecutors appear to consider them "unworthy victims" who are clogging up the courts with unimportant family matters. Some prosecutors, therefore, impose barriers to a battered woman's use of the criminal justice system. These may include delayed charging, the requirement of substantial corroboration, or the imposition of fees upon the victim (Ford, 1991). The reluctance of prosecutors to vigorously proceed with domestic violence cases quickly erodes victim confidence in the prosecutor's alliance with the victim.

Even though prosecutors may eschew victim-blaming attitudes, the prosecution 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 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 court-house. Women with school age children may have to find expensive and inconvenient childcare 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. Those battered women who have resided in a rental unit leased from the defendant's parents may face eviction if they cooperate.

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 prosecution. 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 prosecution, 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 prosecution, many battered women and prosecutors have found that these hurdles can be eliminated with careful attention to the particular requirements of each battered woman victim-witness. 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.**

One strategy adopted to enhance victim participation was the statutory articulation of victim rights.

Pennsylvania's *Crime Victims Bill of Rights* specifies that victims of crime have the right:

To have included in any pre-sentence report information concerning the effect that the crime committed by the defendant has upon the victim, including any physical or psychological harm or financial loss suffered by the victim, to the extent that such information is available from the victim or other sources.

To have restitution ordered as a condition of probation whenever feasible.

Upon request of the victim of a feloniously assaultive crime, to be promptly informed by the district attorney whenever the assailant is to be released on parole, furlough, or any other form of supervised or unsupervised release from full incarceration. (Section 479.3, Act 96 of 1984.)

Another strategy is the statutory mandate for victim-witness service funding. The Pennsylvania Commission on Crime and Delinquency is required to provide technical assistance and to make grants to district attorneys and other criminal justice agencies to provide crime victims with notification and protection services which include:

Information concerning financial assistance and other social services available as a result of being a victim of crime;

Notification that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the victim an unnecessary trip to court;

Notification of the final disposition of the case;

Protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts;

A secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;

Procedures for the expedited return by law enforcement officials of that personal property of victims which is held for prosecutorial purposes;

Services related to the rights of victims;

And other services as defined by PCCD. (Section 479.4 of Act 96 of 1984.)

These rights and services are helpful, but are often not sufficient to engage the cooperation of victims of domestic violence. Additional efforts that have engaged the participation of battered women in criminal prosecution of perpetrators include:

### **Outreach.**

District attorneys prioritizing the prosecution of domestic violence cases have undertaken outreach to domestic violence victims immediately after preliminary arraignment in order to provide victims with notice about charges filed, information about bail and any special conditions thereon, as well as any victim intimidation order under 18 Pa. C.S. §4954, and notice of the defendant's release from custody.

Outreach initiates a dialogue and relationship early in the prosecution process. It enables the victim to consider civil legal remedies and human services options for protecting herself and her children during the pendency of prosecution.

Some prosecutors have instituted victim-witness clinics that provide childcare and are available at times convenient to victim-witnesses. At these seminars, 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.

**Victim protection.**

Since battered women are at elevated risk of violence during the pendency of prosecution, prosecutors should attend specifically to the safety requirements of victims. Systems should be developed in each prosecutor's office to assess the potential lethality of defendants. The prosecutor might undertake a periodic review of victim safety with the battered woman and seek additional protections should they be required. Should a victim seek to maintain the confidentiality of an undisclosed address, the office should very carefully safeguard any contact information and delete any reference to an address on materials that are disclosed to the court and defense counsel. Beyond this, prosecutors 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 district attorney's office who can provide support, as well as information and referral, to assist battered victims both to effectively participate in the justice system. Often those providing victim assistance in the office of the district attorney focus on technical assistance to victims that focuses on the logistics of participation in the criminal justice system. For other critical issues such as emergency shelter, counseling, safety planning, crisis management and civil legal advocacy, battered victims are 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). District attorneys might establish domestic violence units in large offices or create specialists in smaller offices in order to enhance the relationship of the prosecution with the victim, to better investigate and prepare a case against the perpetrator and to specifically tailor safeguards to protect the victim 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.

