

Appendix 6C

Victim Witness Advocacy in Domestic Violence Cases

The following article entitled “Advocates and Victim/Witness Specialists: Differing Roles to Achieve Common Goals” was written by Stephanie Avalon with the Battered Women’s Justice Project. www.bwjp.org. 800-903-0111 x1. Reprinted here with permission.

Battered women require a variety of services to find safety, exercise legal options, and recover from the effects of the abuse in their lives. Safety needs include immediate shelter, long term housing, safe retrieval of possessions, and safety planning. In the legal system, a battered woman may avail herself of restraining orders, separation or divorce, child custody, civil lawsuits, or criminal prosecution. Juvenile courts may be involved as well. Battered women need to know how to use the legal system to get protection from abuse, and understand the possible consequences of their actions or inaction. They need support getting through the process. Abuse leaves many women emotionally scarred, economically deprived and uncertain about their future. Counseling, support groups, financial assistance, education and training can all play a part in helping women put the abuse behind them and get on with their lives.

Battered women’s advocates working for non-profit agencies have been providing many of these specialized services. A growing number of other providers assist battered women as well. Hospitals and police departments may employ “victim advocates”. Prosecutors may have “victim/witness personnel” to support crime victims as criminal cases progress through the system. These service providers all work with victims in some capacity. They are called “advocates”, “court advocates”, or “domestic violence advocates” somewhat interchangeably, regardless of where they are employed or what their primary function might be. They may duplicate the services provided by each other. Thus, the roles of these different players have not been clearly defined or understood even by those performing them. The resulting confusion hurts victims who may be referred to an *advocate* for services that are not within their job description, but provided by another *advocate* working somewhere else. This article compares two major groups of victim service providers working in the court system: advocates working for battered women’s programs and victim/witness specialists employed by prosecutor’s offices. It discusses inevitable conflicts arising from their different roles and offers some strategies for working together.

Definitions

For purposes of this article, *advocate* refers to employees and volunteers of private, non-profit agencies serving battered women. Many of these programs provide shelters, support groups and other services besides advocacy. Some advocates work specifically with women who are involved with the court system, assisting them with civil and criminal court cases. Advocates work to provide for the needs of individual battered women and battered women as a class.

Victim/witness specialists based in prosecutors’ offices are government employees who also provide some advocacy services along with other duties. Victim/witness specialists typically have a dual role in supporting victims and serving the needs of the prosecutor’s office.

Examining the Roles

When battered women's shelter programs began providing advocates to accompany women throughout all or part of court processes, the services of advocates did not duplicate the services provided anywhere else. No other help was available. While accompanying individual women to court hearings, advocates learned where the system failed to protect them and where it added additional barriers to battered women. While supporting women through this imperfect process, advocates witnessed first hand the victim-blaming evident at many points in the legal system.

Advocates believed in the possibility that justice could be found for battered women. They believed that working with individual women afforded a unique opportunity not only to support, inform, and assist the women, but also to educate people working in the legal system and develop policies that eliminated or at least reduced victim-blaming, increased victim safety and made a strong statement to the community that violence against women would not be tolerated. They envisioned a court system where advocates would be unnecessary. So, to that end, advocates created legislation that established civil protection orders with simplified court procedures, probable cause arrest laws, police and prosecution policies and coordinated community efforts. In fact, in some communities, advocates were responsible for establishing victim/witness programs for sexual assault and domestic violence victims in local prosecutor's offices.

Advocates often challenge policies and question court procedures. They enter the court arena with no formal legal training and dare to speak up. Some tension is understandable. Prosecutors sometimes greet advocates with suspicion and distrust, especially when they fail to recognize the primary goals of advocacy. In contrast, victim/witness staff can attain a level of acceptance which advocates working for battered women's programs find harder to achieve. Working in close proximity to prosecutors helps to establish friendships and connections. The in-house staff is recognized as part of the team. While information about charging decisions and the handling of cases is usually unavailable outside the inner circle, victim/witness personnel have immediate access to it. They can quickly learn whether domestic violence cases are being treated differently as a group, or if all cases share common problems.

Victim/witness staff have easier access to information from outsiders as well. Much authority attaches to their identifying themselves as calling from "the DA's office". Victim/witness staff are often assumed to be attorneys. Requests for information carry more weight and are treated with more respect than the same request made by the victim advocate working for a battered woman's program. This is analogous to the comparative ease a battered woman's advocate has in accessing information from the courts that the victim herself is frequently denied.

