



DOMESTIC VIOLENCE; PROSECUTION, VICTIMS AND FAMILY LAW

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Domestic violence cases may involve not only intimate partner relationships such as spouses, live in partners or even dating relationships, but also familial relationships, such as the elderly, or children being subject to abuse in a violent home. Abuse falls into one or more of the following actions, physical battering, sexual assault and emotional or psychological abuse and generally escalates over a period of time.

Domestic violence can be blatant or it can sneak insidiously into a relationship. It may begin with fairly innocuous behaviors, like control of finances, gradual isolation from family and friends, jealousy and possessiveness, criticism or sexism. Over time it develops into more overt behaviors, screaming, slapping, biting, kicking, punching, stalking, sabotaging attendance at work or school, violence to pets, children, coercion, and rape, destruction of property, withholding economic support, medical treatment, and threats of harm to the abuser themselves, the victim, the victim's family members, children and pets.

People are still very ignorant about domestic violence and how it works. If you talk to people and read news reports, the emphasis is always on physical violence. Yet, the batterer's focus is always on power and control. Physical violence is only one tool used to achieve power and control. Many batterers use physical violence only "as needed" to obtain and retain control. One battered woman, who had experienced relatively little physical violence reported, "Just a little of that stuff goes a long way." It's the credible threat of violence, combined with other coercive techniques, that makes for a batterer.

As an assistant prosecutor, the issue of domestic violence, its prosecution and the goals of the criminal justice system are part of our training and ongoing education. We learn from the onset that one cannot count on victims of abuse to follow through with prosecution.

Victims have many reasons why they might be unable or unwilling to assist the prosecutor. Among them, fear, manipulation, love, loyalty, dependence and above all, protection of their children are key. Prosecutors all over the country are learning ways to go forward in domestic violence cases without the cooperation of the victim. Using photos, medical records, 911 calls, excited utterances, other witnesses and even domestic violence experts, prosecution may proceed without the victim's testimony.

The purpose of controlling this crime is to assist victims of domestic violence in breaking the pattern of abuse, to prevent occurrence of further violence to the victim, hold defendant's accountable for their acts of violence, to minimize the victim's active role in the prosecution of the defendant and to encourage the use of education and counseling designed to change the defendant's behavior. And while these goals are echoed across most jurisdictions, the victim's perspective must remain part of the process. The crime of domestic assault places more than normal trauma upon a victim. The physical assault's impact is exacerbated by the interpersonal relationship between the assailant and victim.

For a victim, once the assault is past, the relief from the immediate threat of harm is palpable. However, the ramifications of police intercession, and pursuit of prosecution can be even more intimidating than the event which caused the police to be called in the first place. Thus, begins the bane of police involvement in domestic violence, from both the victim's point of view and the criminal justice system. The goals of the police and victim can conflict. The police are trying to do a job that protects the victim, and brings the assailant to the point of a successful prosecution. For the victim, while police involvement eases the situation at that moment, the pursuit of prosecution can cause a new episode of coercion, intimidation and abuse.

Once an arrest occurs, and the investigation concludes, the prosecution begins to piece together a case that can be proven even without the victim's cooperation. Indeed, the goal of many investigations and criminal prosecutions is to minimize the victim's participation in proving the act of violence. This is an effort to not cause further victimization to the abused. However, there are times when the prosecution cannot proceed because the evidence available cannot sustain the case without the victim's testimony. Many victims of abuse, while they are desperate for the abuse to stop, are also stuck in the throes of self preservation. For them, cooperating with the prosecution of the abuser is too great a risk.

As prosecutors, protecting the victim is also a paramount concern. A lethality assessment is crucial to determine whether the domestic violence offender has a potential to cause further harm to the victim. An assessment should be done the first time at a bail hearing, and updated throughout the case and at sentencing.



Considerations include:

1. homicide or suicide threats or attempts by the abuser
2. availability of weapons to the abuser
3. extreme jealousy/obsession with victim
4. betrayal and abandonment fears of the abuser
5. recent escalation of the batterer's risky behavior
6. recent escalation of violence
7. depression of the abuser
8. past law enforcement contact of the abuser
9. abuse of drugs or alcohol by the abuser
10. potential for hostage taking by the abuser

The purpose of this assessment is to obtain the most comprehensive picture of the situation and tailor a protection order and bond conditions to provide the most benefit to the victim.

