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I have never been a good student. I had to petition to get into the University of Minnesota in 1966 because both my high school grades and my entrance exam scores were so low. I was admitted into the General College, where I studied with some of the university's finest athletes. I dropped out in 1969. Twenty-one years later I completed my B.A. because Margo Dallas and Bob Brenning encouraged me and helped me through the process.

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awards, which we have always accepted as a group. In a few months I will have a Ph.D. I will be called Dr. Pence and be afforded all of the privileges and opportunities that title offers. It seems only fair that we should all receive this honor together.

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SAFETY FOR BATTERED WOMEN
IN A TEXTUALLY MEDIATED LEGAL SYSTEM
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ABSTRACT

Using Dorothy Smith's work on institutional ethnography I have conducted an investigation of the Duluth, Minnesota, criminal court system which shows how the safety of battered women becomes marginalized in the process of managing cases. Those efforts which have been made to build safety into this system have been piecemeal. The complexity of the case processing system results in a single case being processed by six levels of government, over a dozen agencies, and as many as thirty individuals. I have shown that the system is textually mediated at every point of institutional action and is embedded in an institution which is hierarchical, incident focused, bureaucratically fragmented, and based in an adversarial process of resolving cases. Each of these features of criminal law compromises the likelihood of practitioners taking protective measures for battered women. I have shown that the daily routines of the legal system are linked to ideological ways of interpreting women's lives and extended relations of social ruling. I have proposed conducting an interagency safety audit as a legal reform strategy which can identify concrete ways to insert victim safety into domestic-assault case management procedures.

CHAPTER ONE

THE PROJECT

“Re-vision—the act of looking back, of seeing with fresh eyes, the entering of old text from a new critical direction—is for women more than a chapter in cultural history: it is an act of survival.”
(Adrienne Rich, 1979, p. 35)

Introduction

The purpose of this project is twofold. My first objective is to propose a shift in the legal advocacy approaches employed by activists in the U.S. battered women’s movement. I have used Dorothy Smith’s work on institutional ethnography to explicate how practices and procedures used in the daily work routines of criminal justice professionals such as police officers, probation officers, judges, and prosecutors limit the likelihood that court involvement will result in interventions which centralize victim safety as a case outcome. I have proposed a method of engaging criminal justice professionals and community advocatesⁱ in an investigation of local criminal justice settings with the intent of making changes in practices which fail to attend to the safety needs of women who are battered. My focus has been on explicating the work of practitioners in the police and court system that is not observable to advocates in the courtroom, work that produces institutional accounts of women’s experience which erases the violence and intimidation battered women face in their intimate relationships. I have focused, although surely not as ingeniously as Smith would have, on the specific ways that texts such as administrative forms, regulations, reports to the court, and legal arguments are the instruments of power in this system and therefore logically objects of an advocate’s inquiry (D. E. Smith, 1990b). As an activist I have also been cognizant in my investigation of textually mediated practices that these practices occur in an institution with certain defining features that must be accounted for in change strategies. A woman’s safety is contingent on the ability to address the specifics of her situation and requires a recognition of the danger she faces (Browne, 1987; Jones, 1980).

The danger a battered woman faces is linked to what her abuser is able and willing to do to her. Yet in the processing of criminal cases, there is no systematized method of gathering this information. The process is incident focused and driven by the goal of conviction. “What is going on” is not as important as “what happened.” Danger also relates to how the power differential between the man who batters and the woman who is beaten plays out in their everyday lives. My investigation explicates the role of both textual practices and key structural features of the criminal justice system in compromising women’s safety.

My second objective is to develop the concept of a community audit as a local application of

Smith's work on institutional ethnography (1987). Such an audit offers a method of community inquiry and institutional reform that I believe is applicable to other feminist projects beyond this institution (the legal system), and beyond this issue (violence in intimate relationships). Institutional relations are global. They are generalizers and representations of local/individual social relationships. As Smith notes, "The language of the everyday world as it is incorporated into the descriptions of that world is rooted in social relations beyond it and expresses relations not peculiar to the particular setting it describes" (D. E. Smith, 1987, p. 156). Thus, my analysis of only one institution may be representative of all the institutions with which battered women come into contact. The audit process I have proposed compels a community to address the way victim safety is compromised by both the ideological practices embedded in the current legal response and the fragmented processing of these cases.

I conducted my field work for this study in Duluth, Minnesota, over the two-year period following my graduate work at the Ontario Institute for Studies in Education (OISE). I had been working in Duluth since 1980 on a legal advocacy project which has gained international attention for its innovative approach to coordinating various government agencies responsible for processing criminal and civil court cases involving domestic violence (Pence, 1988). Prior to my move to Duluth I had been active in organizing the first battered women's shelter in Minneapolis and had worked with a group of activists to lobby for legal reforms.

In 1975, every advocate for battered women in Minnesota met in the upstairs office of Women's Advocates, the only battered women's shelter in the state. We could very likely have fit every advocate in the country in a slightly larger room. For many of the feminists in the emerging movement, this time was filled with excitement and the sense of radical possibilities. In chapters 2 and 3 I describe how legal advocacy projects such as the one that I worked for, the Domestic Abuse Intervention Project, emerged from the shelter movement of the early 1970s. This description is shaped by my history in the movement and particularly by my history in organizing a legal advocacy project. The meetings, debates, fights, experiments, failures, and successes that I have experienced or witnessed provide a powerful frame through which I interpret and organize a description of legal advocacy projects in the U.S. Another activist from another position in the movement, with a different political commitment and a different social history, would tell a very different story. This project has been a journey as I have sought answers to the questions that I imagine all single-issue activists like me eventually stop to ask: Has it all been worth it? Have I spent 20 years on the wrong track? What should I do next?

My time at OISE has provided me with a method to answer these questions and has in fact also led to some unexpected solutions. When I came to OISE I was disenchanted with the battered women's movement. I could see we had lost our subversive edge. It seemed the vitality of the

movement was dwindling. Certainly my sense of its radical political possibility was waning. I was working long hours and was still committed to the issue, but I couldn't see where we were going. We had changed the laws, we had changed the public belief that battering was a private matter, we had on some level criminalized this practice that had for centuries been normalized as a husband's right and duty. But all of that happened in the first decade of the movement. The second decade seemed to be taken up with holding onto the gains, fighting off the attacks by men's rights groups, endlessly training court practitioners on changes in the law, and arguing with professionals about the causes of men's violence toward their lovers, wives, or partners.

My intent in going to graduate school was to earn a Ph.D., leave the battered women's movement, find a teaching position, and discover a new way of being political. I wanted my dissertation to be everything I learned in the battered women's movement, sort of a "goodbye" think piece. I must not have anticipated learning anything new to write about or think about or work on. I felt like a mathematician who labors on a problem for years and solves all sorts of its aspects but never quite works out the final equation. I was stuck. My discussions with friends in the movement led me to believe that we were collectively stuck. I decided that graduate school would help me find out how and where to move politically with this issue.