Individual Advocacy

A common service court advocacy programs provide is assistance in obtaining civil restraining

orders, also known as orders for protection (OFP) and protection from abuse orders (PFA). This originally meant a sympathetic person connected with a battered women's program would walk a woman through the maze of the court system and remain throughout interviews and court hearings. Advocates often transport women to court, wait with them and accompany them into the office where a clerk writes down the history while the women tell their stories. Many women are not aware of the legal options available besides ordering the abuser from her home. They may think the only reason to get an order for protection is to remove the respondent, not realizing other issues could be addressed involving contact, support, and visitation (though the relief available varies from state to state).

In most jurisdictions, filing an order for protection requires making several phone calls, traveling to and waiting at court perhaps half a day, talking to different clerks of court, and delivering papers to the process server. All of these people may be located in different offices on different floors or in different buildings in different parts of the city. Sometimes the government employees involved are available only on certain days or at particular times of the day. This adds to the barriers which render a simple court process truly daunting. Even in areas where the process is streamlined, barriers exist. Women are exposed to unfamiliar terms (respondent, petitioner, ex-parte, pro se, family court referee, filing, sheriff's service,) and unfamiliar people while having to reveal intimate, humiliating, and/or frightening events in their lives. Many women feel more shell-shocked by the process than by the abuse they had been living with. (The abuse was familiar, after all.) And the actual hearing is the next hurdle to jump.

Failure to appear for scheduled hearings results in the dismissal of many orders. Court personnel don't know or don't understand why a woman may not appear, and blame her for "not following through". They don't realize how hard it is for women to believe a process as lengthy and complicated as the one she just went through to get an ex-parte OFP results in only a temporary order of brief duration. Battered women are often surprised that they need to return to court for a permanent order- at a hearing where her abuser will be present. A woman may change her mind about an OFP. Her partner may threaten her. She may have difficulty getting child care for the time of the hearing. She may have thought of questions or concerns and need more explanation. She may be second-guessing herself after recalling TV versions of formal court hearings and envisioning herself facing the same thing. However, many women who express a desire to dismiss an action really want the order but need it modified, usually to allow some kind of contact regarding visitation exchanges. Advocates involved during the filing process can ensure that a woman understands the necessity of attending the hearing, and help her prepare so she feels less intimidated by the unknown. Follow-up calls can uncover changes in circumstances that need strategizing before the hearing.

When the woman finally gets to court for the hearing, she's often intimidated by aspects of the court that were designed to foster order and respect. The courtroom design has clear physical boundaries separating the players. The same question asked by a clerk the week before may leave a battered woman speechless when asked in legal jargon by a robed judge towering above her. A local judge in a rural county, for example, routinely begins his order for protection hearings by turning to the petitioner and asking very kindly, "What relief are you seeking, Ma'am?" Most women, not

understanding, hesitate and speak falteringly if at all. Advance warning of this question reduces the stress and allows the woman a more comfortable start to her own hearing.

In some areas, advocates may address the court during the proceedings to assist a woman having difficulty on her own. At the very least, the advocate knows what will be asked, what behavior is appropriate, and helps the woman say what she wants. After the hearing, the advocate can discuss what happened in court, validating the woman's sense of how things went, and help her to understand that procedurally it may have been perfectly ordinary. Women represented by attorneys benefit from these services as well. The advocate supports the victim, (sharing, conversing, perhaps assisting with child care, etc.) during the waiting time before the hearing and while the order is being typed. Sometimes the abuser attempts contact in the hall. Advocates can help women get assistance from deputies or strategize about what steps to take should that happen.

While performing individual services, advocates become familiar with local judges and attorneys and can inform battered women about what to expect from those people. This knowledge can help her avoid serious problems. For example, lacking an advocate, a Minnesota woman recently wound up with a mutual order for protection to which she inadvertently agreed. (A mutual order restrains both parties from committing acts of domestic abuse against each other or contacting each other.) In this state, judges are not supposed to hear a respondent's request for a mutual order unless the respondent has filed his own petition. However, many judges continue to inquire of the petitioner if the mutual order would be acceptable. (These judges may not know the applicable case law, and may fail to understand the problems battered women face with mutual orders. Mutual orders may seem more *fair* to someone who does not understand the dynamics of domestic abuse and believes "it takes two to tango".) The most natural response of most women is "I don't care, I don't want to contact him anyway". These women have no way of knowing how an order against them could set them up. This particular woman was arrested and spent the night in jail for violating an order she did not realize she had agreed to. Had she had an advocate, the advocate could have informed her how judges often phrase questions leading to the issuance of a mutual order ("You won't be needing to contact him, will you?") and, more importantly, the possible consequences of having an order issued against her.