Many people simply cannot understand why a victim does not leave the abuser. For a victim of domestic violence the act of leaving is emotionally wrenching accompanied with fear, guilt and self abasement. Moreover, the attempt to leave or obtain assistance is one of the most dangerous times for a victim of domestic violence. The act of leaving often prompts the most violent response from the abuser. Therefore, for those partners who leave their abusive relationships, the need for security is vital. A victim of domestic violence will often leave her abuser multiple times before she finally escapes the violence.

A primary reason for the return to the abuser is homelessness. There is an overwhelming need for emergency shelter. Nearly 50% of the women in this country who are receiving TANF dollars, (Temporary Assistance to Needy Families) reported domestic violence as a factor in their need for assistance.

Domestic violence law is certainly far better than it has been in the past. Police training, protocols, more expansive statutes, and changing view points, have led to progress in the legislative, judicial, and executive arenas. Positive legislative reform is on-going. Changes in the law are important. With better law, good people (judges, police, etc.) can do more and bad ones are limited in the harm they can cause. Law can also have an educational effect.

In dealing with victims of abuse one adage holds true, "do with the battered woman, not to her." What this means is that helpers must work with the battered woman as she makes decisions about her safety and legal options. Outsiders, no matter how knowledgeable or well-meaning, must not impose their will or their ego on her life. They can and should counsel as well as listen, but the battered woman and her needs and desires must be at the forefront.

A lawyer or psychologist may counsel about safety planning. Let's talk about ways you and the children can be safer.

Work through a safety plan. Failing to work out a plan for the battered woman can be disastrous in many ways. First and foremost, it can endanger her. Battered women are not psychic, but they know their barterers well. They have a good idea of what they need for their safety. Outsiders can err by either pushing too hard or not hard enough. They can compromise the victim's safety either by not taking her demands for protection seriously, or by pushing her to take steps that she thinks are dangerous or premature.

A safety plan should include both a plan for being safer in the relationship and after you have left the abuser.

Creating a Safety Plan

Suggestions for increasing safety in the relationship

- I will have important phone numbers available to my children and myself (see below).
- I can tell _____ and _____ about the violence and ask them to call the police if they hear suspicious noises coming from my home.
- If I leave my home, I can go (list four places): _____, _____, _____, _____.
- I can leave extra money, car keys, clothes, and copies of documents with: _____.
- If I leave, I will take (see checklist below):
- To ensure safety and independence, I can: keep change for phone calls with me at all times; open my own savings account; rehearse my escape route with a support person; and review safety plan on _____ (date).
- I will teach my children how and when to call 911 and the Fire Department.
- I will use my judgment and intuition. If the situation is very serious, I will give my partner what he needs to calm him down. I will protect myself and my children until we are out of danger.

Suggestions for increasing safety when the relationship is over

- I can: change the locks; install steel/metal doors, a security system, smoke detectors, and an outside lighting system.
- I will consider carefully which people I invite to help secure my safety.
- I will inform _____ and _____ that my partner no longer lives with me and ask them to call the police if my partner is observed near my home or my children.
- I will tell people who take care of my children the names of those who have permission to pick them up. The people who have permission are: _____, _____.
- I can tell _____ at work about my situation



- and ask _____ to screen my calls.
- I can avoid stores, banks, and _____ (other places) that I used when living with my battering partner.
 - I can obtain a protective order from: _____.
 - I can keep it on or near me at all times as well as leave a copy with: _____.
 - If I feel down and ready to return to a potentially abusive situation, I can call _____ for support or attend workshops and support groups to gain support and strengthen my relationships with other people.

Important Phone Numbers

- Attorney: _____.
- Police: _____.
- Hotline: _____.
- Friends: _____.
- Shelter: _____.

Checklist of Items to Take

- Identification
- Birth certificates for me and my children
- Social Security cards
- School and medical records
- Money, bankbooks, credit cards
- Keys-house/car/office
- Driver's license and registration
- Medications
- Change of clothes
- Welfare identification
- Passport(s), Green Card(s), work permit
- Divorce papers
- Lease/rental agreement, house deed
- Mortgage payment book, current unpaid bills
- Insurance papers
- Address book
- Pictures, jewelry, items of sentimental value
- Children's favorite toys and/or blankets

Part of this safety plan involves the ability to achieve some important assistance from the family court. As indicated, there are many barriers to leaving an abusive relationship. Fear of retaliation, losing custody, fear that no one will believe the victim, fear of child protective services, fear of deportation, blackmail by the abuser, no support system, and no money, contribute to the victim's return to the abuser.