Before I left Duluth for Toronto I had collected dozens of letters that batterers had written their partners after beating them. They ranged from windshield notes ("Fuck you bitch your dead") to cards sent with flowers ("I'll never forget. . . if you'll just forgive") to long mind-boggling rationalizations for the abuse. Each letter was going to be a lead-in to a chapter in my dissertation about how men who batter exercise power over their wives, lovers, and children. It would have been (and still someday will be) an interesting read, a very popular item among shelter residents, and a fairly easy book to write. Somehow all of that changed at OISE. It changed with my first courses, courses that stimulated not my thinking about the pile of letters that I had lugged with me from Minnesota, but about the work that I had done over the past 20 years. I found myself thinking, "If I had only read this earlier," and, "If I had only thought about that before working on mandatory arrest legislation."

After the first two sessions I came home for 3 months and threw myself full force back into my job, but I could see that I was bringing a different way of thinking to my work. My co-workers were not impressed with the comments and questions I raised at meetings. They all noticed that I was "talking different," using words that were not part of our collective language, but not necessarily that I was thinking any more clearly.

I started to notice changes that were not simply superficial. I was actually looking at things differently and looking at different things. I started to ask more frequently, how is it that this is

happening, and less frequently, why is it happening. I started to find court workers' practices more interesting than their attitudes or beliefs. Most important I started to understand what I was hearing at OISE. I could actually see how knowledge was manufactured. I understood more about the concept of multiple subjectivities and what that meant in terms of mandatory arrest or pro-prosecution policies. But I lacked the understanding or ability to articulate what I was seeing to my co-workers.

It was through my gradual understanding of D. E. Smith's work on institutional ethnography that I was able to link my work to my growing understanding of how power worked in women's lives and of how institutional ways of governing and managing were actively shaping the possibilities for protection of women who turn to the legal system when being battered. Choosing her work was not so much the result of a careful examination of the many alternative research methods as it was a commitment to the political possibilities that her method of ethnographic studies offers activists like myself. It was simply a matter of usefulness. The domestic violence (the U.S. term for woman abuse) field in the U.S. has been littered with thousands of control group studies. But these studies rarely help activists like myself answer our most pressing question, "What should we do next?" I chose ethnomethodology—specifically, ethnomethodology as formulated by D.E. Smith—because I could see the possibility it offered in mapping out a strategy for deepening the institutional advocacy work of the project I was involved with and of many others in the U.S. Whether I remained in the work or moved on, I wanted to be part of thinking through the future.

Ethnomethodology is a recent theoretical approach that analyzes how individuals in any social situation interact with each other and interpret these interactions. That is, how (process) do individuals "know" or construct the knowledge of norms from their social interactions. These interpretations, rather than preordained rules, construct their reality. Harold Garfinkel (1967) elaborated and utilized ethnomethodology as a way of understanding how individuals together accomplish what becomes then normative reality. His "breaching" experimentsⁱⁱOne might expect that if all order, individual and institutional, is fragile, as its existence depends on common knowledge, then it is vulnerable to change by responses that are atypical; violating or challenging the agreed-upon rules of interactions, however subtly, could actually change the situation or institution. It seems, however, that reality contradicts this. People have been giving atypical responses forever (e.g., immigrants, gays and lesbians, and other marginalized groups), quite unsuccessfully. indicate how fragile social orders and rules are. Garfinkel argues that the everyday interactions/activities of individuals are formed, named, and interpreted as activities during the processes of accounting, relating, and naming. Weeks (1990) maintains that

Ethnomethodology inquires into the methods whereby we, as members of a society or community, organize our activities so that we, as well as sociologists, come to recognize the patterns that we think of as social structures." (p. 181)

Thus, rather than accepting everyday activities and occurrences as “natural,” we can use ethnomethodology to problematize them as “not natural” and understand the rules (including commonsense reasoning and background information) that underlie these events, interactions, and occurrences.

In the same manner, we can question the irrefutability of institutions, official papers, and rules and unveil societal hierarchies. The ideological practices that order these hierarchies are also important to analyze. D. E. Smith has developed a way of analyzing people’s everyday working lives within an institution: the way they are organized to work produces the reality of that institution, which in turn shapes the everyday world of women whose lives are managed by institutions of social control, such as the law.

Workers in the court system engage in practices which continually reproduce the law as an institution. Racism, sexism, and inattentiveness to women’s safety occurs when people behave and interact in certain ways. Thus, a goal of an ethnomethodological investigation is to challenge structures as natural givens and expose them as individual interactions and experiences. Changing the interactions (processes) could result in change in the institution itself.

Most of the research in the field of domestic violence is rooted in the research method of the physical sciences, producing study after study of controlled experiments in which authors claim to locate a determinant of the system’s failure to adequately protect women (National Clearinghouse for the Defense of Battered Women, 1995). More often, however, they produce profiles of women who are battered and of men who batter and address the implications of these profiles to the kind of interventions and services that should be offered by the state (Ford, 1991; Saunders, 1992; Sherman & Berk, 1984). These studies begin in the already abstracted institutional version of the world. As D. E. Smith maintains throughout her work, the sociologist uses conceptual practices that are parallel to the institutions they purport to objectively describe and analyze. These practices always fall short of telling us how activities are organized at the local level and articulated to larger social relations of ruling, an understanding necessary to organize an advocacy strategy that produces fundamental change.

Much current social science research and most well-funded research translates women’s lived experiences into categories and typifications that discard their actual experiences and transport women into the same discursive world that the legal system employs to make them institutionally actionable. Women are identified in institutional terms. For example, a woman may be “the recanting witness.” This term says nothing of her experience. In chapter 4 I quote from an interview with a woman who is charged with filing a false police report when she recants her

original statement to the police. The term *recanting* says nothing of the threats, the role of the defense attorney in obtaining her recanting statement, or the 11-month delay between the assault and the court's action in the case. It obscures the social relations which shape her everyday life, yet sociologists use the legal institution's renderings as fact. What occurred to produce the recanting statement is not available to the court, the jury, the sociologist.

The failure of sociologists to escape the conceptual practices of the ruling apparatus has in practice left the psychologist telling us about women who get battered, the criminologist about men who batter, and the legal theorist about the efficacy of different legal approaches and working with different types of criminals and victims. The gaze is a one-way gaze. The woman who is the object of that gaze is a source of information but not of knowledge. She is never allowed to return the gaze. She is, as Shamita Das Dasgupta (interview, June 17, 1996) says, "an abola," a creature who can not speak.