Many women have difficulty saying "no" to questions asked by judges and agree to things they think the judge wants them to. Good advocates need to recognize this and know how to help women get what they really want. Sometimes advocates need to intervene and question the procedures in court. Unfortunately, there is no handbook on how to do this. Judges do not take kindly to advocates "overstepping their bounds", particularly if they do not ask permission to "approach the bench" in the proper fashion. Intervening, confronting, and questioning should be respectful. Even very skilled advocates may feel uncertain or hesitant about how far they can go, but effective advocates do risk the ire of judges on occasion.

System Advocacy

Though advocacy services evolved differently throughout the country, they emerged from a common grassroots movement. The advocates' role is highly politicized because the underlying purpose is

to speak for battered women as a class. This is the most challenging part of the job and the least appreciated. While assisting individual women, advocates learned much about the system which led to changes benefiting battered women. In addition to identifying problems, during court hearings advocates have opportunities to educate judges and other court personnel about new laws or about applications of law to battered women.

System change advocacy is intrinsically connected to the provision of quality individual advocacy services, but also requires additional efforts which include the identification of systemic problems, the creation of possible solutions, and the negotiation of their implementation by the institution. Effective advocates use their knowledge of systemic problems to push for procedural changes to benefit battered women as a group. For example, advocates in Minneapolis met with Family Court referees to streamline the cumbersome process a battered woman faced if her abuser could not be located and served his copy of the protection order. Advocates must probe and question with intelligence, but also with restraint, a difficult task when hostility is open. The point of all the research, of course, is to be able to create solutions to systemic problems that have been uncovered. Advocates need to carefully document their observations and collect the data necessary to back up their assertions and persuade the system to respond differently.

The system advocacy role of independent advocates is sometimes not well understood or appreciated even by the agencies that employ them. Challenges to the system can anger and upset the status quo. As programs seek funding from government sources and work toward coordinated community efforts, they may stifle the attempts of their own advocates to address systemic problems. This misinterpretation of collaboration can result in the hiring of advocates who understand their role differently from those who blazed the trail years earlier. The taming of advocates within battered women's programs conflicts with the underlying goal which prompted advocacy efforts in the first place, and fails to serve the needs of battered women.

Redefining the role of advocates and emphasizing system advocacy in the job description is one way to achieve this goal. Advocacy agencies should devote special staff meeting and in-service training time to developing system advocacy skills. Working in the court system can be lonely and stressful to advocates who seriously wish to make changes. The nourishing support of one's own agency is essential. Too often, where system advocacy has been stifled, advocates may appear to be doing little. Unless system advocacy is acknowledged, encouraged and facilitated this will remain the case.

In contrast, system advocacy is not often viewed as an integral function of victim/witness programs. While victim/witness specialists usually have backgrounds in the court process, court sanctions, and general victim issues, they may not have specific training on system advocacy or community organizing around battered women's issues. They are frequently hired to provide a more accessible route for the crime victims to exchange information about court hearings and procedures. In addition, they face other obstacles to recognizing problems in the system. Victim/witness staff may have few opportunities to network with battered women's advocates, so their recognition of certain problems may be hampered. In effective advocacy programs, advocates are expected to stay well connected to local or state coalitions where they become aware of emerging issues common to

battered women in their area.

In the best victim/witness programs, victim/witness specialists have the necessary training and permission to take advantage of opportunities which can arise to do system change work. Donna Medley, currently the Executive Director of the Texas Council on Family Violence, recalled a situation while she was employed by the victim assistance program in San Francisco. While walking down a court hallway, she expressed concern to a prosecutor about the problem of crime victim reparations being denied when prosecutors labeled case dismissals as caused by an “uncooperative witness”. The prosecutor relabeled those dismissals as “unavailable”, thereby opening doors for countless women who would have otherwise needed to fight for crime victim money they really were entitled to. Being in the right place at the right time, having developed rapport and respect, Donna was in a unique position to influence such a decision.