Housing too is a serious problem. The lack of sufficient income is the key to the housing crisis. Minimum wage is not sufficient income to obtain a two bedroom apartment at fair market rent. Poor employment, credit ratings or rental histories can prevent a person from obtaining permanent housing. Shelters are overcrowded, and the demand for

sanctuary is so high that most shelters have to limit the length of a person's stay. It generally takes a victim anywhere from 6 to 10 months to find a permanent home.

The first need for victims is for security, an income, child care, clothing, identification, basic life essentials, those a shelter can initially provide, and then comes the complications of obtaining housing. If the batterer is still around and is able to determine where the victim is staying, this can cause yet another problem. Some apartments or landlords have "zero tolerance for crime" policies. This means that a tenant can be evicted when domestic violence occurs in the home regardless of whether the person is a perpetrator or a victim. A victim may hesitate to contact the police when the batterer appears because of their fear of eviction.

Family law overlaps the domestic violence paradigm in a number of ways. One key aspect is the assistance a court order can provide to a family. The family court can help an abused woman, by expediting the initiation of a child support case, to get dollars coming in from the abuser to the victim. Maintaining steady, ongoing support would help to alleviate some of the dilemma. Obtaining custody, child support, housing and financial independence are all major hurdles in addressing domestic violence. The family law system plays a role in how these dynamics weigh out.

Frankly, a court case is by no means a cure all; it can however give a victim some security and leverage in dealing with an abuser, by providing an avenue for outside support. But, one needs to be aware that family court can become a tool for the abuser as well. In domestic violence relationships, the batterer is twice as likely to seek sole custody of their children. The perception that mothers are more likely to win a contested custody case is not always true; fathers who contest custody may win sole or joint custody. The court system can become another form of abuse. Harassing and retaliatory legal actions are common.

Correspondingly, the Michigan Child Custody Act provides 12 specific factors the court must weigh in determining custody, One of the factors the court must consider is domestic violence, regardless of whether the violence was directed against, or witnessed by the child. Children witnessing domestic violence and living in an environment where violence occurs experience the same trauma as children who are physically abused. Children may become fearful, antisocial, aggressive, withdrawn, anxious, depressed and angry. They can develop eating, sleeping and behavior difficulties. The impact of domestic violence on the entire family is pervasive regardless of the focus of the abuse.

One avenue for victims to gain access to the court system is through the Federal Child Support Program. The State of Michigan has a judicial based child support establishment and enforcement program. It is a federally funded cooperative program that provides assistance to not only



those individuals who are public assistance recipients, but anyone who applies for services under Title IV-D of the Social Security Act. Through the referral process from the Department of Human Services, to the local prosecutor's office or FIA office, victims can obtain assistance in starting paternity and child support cases, which in turn can lead to financial security. For most people the request for public assistance benefits is the starting point to gaining the security they need to move forward in their creation of a plan to leave their abuser. Gaining the support of a case worker, help with finances, housing, counseling and so forth can truly empower victims to help themselves.

Confidentiality of addresses, employers, and other means of locating the victim are permitted under both federal regulations guiding the child support program, and state laws and court rules. Thus, a victim can seek the support needed without fear of discovery. Genetic testing can be done separate from the abuser, testimony can be presented telephonically. There are many accommodations that can be made to create a shield between the parties in a case and give a victim security in pursuing a court order.

Even with the advances in addressing domestic violence the statistics are startling and don't really tell the whole picture, because of unreported behavior, but they are worth noting.

For instance, Michigan ranks 21st in the country for the number of female homicides per 100,000 people with 68. Only California, New York, North Carolina and Texas have higher numbers of female homicides per 100,000 people. The Michigan Coalition Against Domestic Violence reports that 4 out of 10 females seen in emergency rooms for injuries are due to intimate partner violence. Over 22,328 cases of domestic violence were prosecuted in Michigan in 2000. Between 1999 and 2001, 316 violent deaths connected to intimate partner relationships were registered in the state. 48,310 domestic violence offenses were reported to the Michigan Uniform Crime Report Program in 2003. These numbers are not decreasing. The problem of domestic violence generates costs in the human element, medical environment, social service, our communities, employers, children, every facet of life. The goal of reducing domestic violence is laudable. The need is overwhelming and the legal system is only one component in achieving this goal. Helping victims of abuse is viewed by practitioners of the legal profession with utmost seriousness and vigilance. Our profession is in a unique position to assist in crafting the safety net victims of abuse need to get to the point where leaving their abusers is truly an option. Legal practitioners help not only by vigorously pursuing prosecution, but using the family court to help protect and provide for families in need.