We have a word for creatures who have no voice, no voice in that they cannot speak a language understandable to us. It is abola. So women who are not allowed to speak, by their husbands or by institutions or because of violence, are abola.

Examining women's experiences by beginning with the abstract notions of the battered woman, the hostile witness, the victim, and the at-risk mother, or looking to contextualize certain behavior such as "failing to protect," "recanting," or "returning to the abuser," is the grist of the social science research mill in this field. Feminists often enter into a similar commitment to documenting or debunking these ideologically produced representations of the social world by using the same discursive practices but shifting the focus of the gaze from the victim to the offender or to the intervening professional. Feminist and pro-feminist studies frequently expose victim blaming in the mental health paradigms (Mann, 1986), gender bias in policing (Edwards, 1989), forms of collusion by therapists with batterers (Adams, 1988), and abuse of institutional authority by judges, social workers, police officers, probation officers, or others in the system (Buzawa & Buzawa, 1990). While these studies may present public policy implications or provide groups advocating for certain judicial appointments with "hard data" to raise the points they need to block a poor appointment, they still lock us into the parameters established by institutionally authorized ways of knowing. As C. Wright Mills (1967) notes of these types of controlled experiments in the social sciences,

On the purely molecular level there is a connection proved between problematic observation and explanatory observation, yet here the larger implications and meaning of that association are neither explored nor explained. When you are unsatisfied with such work it is because, although it is "neat" and "ingenious," you feel there is "more to it all." (p. 562)

In the past five years many ethnographic studies and qualitative projects have held onto the situated subject—in this case, women who are beaten—and have insisted on a project which begins from their standpoint. The work of James Ptacek (1995), Wittner (in press), and Beth Richie (1985) are just a few examples. Ethnographic studies and other forms of research can be limited in their value to activists wishing to effect change on a national or state level because such studies are generally tied to the particulars of a local setting in which the observation and interviews occurred or because they produce information about the individual choices and characteristics of the actors involved.

D. E. Smith's notion of an institutional ethnography offers us a way out of this trap. She uses a method which intends to explicate the institutional relations which shape the everyday world. This method allows a way for us to see how a woman who is beaten by her husband is made institutionally actionable and how in that process attention to her safety drops away as other institutional objectives subsume her particular situation and needs under a generalized way of "handling assaults." In the courtroom the fact that the processing of the case often compromises a woman's safety, or even increases the danger to her, is seen as the result of her situation and not as linked to how social relations are accomplished in the methods of institutional involvement in these cases (Browne, 1987; Campbell, 1995; Jones, 1980). The institutional function—in this case the law—has specific ways of bringing individuals out of their everyday world, with its actual contingencies, into institutional existence as crime victims. Smith's work offers a way to attend to the local and the particulars of a case in order to provide activists with a means of grasping the social relations which organize the everyday world of women who are battered. Thus while a case is tied to the particulars of a given woman's experience, its exploration uncovers the institutional relations which act as determinants of her everyday world. I am looking specifically at how those institutional relations take up and attend to the safety of women who are battered.

The Project

In the years I have worked in the battered women movement, I have watched more than 200 sentencing hearings for men who have assaulted their partners. The first time I observed such a hearing after being away from the courthouse for almost 2 years, I was struck by how sanitized it all seemed. There was no mention of the violence, of the blows, of the kicks to the ribs, no mention of what it must have felt like for the woman when her body hit the concrete, no mention of her fear, her pain, her anger, or of how this attack affected her life. The probation officer's report seemed to be more of a character reference than a sentencing recommendation for a man who had brutally beaten his partner. When I returned to the office I read the police report on the incident. According to this report, the defendant had smashed his partner's head into a wall eight

times and kicked her down a flight of stairs. She had multiple bruises, lacerations, and a sprained wrist.

The probation officer had reported on where the defendant worked, his military service record, his income, even his volunteer activities. As I watched this probation officer doing his job I thought, “Will this guy ever get it?” The probation officer was a nice man. I genuinely liked him, but it didn’t seem to matter how many trainings he had gone to or how many pleasant chats we had had in the hallways—he just didn’t appear to care about what had happened to the woman this man had beaten. As a woman’s advocate, I felt frustrated, but I didn’t really know how to make the woman count.

In the next chapters I want to re-vision my work as an activist working for reforms in the legal system’s responses to women. I am basing this re-visioning on investigations and organizing work I conducted from 1992 to 1996. As I applied what I was understanding from D. E. Smith’s work, particularly seeing texts as the medium of power in institutional practices of ruling, I was able to discern previously hidden barriers to the goal of centralizing women’s safety in the court process. These barriers materialize in work routines, administrative processes, the formation of public policy and law, legal ways of knowing things, and the structural features that characterize the legal system and its relationship to other institutional modes of ruling, particularly the social welfare and mental health apparatuses (D. E. Smith, 1987).

By turning my attention away from individuals in the system, whom I had seen as the problem to be fixed, and watching instead the daily routines and everyday practices in which they engage, I began to see quite differently the problem of making women count. I came to see that the very processes and ways of knowing that excluded women from being active subjects in the resolution of their cases simultaneously constrained practitioners from acting outside of institutionally mandated boundaries of functioning and thinking. I began my investigation at the level of everyday practice. It has been somewhat like examining a Russian nesting doll, in which one wooden doll encases another, which encases another, until one finally reaches the first doll, or is it the last? They are all painted in the same colors, wearing the same clothes, and smiling the same smile. The individual practitioner’s work routine is encased in a system’s work routine, which like that of individual workers has definite features. That system is encased in the institution of the law, which carries its corollary features, and the law is encased in a web of institutions which make up a complex social apparatus of ruling. Within this web are intersecting discourses, fields of knowledge, and ways of ruling encompassing the medical, mental health, and social welfare institutions and professions. Like the Russian doll, the smallest procedure mirrors the largest, and the largest encompasses layers of similarly constructed processes, yet each stands separate from the whole.

Following chapters 2 and 3 on the legal advocacy history of the battered women's movement, I describe my investigation, beginning with a discussion of how individuals' daily work routines are organized. I have focused my discussion on how routines are organized to collect, produce, and disseminate information about cases in ways which impact the safety of women who are the victims of the crimes processed in the criminal court system.ⁱⁱⁱ I have shown how these routines are encased in a legal system characterized by certain features particularly problematic when it processes domestic assault cases. These features include (1) case orientation and textual mediation; (2) a highly specialized labor force with a fragmented case-processing structure; (3) a focus on an incident rather than on the overall way the abuser uses violence in the relationship, and (4) use of an adversarial process in which one side wins and the other loses.