Expansion of Advocacy to Criminal Courts and the Development of Victim/Witness Programs

As arrest policies changed and more assailants were arrested and charged, battered women’s programs provided advocacy to victims in the criminal system. Like in civil court, advocates went to criminal court hearings, explained proceedings to victims, provided victim input, all the while expanding their own knowledge of policies and procedures. As this practice expanded, the rights of victims in the court process became recognized by many state legislatures which passed laws mandating certain victim services. Some advocates were contracted by prosecutor’s offices to provide these services to victims of battering while continuing their own advocacy goals. They were rightly concerned that the needs of battered women were different from the needs of other crime victims. Crime victims in general (victims of theft or of drunk drivers, for example) are not as routinely blamed for their own victim status as battered women, nor do they usually have any conflict with prosecuting the defendant.

With the passing of crime victim legislation and increased arrest rates of batterers, urban prosecutors in particular became overwhelmed with the task of contacting and informing assault victims in a timely manner. In the eighties, intervention projects in Minnesota followed the Duluth model by providing advocates who contacted battered women as soon after an arrest as possible through a cooperative system involving police, advocates and prosecutors. One urban project, originally funded to provide victim advocacy in misdemeanor cases for a small fraction of the city’s victims of assault, expanded to city-wide by the summer of 1988. To respond to the more than 300 misdemeanor arrests a month, the project employed six full time legal advocates who contacted victims prior to the morning arraignment calendar as the first in a series of contacts intended to inform women of the court process, how they could have input, and of options available in their safety planning.

Now, a growing number of prosecutor’s offices have in-house staff to contact victims, inform them of court dates and case developments, gather information about what they would like to see happen in an outcome and what “damages” should be addressed in court. In many communities where victim/witness specialists have assumed some of the functions previously fulfilled by advocates,

confusion, “turf wars” and conflicts over funding and resources have arisen. Battered women cannot be served effectively under these circumstances, so it is incumbent that both groups work to understand each other’s roles and strategize on how best to work cooperatively.

Conflicts/Issues and Solutions

Role Limitations

Tables 1 and 2 are typical examples of duties performed by advocates and victim/witness personnel. A comparison of job duty descriptions shows the differing focus of each. These different roles pose different dilemmas for each practitioner and give rise to potential conflicts between advocates and victim/witness specialists. The issue of reluctant victims is a good illustration of this point.

Battered women appear uncooperative to most prosecutors who don’t understand the dynamics of abuse. The power and control exercised by abusers over battered women wreaks havoc with prosecution strategies. Women may ask for charges to be dismissed, want “no contact” orders dropped, change their stories or minimize details, refuse to appear or testify, or take all the blame for the violence. Though women want police to respond when they call for help, arrest and prosecution is often way more than they bargained for. Advocates may believe an assailant should be prosecuted and encourage a victim to cooperate with the state’s attorney. However, if the victim is competent to make her own decisions and does not want to cooperate, the advocate’s responsibility is to support her decision and continue to provide options to increase her safety.

However, as indicated in the job description, most victim/witness specialists are expected to “ensure witnesses appearance” and “persuade reluctant witnesses to ensure their continued involvement. Prosecutors usually want their victim/witness specialists to produce witnesses for court, dressed appropriately and ready to testify. They want victim assistants to handle problems that arise during the process with as little interference with the case as possible. This may explain why some victims feel that the victim/witness staff only told them what would happen in court but did little to make anything *different* happen. Advocates have a primary duty to help ensure victim safety. Prosecutor’s victim/witness staff may be unclear themselves about their responsibility to victim safety. The problem is exacerbated by prosecutors who are also unclear about this responsibility and just expect victim/witness providers to assist in whatever trial preparation needs that arise. Victim/witness specialists may find themselves caught between serving the needs of the prosecutor and serving the needs of the battered woman.

Some prosecutor’s offices have recognized this dilemma and created specialized domestic violence units to serve battered women. Patti Seger supervises such a unit for the Dane County DA’s office in Madison, Wisconsin. She began her career performing many shelter services including legal advocacy. After ten years in the battered women’s movement she is now working, as she laughingly puts it, “for the enemy”. The Domestic Violence Specialists in her unit are highly specialized victim/witness staff with legal advocacy skills and backgrounds. Patti’s staff provides information, listens to women’s stories, and helps them safety plan. With a thorough understanding of battered



women's needs, the domestic violence specialists can provide realistic options and explanations, as well as appropriate referrals to other services the DA's office cannot provide. With the huge caseload, (a thousand or more cases) Patti is delighted to share advocacy duties with the shelter. She recognizes the barrier her connection to the DA's office poses for some women, and she trusts the abilities of the shelter advocates to meet women's needs. With plenty of work to spread among qualified people, there's no need for "turf" wars. Roles are defined with the focus on victim safety, regardless of who becomes the primary advocate. While increased victim cooperation can result through the provision of information and support, neither advocates nor victim/witness specialists are expected to guarantee it.