In many jurisdictions in the Commonwealth, the victim of domestic violence must undertake prosecution at the preliminary hearing if the case is to proceed. Crime victims are uninformed prosecutors; often incapable of presenting the evidence of the criminal conduct of the suspect and invariably intimidated by defense counsel and the perpetrator. Thus, many domestic crimes fall through the cracks and are dismissed. The success of prosecution at the preliminary hearing phase sometimes improves when police officers carry the burden, but issues of victim safety are routinely ignored. If district attorneys are to upgrade efforts to prosecute domestic violence crimes, preliminary hearing prosecution is essential.

**Timely prosecution.**

Victims of crime are not entitled to timely prosecution under the current statutory scheme; however, research suggests that timeliness is essential to victim cooperation (Ford & Burke, 1987). 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 district attorney 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.**

District attorneys 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 empowerment and 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).

### **OTHER VICTIM ISSUES.**

#### **Limits on victim compulsion.**

Victims should not be penalized for their reluctance to participate in prosecution. Policies should be developed in each prosecutor's office 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. While it is appropriate to routinely 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. Prosecutors 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, and abandonment by significant support persons. 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 Commonwealth controls 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 district 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.

### **Restitution and victim compensation.**

Battered women in Pennsylvania have reported that neither restitution nor victim compensation has been predictably achieved or achieved in a timely fashion despite the substantial losses sustained as a consequence of domestic violence. Prosecutors might seek to institute a policy whereby victim restitution would precede the collection of other court costs and fines. Beyond this they might request 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 have received few, even though they are eligible. The lack of awards appears to be a failure of advocacy. Although many district attorneys offices afford victims clerical assistance in the preparation of compensation complaints, they do not proceed to advocate for the issuance of awards. If advocacy in this arena occurs during the pendency of prosecution, victims may invest more fully in the prosecution.

The Protection From Abuse Act permits the court to order payment for many losses that may not be compensable either through restitution or crime victims' compensation. Therefore, the office of the district attorney may alleviate some of the stress and burden imposed by the losses sustained by the victim if they direct domestic violence victims to the civil courts for economic awards as well as protection. Meanwhile, when all else fails, if there are losses that affect a victim's capacity to work, payment might be forthcoming from the Bureau of Vocational Rehabilitation. Particular attention to these economic matters renders a great service to victims and simultaneously enhances their investment in prosecution.

### **Post-disposition issues.**

Victims of crime have articulated concerns that prosecutors seem to lose interest once a conviction or plea has been achieved and sentencing imposed. The only statutory obligations of district attorneys after disposition are notice to victims of feloniously assaultive crimes of parole hearings and the right to participate therein, notice of furloughs, notice of transfer to community facilities and notice of discharge from incarceration. Actually, victims are only entitled to this information if they request it from the district attorney and provide that office with current contact information. Crime victims may not appreciate the importance of providing the district attorney with this information, and few prosecutors have developed systems that expedite timely notification. These systems may be particularly crucial in domestic violence cases as domestic violence perpetrators frequently engage in further assaults after incarceration. It is important that contact information be kept confidential so the perpetrators cannot access it to discover the whereabouts of battered women upon release.

Domestic violence programs have engaged in legal advocacy on behalf of crime victims in parole hearings. Where domestic violence victims believe that their safety is jeopardized by early parole of perpetrators, coordinated efforts by the office of the district attorney and the local domestic violence program can provide the Parole Board with information essential for their informed decision-making, both as to whether parole should be granted and as to conditions that might be imposed on any parole. Where a prosecutor is convinced that a crime victim continues to be at risk of lethal retaliation from a perpetrator upon parole or at the expiration of his sentence, the office might assist the victim in relocation and in legal process to change the victim's identity. Victims of domestic violence are among those most likely to need this type of assistance.

### **THE CHALLENGE TO PROSECUTION.**

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 the power of prosecution 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 in the prosecution of domestic violence. The strategies outlined in this chapter have been utilized to engage and protect battered women as victim-witnesses and thus have greatly advanced the success of prosecution in this arena. While it may be impossible for every district attorney to engage in all of the activities suggested, it is believed that the adoption of a prosecutor protocol attentive to victim issues will greatly enhance justice-seeking in domestic violence cases.

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