The processes which make up the system are encased in a larger web of institutional practices of ruling. When the criminal court process culminates in a sentencing hearing, the woman's experience of violence has all but disappeared from the case. It has been systematized, replaced, and remade into legal equations and operations that bear little resemblance to the woman's experience but enter into and organize her life and fail to challenge the relations under which she is compelled to live. The state's action looks objective and relevant to those who process the case but not to the citizen most harmed by the violence. I want to draw attention both to how practitioners are organized to perform their individual tasks and to the features characterizing the criminal court structure. It is this organization of tasks and these features which work together to produce accounts of violent events which consistently marginalizes attention to the safety of victims. Unless women's safety is built into the processing of a case at each point, the legal system will remain a woefully inadequate source of protection for battered women and their children.^{iv}

I cannot pretend that my investigation has taken a neat and orderly path. I have taken many side excursions. Eventually, however, it has led me to produce a blueprint for a similar but more comprehensive investigation of local criminal and civil court processing of domestic assault cases. In chapters 8 and 9 I propose a method of investigating or auditing the attentiveness of the criminal court system to providing ongoing protection for battered women as it processes the cases against their partners. The City of Duluth was recently awarded a federal grant to complete such an audit of the Duluth court system. An audit is best conducted by a team of practitioners and community advocates in search of a better way to do things, not by someone who does not work with these cases on a daily basis. The means, after all, is the goal in practice. In this project I provide a description of that audit process.

Site of the Study

Duluth, Minnesota, is the primary site of my study. Duluth is a mostly working-class city of 85,500 people and is located in the state's Sixth Judicial District. According to U.S. Census Bureau statistics, the annual income of fifty-two percent of its households is less than \$25,000; only sixteen percent have annual income of \$50,000 or greater. The population is 2% Native American, 1% Asian American, 1% African American, and 96% European American.

There are two battered women's advocacy programs in Duluth, the Women's Coalition and the Domestic Abuse Intervention Project (DAIP). The Women's Coalition provides battered women shelter, educational groups, and advocacy in the civil and criminal court. The shelter advocates conduct in essence almost all of the individual advocacy for battered women and in so doing become the central informants in the process of determining institutional advocacy goals. The DAIP, like the shelter, is a small nonprofit agency, but its orientation is not direct advocacy in individual cases for battered women. It acts instead as a monitoring or coordinating organization for all the agencies and practitioners who intervene in these cases. It is an outsider organization which has through its history established some insider rights. The DAIP staff fill gaps in the system's handling of domestic assault cases by bringing about various interagency meetings and dialogues around particular problems in the system, identifying the ongoing training needs of practitioners in the community, coordinating those trainings, coordinating an interagency rehabilitation program, and operating a case-tracking system. This tracking system informs practitioners of changes in cases, monitors practitioners' compliance with agreed-upon policies, and monitors compliance of individual offenders with court orders. I am including some background information on these two community-based organizations to place our local work into a broader national picture and to contextualize a later discussion about making changes in the Duluth system.

The Women's Coalition

Every shelter has its birthplace and its birth story. Some center on a tragedy, often a woman's murder; others are entwined with the history of activists in the women's movement. In Duluth, the story begins in the private lives of three women who met at a community mental health center while participating in a counseling group for "women in transition." This was a common euphemism in the seventies for women in the process of separation or divorce. The group had been meeting for four or five sessions when the topic of fair fighting came up. One of the members mentioned that her boyfriend had hit her that week because she called him a name. Another responded by talking about her husband's "temper" and the third lent support by talking about the difficulties of practicing communication skills with a partner who ends more arguments with a slap than an insult. At the end of the session the therapist told the three women that she had just read about a shelter for battered women opening in St. Paul. As one of the women recounts the story,

She [the therapist] wasn't suggesting that we pack up and head south for this haven of safety as much as she was telling us that what we were experiencing was not so unusual. She used this term "battered women," although I didn't really think it was meant for someone in my situation, I did know that I had something in common with those women. I know Jean and Pat did too, because after the group all three of us hung around the parking lot smoking and ever so carefully testing how much of what was happening in our lives was safe to talk about. This post-group parking lot kibitzing went on for another two or three sessions. We finally moved it to Perkins [a local pancake house] where the first mention of us actually trying to open a shelter in Duluth was raised. Peg [the therapist] put us in touch with some women in town who had started other women's programs and we were off. To this day, if you ask the early organizers where did the idea of a shelter originate, we'd all answer unanimously, Perkins. We didn't have an office, so we held our meetings there for the first year. We probably drank a thousand cups of coffee and ate at least that many pancakes. (Interview, June 18, 1995)

While it seems unfair, I will now summarize literally thousands of hours of work in two overly long sentences. This gang of three women sought out help from women who had opened a health clinic and a rape crisis center; conducted a needs assessment by calling every agency director in town and interviewing them about what, if anything, they were doing to help battered women; recorded their inadequate answers and wrote them up in the form of an official report; separated from their partners and went on welfare; and hooked into the new call-forwarding technology that let them operate a twenty-four-hour hot-line from their home phones. They advertised a support group for women in abusive relationships; turned that group into an organizing committee, complete with subcommittees, to start a shelter; incorporated; went to the press with their needs assessment results; received a \$10,000 grant from the county to offer services to battered women; and talked the housing authority into renting them a duplex for \$1 a year.^v

By 1979, the Duluth shelter staff, like that of other shelters in the state, was becoming increasingly frustrated with how new laws were being implemented and with the lack of progress in securing more substantive changes in both the police and court systems' response to battered women and their intervention with batterers. Therapy groups for men were starting to form and there was a growing concern that these groups would give an already unresponsive system a way to further decriminalize these cases. Nationally, shelter activists were advocating for increased involvement and intervention by the courts and the police and an end to the nearly laissez-faire approach that dominated police and court response.

In Minnesota several activists met to discuss a proposal to attempt to organize a battered women's institutional advocacy project. The notion of locating a city in which to test many of the assumptions that advocates were making about how to better protect women emerged from a series of statewide meetings of shelter workers. The similarities in the problems that women

using shelters were experiencing with police, prosecutors, and judges were striking, but the resources to work simultaneously on more than 600 Minnesota law enforcement agencies and 11 judicial districts were not available. We thought if we could make headway in one jurisdiction it would clear a path for advocacy in all of them. Because of the size of Duluth, the shelter staff's enthusiasm for working on such an effort, and the willingness of a few key people, such as the police chief and the city attorney, to experiment with new policies, Duluth was selected as the site of the demonstration project (Pence, 1983).