Dane County has a well coordinated criminal justice response to domestic violence. Patti credits their DA for his efforts in making the system work successfully. The DA's office has trained law enforcement and funded advocacy. They clearly understand that victim services are distinct from witness preparation. The system does depend on a widespread community support, which puts pressure on political leaders to continue the coordinated community response begun years ago. While this program may be difficult to replicate in many communities lacking Dane County's historic focus on domestic violence, Patti believes it's possible in any community where the prosecutor is willing to form a partnership with law enforcement and the local shelter program.

Legal Services Advocate

Duties and Responsibilities:

- Provide battered women with assistance in filing for and obtaining temporary restraining orders and injunctions.
- Provide court preparation and accompaniment and transportation for civil and criminal cases.
- Provide direct services to battered women, including individual counseling, advocacy and information and referral.
- Respond to phone requests for legal information.
- Develop legal information materials for use by staff and battered women.
- Assist battered women and their children to use the civil and criminal justice system and law enforcement.
- Advocate with the post-conviction criminal system.
- Provide information and problem solving regarding family law.
- Maintain and update attorney referral system.
- Train, supervise and schedule volunteers and interns working in the Legal Program.
- Coordinate special projects in the Legal Program, i.e. Court watch and the Legal Clinic.
- Provide community education and training as required, especially regarding criminal justice issues.
- Maintain consumer files and agency forms as required.
- Monitor or track cases to see if established policies are being followed.
- Identify systemic problems which hurt battered women and work with systems to make change.
- Attend all agency staff meetings as required.
- Other duties as assigned.

Table 1. Job Duties of Legal Advocate Position

Victim/Witness Specialist

Duties:

- Contacts citizen witnesses/victims to inform them of the status of the case in which they are involved; determine potential problems with court appearances and seek resolution to ensure witnesses appearance.
- Orients witnesses to their rights, to the criminal justice procedures, and to community and government resources available to them; makes referrals to appropriate community agencies as needed.
- Provides court preparation and counseling as it relates to testifying.
- Provides court accompaniment and support for victim/witnesses during court hearings, court preparation meetings with assistant district attorneys and other activities required of victim/witnesses by the criminal justice system.
- Interprets to witnesses the importance of their role; reassure and persuade reluctant witnesses to ensure their continued involvement.
- Coordinates meetings between the victim/witness and the assistant district attorney to insure that victim is adequately prepared for all court appearances. Assists victims/families with developing and submitting to the court victim impact statements at sentencing.
- Acts as witness advocate and liaison with various court and police agencies.
- Investigates whereabouts of hard-to-find victim/witnesses.
- Makes necessary arrangements for victim/witnesses with special needs such as children, the elderly, and the disabled.
- Arranges for protective services when appropriate.
- Contacts victims for restitution purposes; request victim loss information and verification of losses; explain restitution procedures; work with defense attorneys and probation agents on an on-going basis.
- Orients victims to the benefits available from the State's Crime Victim Compensation Program; assist victims with application procedures.
- Assists with the preparation of statistical and annual reports.

Table 2. SOCIAL SERVICE AIDE (Victim/Witness Specialist) position,
example from Dane County District Attorney's Office

Limitations Imposed by Programs

● ***Definition of Caseload or Services***

Victim/witness specialists usually have clearly defined boundaries regarding the services they provide to victims. Usually they are limited to the criminal court setting, where prosecution takes place. Dane County's Domestic Violence Specialists have a caseload of all the victims in criminal assault cases pending in the court. Commonly, victim/witness specialists must limit their work to the specifics of the criminal court case. Domestic violence specialists in Dane County encourage the connection with shelter advocates because their limited role doesn't allow them to meet all of her needs. However, within their sphere they advocate as vigorously as they can.

Advocates who work for shelter programs may assist women in other courts or with housing or counseling needs. Advocates are used to responding to a myriad of requests from women. The women who need services could be involved in the court system already, contemplating legal action, or recovering from it. Whatever stage she's in, the legal advocate attempts to sort things out with her and help her understand and explore options. The request for service alone creates the "open case". Victims benefit when advocates are free to work with them throughout the court system whether it's criminal, civil, family, housing, or juvenile court. While advocates do have time constraints, they usually still have more freedom to expand their role to meet the victim's needs than the victim/witness staff in a prosecutor's office. Not being on the prosecutor's *team*, independent advocacy groups can expand their services as needs arise and resources allow.