The Domestic Abuse Intervention Project

Before selecting Duluth as the project site, organizers met with the administrators of the police department, the heads of the city and county prosecutors' offices, the directors of three mental health agencies, the deputy in charge of the county jail, and the chief judge. A vague proposal was put forward, asking that each agency attempt to reduce repeat cases of domestic assaults by developing written policies and protocols and engaging in an interagency networking process. Each administrator agreed contingent on the agreement of the others. This non-specific commitment to developing policies was enough for project organizers to decide to locate the project in Duluth. A Duluth foundation made the first grant to the project of \$30,000, and in September of 1980, 4 years after the opening of the shelter, the Domestic Abuse Intervention Project (DAIP) opened its office (Pence, 1996).

The first DAIP staff consisted of a legal advocate from the shelter, a secretary who had been volunteering at the shelter, and me, an activist from Minneapolis who had been administering state shelter funds. All of the planning and strategizing was conducted with DAIP and shelter staff. DAIP staff contacted one person from each law enforcement and court agency whom shelter advocates had identified as friendly to the cause of making changes in the system. These practitioners provided staff with an insider's knowledge of how the system worked as well as political advice on how to accomplish the goals of the project. At the same time, project organizers were holding evening meetings with women who had used the shelter to find out how the system worked in practice and how it worked for different women. Proposed policies and procedures originated at these meetings. By the time project organizers met with agency administrators, they had a fairly good picture of how the system was designed to work, how it was actually working, what changes in institutional procedures advocates wanted to propose, and who would be sympathetic to these proposals, as well as who might be hostile or resistant.

Nine agencies were drawn into the negotiating process, although project organizers avoided suggesting any interagency meetings until after the basics of a policy or procedural agreement had been worked out with each agency. Once the decision was made to try the plan out in Duluth, it took 9 months to enact the policies. On March 1, 1981, at 2:00 p.m., the agency

directors participated in a press conference to announce their new policies, which then immediately went into effect.

The role of the DAIP in orchestrating this interagency experiment and then working with individual agencies to coordinate its ongoing implementation has positioned this community-based organization in an unusual insider-outsider role. The relationship of the DAIP to these agencies and my role as one of the central figures in the DAIP efforts has allowed me in my position as a graduate student to have relatively unfettered access to practitioners, files, and assistance that could not be easily secured by another ethnographer. I address this issue in chapter 9 in my proposal for an interagency-sponsored audit of the system.

Sources of Data

I have used five sources of data during my investigation: observation of practitioners, interviews with practitioners and advocates, notes from meetings with practitioners in the criminal justice system, review of case files and court records, and published literature. Most of these interviews, observations, and court documents were related to cases within the Duluth court system. I have, however, used interviews with some practitioners outside the Duluth area as well as several documents I secured in doing work on cases outside the Duluth system.

Duluth is a small community. Some of the people whom I interviewed had absolutely no qualms about me using their names and their identities, while others were quite concerned that their statements not be in any way attributable to them. I have therefore attempted to provide some anonymity to these informants by omitting their names and changing their identifying features. With the exception of the sentencing hearing in Baltimore appearing in chapter 7, I have changed names, dates, and identities of people in all of the documents I have used. I have likewise changed identifying features of cases without changing the important aspects of the texts I am exploring in this study.

When I began this project I set up appointments to interview a number of practitioners. I recorded and transcribed these interviews and used materials from them in developing my analysis. As time went on, I spent more time in the court system observing, meeting, and talking informally with practitioners. I also spent time talking with people before and after the advocacy meetings I was involved in. Many of the quotes and much of the information that I have drawn on came from practitioners under these circumstances. I have also quoted from battered women with whom I have talked during the past several years and from a number of advocates who themselves have been battered.

None of the meetings and informal conversations discussed above were recorded. I took notes

afterwards, and many of the quotes in this dissertation are my best efforts at remembering what someone had said 2 or 3 hours earlier. These quotes are therefore missing the “ums” and “ahs” of informal speech.

I made observations and secured documents for analysis over a 2½-year period, from May of 1994 through September of 1996. During that time, I had access to all of the police reports regarding domestic assaults filed in the past 7 years in the city of Duluth; all of the affidavits for protection orders; a limited number of sentencing transcripts; and all of the court case files on misdemeanor and felony cases in the Sixth Judicial District. I observed practitioners carrying out the following procedures: (a) 911 dispatching procedures; (b) police responses to domestic assault calls; (c) police report-writing procedures; (d) booking procedures of the St. Louis County jail; (e) arraignment court procedures; (f) supervised release interviews with offenders and presentations to the court; (g) order for protection hearings; (h) presentence investigations and presentations to the court; (i) pretrial hearings; (j) trials; (k) sentencing hearings; and (l) intake procedures for offenders court ordered to a batterers' program.

I also interviewed 32 practitioners in the criminal and civil court system, 11 advocates, and 6 battered women. I obtained complete court files on 6 cases and reviewed 207 police reports, 9 transcripts of sentencing hearings, and 14 detention order files. I chose the cases that I followed through the system simply by listening for names that shelter advocates mentioned during meetings with DAIP staff, or names that I heard at meetings with the police department or in discussions with the city attorney's office. For example, if an advocate brought up a case in which one of the people arrested was released from jail without any kind of assessment done of his dangerousness, I would follow up on it because it is a typical advocacy case in our system.

Because I am focusing on the way texts organize the everyday practices of ordinary practitioners, I have chosen not to use any poorly written police reports, or describe any practitioners' actions that seem to be out of the ordinary. The everyday world is problematic enough as it is.

CHAPTER TWO

LEGAL ADVOCACY AND THE BATTERED WOMEN'S MOVEMENT

In the past 20 years activists in the U.S. battered women's movement have successfully argued that the state has an obligation to intervene in personal relationships in order to protect women from their abusive partners, that it can and should remove violent husbands from their private homes in order to protect women in *their* private homes, that the police should arrest husbands for assault, and that the state should prosecute them (Dobash & Dobash, 1979; Schechter, 1982). These shifts in the legal status of women marked a monumental achievement for the women's movement, not unlike the gains in the abortion and divorce rights efforts.

None of the new measures was implemented as a matter of course. In every state, in every courthouse, and in every squad car, there has been resistance to the full measure of what this social movement seeks to gain for women. Still, for the first time in the history of the struggle against "wife beating" that began as early as 1640, the contemporary battered women's movement has won public acknowledgment that the state has the obligation to render full protection to abused women (Dobash & Dobash, 1979; Pleck, 1989).