Interestingly, some large urban advocacy programs have created specialized advocacy programs which only work in criminal courts. They employ other advocates to assist women in civil court systems or routinely refer women outside the agency for other advocacy services. Unfortunately, this limitation, whether imposed by victim/witness staff or advocates, represents a potential loss to the prosecution. Advocating with a victim throughout the process of obtaining an OFP affords a great opportunity to learn valuable information relevant to the criminal case. For example, a local advocate who was assisting a woman filing an OFP learned of several uncharged cases. With the woman's cooperation, she retrieved the police reports and turned them over to the prosecutor who negotiated a conviction that otherwise would not have been likely. Increased specialization may be difficult to avoid in some circumstances, but if battered women are to be served effectively, a greater commitment to communication with victims and among intervening agencies must be implemented.

● ***Victims Charged with Crimes***

Another example of caseload conflict involves battered women who are charged with crimes. Experience with the passage of mandatory arrest legislation in several states had demonstrated the potential for backlash against the reforms of the battered women's movement. In the name of gender neutrality, battered women were arrested in record numbers. Battered women who get arrested and jailed experience the system's injustice in lonely isolation. Though they qualify for public defenders,

they may not always take advantage of them and instead frequently plead guilty as fast as possible to “get it over with”. From jail, safety planning is impossible. The children may be left at risk with an abuser, or Child Protection may have taken custody of the children or be threatening such action. Women in these circumstances need advocacy services. They need information and support. And they need to understand both the short and long term consequences of the decisions they make.

From a strict criminal justice point of view, these women are not victims and therefore are not on the caseload of victim/witness programs. As a consequence, no attempt may be made to clarify the circumstances or context of the arrest, or to connect the woman to resources she may need. Advocacy programs are not precluded by definition from working with battered women charged with crimes. However, many have been slow in responding to these victims and many also fail to understand the complexity of these arrest situations. They assume that public defenders will protect the rights of battered women charged with crimes and that advocacy isn’t needed, although the assumption is not automatically made when women engage lawyers for their order for protection hearings. One public defender expressed genuine surprise when an advocate began assisting one of her clients who was accruing a lengthy criminal record. The woman’s attorney appreciated the help, recognized that the advocate could offer assistance she could not, but had never thought to encourage this connection.

Protecting such women should be given higher priority by advocates, but often these victims are ignored by everyone and only get advocacy if someone in the system notices they are battered women. By then it may be too late to do anything but damage control.

Other advocacy programs have become confused about their mission in the midst of organizing collaborative projects with criminal justice agencies. Some programs have voluntarily agreed not to contact or provide advocacy services to women charged with crimes. In some communities, the law enforcement or prosecution partners in joint efforts have pressured the advocacy program to stop assisting battered women defendants, and unfortunately, some of these efforts have been successful. Pro-active approaches should be developed to access these women as soon as possible after arrest, determine whether they have prior victim status, and decide what services are appropriate. Information on prior cases can aid in establishing who is the primary aggressor or the likelihood that the woman acted in self-defense. While some women who are the primary victim in the relationship do initiate violence against their partners, the context of their violence may warrant differing sentencing options. In any event, these women still deserve support as victims and should be offered the full range of advocacy services. The Domestic Abuse Intervention Project in Duluth and SafeHouse in Ann Arbor, in particular, have developed good procedures that guide their advocacy response to these cases.

● *Employee Qualifications*

Battered women’s programs used to expect employees to be involved in a high level of committee work, involvement in local politics, and immersion in battered women’s movement events. This kind of involvement is necessary to be an effective “system change” advocate. Founders of programs and their early staff worked long and dedicated hours in this effort. Employees were often hired because of their organizing abilities and their intimate knowledge of the system problems to be confronted.



Ability and willingness to take risks and confront the system were essential qualities. Many advocates were survivors of battering themselves with a personal *calling* to the work. These qualifications were more highly valued than professional degrees. Most advocacy programs continue to emphasize domestic violence or related advocacy experience over strict educational requirements. Victim/witness programs are usually governmental agencies, and civil service regulations or traditional hiring practices may limit their ability to hire staff who lack educational degrees, but have great work experience in the field. This makes it more difficult for them to include survivors on staff or people from populations in their communities who are less likely to have a formal education. In response, some victim/witness programs have successfully lobbied within their agencies for the right to hire a more diverse staff.