Every state has expanded the obligation and authority of police to arrest abusive partners. Every state has passed some version of a protection order that allows the court to exclude abusive partners from their homes. The National Council of Family and Juvenile Court Judges has published an extensive model state code recommending that state lawmakers adopt a comprehensive legislative approach to the reform of the antiquated legal system (National Council of Juvenile and Family Court Judges, 1994). The American Medical Association and the American Bar Association, two of the most powerful professional lobbies in Washington, D.C., have both adopted far-reaching positions on domestic violence (Flitcraft, 1992). Public opinion, though far from fully enlightened, has dramatically changed as court watch groups, community-based legal advocacy projects, and battered women's shelters have put the spotlight on practitioners, their failures to respond to "domestic violence," and the ways abusers escape social sanction. Men who beat their partners can no longer expect to use violence and remain immune from social sanction, nor can practitioners who fail to respond to the violence be assured of anonymity.^{vi}

The suffrage and progressive social reform movements of the late nineteenth century produced legislative changes ending over 200 years of regulating wife beating and criminalized the practice regardless of the woman's behavior. By 1911, laws forbidding wife beating had been passed in every state. Because no infrastructure of local efforts existed to advocate for the

implementation of the new laws, they were noted in law books and shelved until 70 years later, when the next wave of feminism gained momentum and activists insisted on their enforcement (Dobash & Dobash, 1979; Pleck, 1989).

In the U.S. the battered women's movement emerged in the middle 1970s on the heels of the social activism of the 1960s. I was motivated by the challenges of the most recent wave of feminism. It attracted people of diverse political commitments to advocate for women's right to freedom from violence in marriages. It has been a pragmatic movement which in its early years drew much of its strategy from the progressive social struggles of the sixties and much of its theory from the feminist movement. In the early seventies, when the first shelters opened, the feminist movement was organizing largely through locally based consciousness-raising groups. From these groups rose a voice of and for women that had been absent in the public discourse for half a century. As the women's movement developed its political analysis, it called into question the European notion of the "natural family unit" held together by love. Feminists argued that the nuclear family, which evolved over centuries of European patriarchal feudalism and capitalism, was held together not so much by love as by the concrete conditions of women's subordinate economic and social status in the public and private spheres (Schechter, 1982).

The early days of the contemporary wave of feminism were characterized by women organizing in their local communities to dismantle some small piece of this overwhelming patriarchal apparatus, so huge and so all-encompassing that common sense dictated finding just a piece of it that could be changed. Activists often refer to their work as chipping away at the patriarchy. Many activists believed that challenging the legal and social tolerance of men's violence against women would be a critical step in undermining men's social power over women. Feminists organized around specific forms of male violence toward women. Some went about changing the laws that made it difficult to prosecute men who rape strangers and impossible to prosecute men who rape their wives. Native American women fought the removal of their children from their communities by social workers. Some women struggled for abortion rights. Others exposed the racist practices of forced sterilization. There were those who took on the multi-billion-dollar pornography and prostitution industries that promoted pornography as free speech and prostitution as a victimless crime. Still others challenged the de facto right of husbands to beat their wives without legal sanction. Across the country rape crisis centers, anti-pornography projects, abortion clinics, women's health centers, and shelters for battered women began to open.

All these projects were in some way anchored in the women's liberation movement.

While there was no central organization that activists all joined, no party or national office, themes that came directly from the rhetoric of the women's movement could be found in all of

this work (Freeman, 1975). One theme had to do with a growing awareness of the systemic nature of women's collective oppression and was expressed in the popular slogan "The personal is the political and the political is personal."

Woman's liberation is the first radical movement to base its politics—in fact, create its politics—out of concrete personal experiences. We've learned that those experiences are *not* our private hang-ups. They are shared by every woman, and are therefore political. The theory, then, comes out of a human feeling, not out of textbook rhetoric. (Morgan, 1970, p. xx)

A second theme had to do with the notion of making visible the invisible and of women finding their voices. In all of this work there was a recognition of the importance of women speaking out about our experiences, about rape, about botched back-alley abortions, about poverty, about beatings at the hands of our lovers, pimps, and husbands. "Speaking out" meant women sharing actual experiences. This challenged the authority of priests, doctors, lawyers, psychiatrists, retailers, reporters, tribal leaders, politicians, parents, heads of families, community leaders, and teachers, all of whose daily practices silenced women's voices and rendered their abuse and oppression invisible.^{viii}

However, although it is important to recognize the connection of the battered women's movement to feminist activism and theory, a claim that shelters were largely organized by women who identified as feminists or saw themselves as part of the women's movement would be inaccurate. Many of the women who organized the first shelters came to this work as seasoned activists in the civil rights movement, the welfare rights movement of the Nixon era, the anti-war movement, Native American struggles for treaty rights, and various struggles to liberalize religious institutions. For many of these women the emerging feminist analysis was too narrow to encompass the diverse experiences of women of differing class, ethnic, and social origins. For others this work was their first involvement with social activism. They may have come because of the murder of a daughter, sister, or mother, or because they were being battered or had lived with violence in the past. Many joined the work to create different possibilities for their daughters (Schechter, 1982).

The battered women's movement did not develop a radical critique of the family or of the capitalist state or of heterosexism. Rather, *safety* became to the battered women's movement what *liberation* was to radical feminism. This means that the battered women's movement is not a feminist project the way the anti-pornography, the anti-prostitution, or abortion rights movements have been. It cannot be adequately understood or critiqued unless we account for its political diversity and its corresponding absence of a radical critique. This was an undertaking in which feminists and progressives played a primary role but were not the sole or even perhaps the

majority of workers. Of course, political positions can change. As one shelter-resident-turned-activist remarked, "I never considered myself a political person or a feminist, but then there is nothing more politicizing than a fist in the face followed by a little chat with ten other women with black eyes" (interview, May 19, 1995).

Women became politicized as we sought to understand both our differences and our common ground. African American women sought to explicate how the history of slavery, institutional racism, poverty, and Western forms of sexism shape African American family structures and power relations between women and men (Coley & Beckett, 1988; hooks, 1981, 1984; B. Smith, 1983). Native American women analyzed how the legacy of forced assimilation through boarding schools, foster care, adoption, laws restricting the practice of spiritual traditions, and a host of government policies gave rise to the widespread use of violence by Native American men against their partners, a practice which was not widespread in pre-colonial America (Bachman, 1992; Chester et al, 1994; Leacock, 1994). Parallel critiques were developed by women of European descent, Asian American women, Latinas, and immigrant women.^{viii} Yet while these critiques were developed simultaneously with those of Western white feminists, the latter's hegemonic control caused other critiques to be subsumed under what appeared to be a universal experience of "the battered woman" (Dodson, 1982).