Issues related to Victim Contacts

● ***Frequency and Type of Contact***

Where advocacy and victim/witness services are both available but not working cooperatively, victims are likely to receive calls from more than one service provider following an arrest. If calls are being made by both agencies battered women could be not only inconvenienced, but more than likely confused by conflicting, and inconsistent information. For example, in one community, the implementation of a victim/witness unit without any coordination with the local advocacy program resulted in calls to each victim by both agencies and the jail (notifying her of the abuser's release) in the hours following an arrest.

It is also important for programs to decide on the nature and purpose of initial contacts with victims. The agenda for a contact affects the results. If a caller's primary concern is learning the immediate needs of the victim, her call will elicit different responses than a call intended to merely advise someone of the next court appearance and collect information. This was very evident in the early years of one advocacy program providing services to victims in criminal court. Meetings with the prosecutors revealed that their contacts with victims were eliciting entirely different responses from the advocates' contacts. Advocates focused on safety issues relevant to the present and provided assistance with other issues besides the criminal court case. The advocates learned that prosecutors would frequently begin their conversation with a woman by asking, "are you willing to come to court to testify when this case goes to trial?" Most victims understand *trial* to mean a jury is selected and testimony is given by herself and the other witnesses (like on TV). However, misdemeanor assault cases very rarely proceed to trial stage, the majority of these cases are negotiated to a plea. Prosecutors either failed to realize how the fear of a court appearance against her abuser would affect the victim or intentionally used this threat to screen out cases or persuade victims to agree to negotiations she might otherwise feel are inappropriate to the assault circumstance. In addition, listening in on the prosecutor interviews, advocates heard the attorneys routinely give misinformation to victims because they lacked knowledge of their own system's shortcomings or the realities of domestic abuse. Court sanctions such as "no contact orders" and "continuances for dismissal" were offered with explanations which not only created a great deal of confusion and disappointment, but more importantly, failed to provide real protection. Women received unclear and misleading information largely because the prosecutors did not *know* what happens out in the community. To

avoid repeating these problems, advocates and victim/witness specialists need to coordinate their calls to victims, clearly define the nature of their roles in these cases, and communicate appropriately with each other. They need to be knowledgeable and realistic about the likely outcomes of other legal remedies or services available to victims.

- *Confidentiality*

A call to the police and a subsequent arrest makes the incident public, involving the victim in court intervention in her life, whether she wishes it or not. Currently, in many communities, arrangements are made for the victim to be contacted by an advocate or a victim/witness specialist. Victims may not be happy about the police response or the pending prosecution, but they usually welcome the contact if they can get basic information about what is likely to happen next and what options they have in planning for their immediate safety. Many women are satisfied with the initial contact and minimal contacts thereafter; others require and welcome a broad range of advocacy assistance. However, once contact is made, a number of questions arise about the confidentiality of these contacts. It is imperative that all programs plan how they will treat these communications if the safety of victims is to be safeguarded.

Given their employment by the prosecutor's office, victim/witness specialists are usually expected to share whatever information they obtain about a particular case because they work for the prosecutor's office and prosecutors have a duty to share any evidence they have which is exculpatory, i.e., they are obliged to share case information with the defense attorney handling the case. Different interpretations have been made by prosecutor's offices as to how that information is shared. Some offices routinely share everything in the case file. Others separate case information into two categories: materials related to the current charges which are totally open to the defense, and information related to the victim services provided by advocates or victim/witness specialists, which is sealed but kept in the file. Should a defense attorney wish to review those materials, the prosecutor requests that the judge first rule on its admissibility in court. The prosecutor who used this procedure explained that once defense attorneys had reviewed this information on a few cases, they realized that this type of information was generally not useful or relevant to their cases. In general, ethical practice requires that victim/witness specialists inform a victim immediately upon contact that all information will be passed on to the prosecutor on the case and explain how it will be shared with the defense and the defendant.

Confidentiality issues are less clear regarding victim contacts by independent advocates. In a few states, counselor privilege is extended to include advocates or others who work with sexual assault or domestic violence victims. In at least one state, California, victim/witness specialists also have been given this privilege. However, most statutes include limitations on privilege, such as the duty to report child abuse, so it is important that each program carefully research state law and understand its implications for victim contact. Some advocacy programs immediately inform the victim that their interview will be confidential, however, they explain that background about the history and extent of the violence is relevant to the prosecutor and the courts in order to determine how the case should be handled, and that the court is interested in the victim's wishes about the case outcome and ways that alternative sanctions could assist in ending the violence in her life. The victim decides



what, if any, of this information she wants transmitted to the courts and gives her permission for its release.