Although much of the analysis of the feminist movement regarding relations of dominance and subservience has been taken up by the battered women's movement, its two-decade history has nevertheless been marked by a reproduction of the race, class, and heterosexist oppression that dominates social relations in this country. White women, often from middle-class backgrounds, have held many of the structural leadership positions (e.g., coordinator, program director, fundraiser) and have written the majority of the literature. As Susanne Kappeler (1995) points out,

The issue no longer is white women's oppressive behavior, but Black women's absence from the movement - to which the quick response has been to issue an invitation addressed to Black women to 'join' the movement (ours), to participate in our conferences and to fill the ranks of our rallies so that these will no longer suffer from the stigma of exclusive whiteness. The enterprise remains in the interest of the entrepreneurs, but Black women are now in demand and needed to stave off any future critique that white women are excluding Black women. (p. 60)

Movement strategies, including legal reform strategies, were developed with women of color often in reactive rather than proactive leadership roles. In these roles women of color have been far more cautious in mapping out strategies for reform that would involve an expanded role for police and the courts in women's lives. In some cities women of color have also placed greater

emphasis on reforming the child protection court processes than on reforming the criminal or civil court processes, because historically the role of state involvement in their lives has largely been organized around welfare and child welfare agencies (Abramovitz, 1988). A Minneapolis advocate explains,

It made sense for white women to look to the divorce process as the problem and in need of reform because that was the court that they had been using to try and get help. As Indian women, we have put a greater emphasis on the juvenile court because for us, turning to the courts for help to deal with being battered will very likely put us in a battle to keep our kids. (Interview, June 8, 1995)

Much of the early work of legal reform efforts was marked by a certain naivete on the part of the white middle-class leadership about the role of the legal system in maintaining existing relations of ruling.

I think white women talked more as if the courts belonged to us [all women] and therefore should work for us where we [women of color] always saw it as belonging to someone else and talked more about how to keep it from hurting us.—Legal advocate (interview, September 19, 1995)

While many of the key figures in the movement leadership were lesbians there was a defacto agreement that lesbians be closeted in their dealings with public agencies. In some shelters lesbians had to be closeted even to co-workers. There was no lesbian critique within the battered women's movement's discourse that paralleled that of Native American or African American activists. When lesbians in the movement did start speak from a lesbian position it was more on the rather narrow issue of lesbian battering than on an analysis of heterosexism and violence against women.

In every state, advocates formed coalitions of locally based programs to work for legislative changes as well as for changes in the state's regulation of local welfare, police, and funding agencies. The new legislation merely authorized change. Many of the laws and regulations passed were either ignored or cynically turned against battered women or against men in marginal positions in society. Thousands of women in the U.S. have been charged with assault when they have fought back against an abuser; many others have been arrested for failing to cooperate with the prosecutor's efforts to enforce criminal statutes against batterers. As a direct result of the reform efforts which envisioned a more active role for the courts in intervention, battered women have been charged with filing false police reports, failing to obey subpoenas, and neglecting their children (Pence & Ritmeester, 1992).

We were told by police, "We can't arrest, we don't have the authority to arrest," so we spent

an entire legislative session getting the law changed so that they could arrest and the next year a small number of men were arrested and a really high number of them were either Black or Indian men or else white guys who had given the cops a bad time. (Interview, June 8, 1995)

However, the grassroots nature of the battered women's movement created an infrastructure through which these practices could be challenged over a long period. Policy changes secured at the state or legislative levels would be taken up by advocates by means of local training programs for professional groups. Through constant pressure advocates kept raising issues about how particular cases were being mishandled by the system.

Few of the women who organized the battered women's movement were economically self-sufficient. Most were part of the working poor. Some were dependent on their husbands or dependent on the state, either as welfare recipients or as civil service workers. As women seeking refuge in the shelters turned to the state for financial resources or legal protection, the state's role in reproducing relations of dominance and subordination was repeatedly demonstrated. Lawmakers, police officers, judges, and social workers consistently failed to use their institutional powers to protect women from further abuse or to sanction men for their violence.

Even when the movement had secured legislation that expanded the institutional power to intervene, practitioners frequently refused to use their new powers. It was this reality that politicized movement workers. Feminist theory offered them an analysis of what they were experiencing each day they walked through the shelter door to begin a work shift or to escape a batterer. As women crowded into shelters, their stories revealed a disturbing pattern of specific actions on the part of legal and human service practitioners which seemed to collude with men's violence and intensify women's vulnerability to domination by violent men.

It got so I could finish a woman's story halfway through it. There was this absolutely eerie feeling that these guys were getting together and deciding what to say and do. The people in the system were saying a lot of the same things that the men were saying: "It's her fault, too. She has to take some responsibility for what's happening, it takes two to tango." Back then there were no arrests, no prosecution, no special visitation orders. It's as if everyone just had blinders on to how violent some of these men were. Some women weren't shocked by this—they had been on welfare or in this system for a long time and had that jaded attitude toward the system. I was a novice, I was shocked at it. I remember thinking, "But the squad car says 'to protect and serve' on the door—how could the police just walk away?"—Shelter advocate (interview, June 15, 1995)

Each woman's story added to a picture of a legal system whose practices, procedures, and policies made it difficult for most women to use for protection from male violence and which

remained virtually inaccessible to marginalized women.

I was trying to get away from him so I went to Legal Aid but I had to use our family income on the intake form. My income was nothing. His was about \$25,000, which meant I didn't qualify for an attorney. It wasn't like I could say, "By the way, Mike, can you leave a check on the table before you leave today? I'm off to see a divorce attorney." . . . The same thing happened when I tried to apply for welfare and get an apartment. We were still living together, so I had to use the family income, which meant I couldn't get on welfare.—Former women's group member (interview, May 25, 1995)



Everyone kept telling me to call the police on her and have her arrested but I knew if Carla and I ended up in court together or if I tried to use a shelter, Jerry would find out and I'd be back in court all over again for custody. He could never quite prove to anybody that I was a lesbian. He just needed the proof to get the kids.—Former women's group member (interview, May 25, 1995)

Advocates began to understand that the failure of the courts and police to protect women was not simply a matter of an attitude on the part of individual practitioners. It was a lack of legal tools to intervene in a legal system that did not take into account the inequality of the possibilities of parties seeking court intervention in family matters or the complexities of women's experiences in a society in which citizens' access to resources and social privilege is determined by their sexuality, race, gender, and class position. These realizations led advocates to form legislative coalitions and criminal justice reform projects at the state level. Successful legal reform efforts in one state were quickly taken up by advocates in other states.^{ix} Reform initiatives, such as laws that authorized civil courts to remove abusive parties from their homes, expanded police authority to make arrests, required jailers to notify victims when releasing offenders from custody, and allocated funds for shelters, would be passed in one state and within 3 to 5 years passed in over half of the country's state legislatures (National Council of Juvenile and Family Court Judges, 1996).