In addition, victim/witness staff and advocates both need to be clear about the policies and practices within their own programs and between cooperating agencies in a coordinated criminal justice response. Conflicts can be avoided just by clarifying what information will and won't be shared and under what circumstances. For example, one advocate recalls a situation in which the woman she was helping wanted her phone number kept confidential. The police investigator on the case became angry because the advocate refused to give him the victim's number, although she offered to set up meetings with the victim for him. He complained to the advocate's supervisor, who eventually took the position (which is arguable) that the advocate had a responsibility to turn over the phone number because of the contractual relationship that had been established with the prosecutor's office. Since the advocate had not anticipated the conflict ahead of time, she was in an awkward position. Given that she had promised confidentiality to the woman, she refused to divulge the phone number, angering her supervisor, the prosecutor, and the police investigator. This problem could have been avoided by a clearer understanding and agreement ahead of time about victim confidentiality.

- *Guilt by Association*

The criminal process is not user-friendly to victims. The language and surroundings are unfamiliar. The abuser is represented by a defense attorney. A battered woman may feel she needs someone representing her interests, and she does, but the prosecutor represents the state, and must attempt to balance the interests of the state with the victim's interests. Advocates were some of the first people to recognize the needs of battered women as victims in the criminal court process and to offer services and initiate changes in the criminal justice system's handling of these cases. Not being part of the system helped to establish trust, especially for women who had previous negative experiences with the criminal justice system.

Patti Seger understands that many women choose to limit their contacts with her because of her association with the District Attorney. If a victim is unhappy with the police response, (did not want arrest, for example), she may be much less receptive to receiving assistance from the court associated with those arrest practices. Nevertheless, most women still want specific information regarding court procedure and choices they may have. While some women feel uncomfortable working with the prosecutor's office, other women resist help from a "battered women's" program. A surprisingly large number of assault victims resist this label. This resistance may come from the deep seated victim-blaming which pervades our culture as thoroughly as racism. Battered women know a stigma still exists for being battered. "Why does she stay?" is still more frequently asked than "why does he batter?" This explains the failure of many women to contact shelters for services. The lingering perception of advocates as man-haters, home-wreckers, lesbians, and/or radical feminists also acts as a barrier.

Victim/witness specialists can effectively help women who do not initially identify themselves as battered to obtain other assistance they may need. Patti Seger reports that, over time and with encouragement, women do often get involved with the shelter program. Several procedures help to



promote this connection. Mailings from her office routinely include shelter brochures. Probably one of the most effective strategies, though, is the occasional use of legal advocates from the shelter to cover court cases for the domestic violence specialist. This happens frequently, Patti says, because of vacation days and other schedule conflicts. Since the domestic violence specialists are confident the advocates can step in and handle the caseload, this practice works very well. Similarly, Patti can cover a hearing for the shelter advocate, especially since she is likely to be in court anyway.

Reaffirming a Common Goal

Battered women's programs rightly recognize the potential for conflict between themselves and the court system. However, finding common ground, sharing information, and providing in-service trainings can help to bridge the gap. Advocates need to know when and how to confront the system assertively. When advocates are too hostile themselves, system people will be less likely to make the changes that are needed. Moreover, such hostility may turn off the very people who might be sympathetic to the issue. Informal "brown bag" lunches can be set up to provide networking opportunities. Joint in-service trainings can clarify the duties and responsibilities of the advocates and the victim/witness specialists. Trainings offer an opportunity to share concerns, "war stories", and generally talk about court work. Copies of procedural manuals, forms, legal documents, and regulations can be exchanged and discussed.

Time constraints and scarce resources always limit advocacy services. The possible assistance that battered women need has always been greater than any program's ability to provide it. Improving the collaboration between advocacy programs and victim/witness staff contributes to the effectiveness of a community's response to battered women. Cooperation avoids duplication of services and can free up the advocates' time to organize system's change efforts. Advocates can concentrate on prodding the justice system into doing its job if they don't have to assume the responsibilities of the practitioners in the system. The development of "memoranda of understanding" can help to clearly define the roles each agency will play in a cooperative effort. Battered women, individually and as a class, benefit by the presence and efforts of both victim/witness staff and advocates. When both groups clearly understand their distinct roles, they can work cooperatively toward the goals of a coordinated community response: improving victim safety, holding the offenders accountable, and creating a climate of intolerance of domestic violence in the community.

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