Activists also organized criminal justice reform efforts on the local level, either as separate projects within shelter programs or, in cases like the Domestic Abuse Intervention Project (DAIP) in Duluth, as independent sister organizations of the shelters. The first community-based legal reform projects focused on specific aspects of legal intervention. For example, Evergreen Legal Services in Seattle set up the first legal advocacy project for women who wanted to prosecute their abusers. The San Francisco Family Violence Prevention Project was the first major project to locate a feminist advocacy program within a prosecutor's office (Schechter, 1982).

When the Duluth project began in 1980, legal advocates in other cities had effected changes in every aspect of criminal court intervention, from dispatching to sentencing. DAIP gained national recognition as the first community-based reform project to successfully negotiate an agreement with the key intervening legal agencies to coordinate their interventions through a series of written policies and protocols that limited individual discretion on the handling of cases and subjected practitioners to minimum standards of response (Pence, 1983). These early reform projects placed victim advocates in a leadership role of bringing various actors in the system together to examine and change procedures across agency and department boundaries.

Within the battered women's movement there was little disagreement that it was the role of advocacy programs to challenge institutional practices that prevented women from getting the full protection of the legal system. There was, however, sharp disagreement over the extent to which battered women's activists could or should initiate reforms that would increase the presence of the police and courts in the lives of battered women. Activists debated efforts to require police to arrest batterers and to require prosecutors to pursue convictions as the multiple realities of women's lives came into sharp relief. Even when police uniformly apply their arrest powers to men of different or ethnic backgrounds, arrest does not mean the same thing to a Latin man and an Anglo man, to a poor man and a middle-class man, or to a gay man and a straight man; nor does it have the same impact on their partners. Movement activists were demanding the protection of women from an institution which has been instrumental in maintaining white patriarchal supremacy and suppressing resistance to the social order. The movement was caught in the tensions of responding to immediate needs of women and working toward long-term institutional change. Like tensions within all social movements, they took on complex meanings (Costain, 1982; hooks, 1984).

It was one of those you're-damned-if-you-do-and-you're-damned-if-you-don't things. When we started talking about arrest I knew it was going to be used against Black men for reasons other than hitting a Black woman. It was things like the Birmingham police arresting ten Black men to every white man that made me argue against it, but then I didn't want police walking away when a Black woman was beaten either. So in the end I supported a policy which meant in most cases the man would be arrested and Black women would be down there to get him out. That's the way it is.—Legal advocate (interview, June 23, 1995)

Politically, the battered women's movement has been oriented toward the very practical legal, financial, emotional, and medical needs of battered women. The sheer numbers of women coming into shelters necessitated a pragmatic approach (Costain, 1982). Women called the police when they were being beaten, they sought legal relief in divorce court, and they were dragged into juvenile court as allegedly bad mothers. The question of whether we should use the courts to protect women was in a sense rhetorical, as women were already inextricably hooked into the

legal system. The more meaningful debate centered on strategy (Currie, 1990).

I write this as if there is a common description or definition of a community-based advocacy program, but of course there is not. Some of these programs operate almost exclusively on volunteer labor while others have substantial budgets and staff. Some are operated by people with no previous political or organizational experience and others are staffed by people with academic degrees in human service administration. Despite the educational, class, and social differences that separate many of these programs, they are loosely connected. What has led them to enter into coalition with each other is the experience of working with women who face horrendous institutional obstacles in securing safety for themselves and for their children.

In the next chapter I will discuss the development of a legal advocacy approach which has become known as coordinated community response or domestic violence intervention projects.

CHAPTER THREE

INSTITUTIONAL ADVOCACY & CRIMINAL JUSTICE REFORM EFFORTS

As activists developed advocacy strategies at the state level, and community-based programs pushed for their implementation on the local level, two distinct forms of advocacy emerged: individual advocacy and institutional advocacy. Individual advocacy involves an advocate helping a woman consider her options and then pursue a course of action in the legal system. The advocate explains various court procedures and helps negotiate around obstacles. In short, it is the job of the advocate to help a woman achieve her personal goals in the legal system. The advocate may not agree with the choice the woman has made, but she is trained to support the woman's decision unless she cannot ethically do so (Davies, 1995).

For the battered women's movement, institutional advocacy is the sum total of those activities designed to change an institutional practice (i.e., policy, procedure, or protocol) which works against the interests and needs of battered women as a group.^x It is rooted in individual advocacy in that institutional advocacy programs are informed by the everyday experiences of battered women as their cases are processed in the legal system. Institutional advocacy is committed to claiming the legal process for women who have very different goals in using the system than those in the system who process her case. Wittner's (in press) institutional study of women's agency in domestic violence court found battered women used the courts for many purposes; rarely was it to secure a conviction.

In these often invisible ways—broadcasting the news about court, discussing the problem of violence among friends and relatives, redefining the meaning and scope of unacceptable violence, rethinking their relationships with abusive men, reconceptualizing their rights and obligations, and reflecting on themselves—women made significant changes in their own lives, in their communities, and in the court. (Wittner, in press, p. 42)

In some cities legal advocacy projects have organized as independent organizations, while in others they are program components of shelters. In many cities, shelter or community-based advocacy program staff practice both forms of advocacy.

I always think of my role in doing individual advocacy as helping to clear a path for women who have chosen a course of action but are coming up against obstacles. My knowledge of the system and relationships with people in the system put me in a position to help overcome those obstacles. When I am doing institutional advocacy, I think of it more as clearing a new path. When an advocate finds herself coming up against the same problem over and over again with different women, it's clear something needs to permanently change.—Legal advocate (interview, June 15, 1995)

Institutional advocacy, however, also focuses on how the state should intervene with men who beat women, regardless of the desires of an individual woman who is the victim of an individual man. Thus the demands of the battered women's movement to criminalize violent men often conflict with the interests and desires of women who are living with those men (Edwards, 1989).

Women entering the first shelters came with a need for more than a temporary place to stay. Various kinds of discussion take place in shelters. None reveal more about women's lives, experiences, and needs than the conversations around the kitchen table late at night, when the children are all sleeping and the intense pitch of activity that marks each day has subsided. This is when women start to compare stories about police coming into their homes, phone calls from defense attorneys, subpoenas from prosecutors, and questions from child protection workers. This point of contact between the women's experience and the institution she encounters is the juncture where advocacy begins, the juncture at which an abused woman encounters the state as a "battered woman." It is the point of departure for individual and institutional advocacy:

I don't think anyone who hasn't been there can quite understand what it is like to have a huge fight with your husband, who decides to start punching home his points, then somehow you get to the phone without him cracking you over the head with it. It seems like it takes forever for the cops to get there. Every minute is like an hour. When you hear that knock on the door you have this feeling of panic—"My god, what have I done?" mixed with this feeling of relief—"My god, they're here!" So in walk two men. They look so calm, so powerful. Blood is dripping out of your nose, you feel like a train just ran over you, you look like shit, your house looks like shit, your whole fucking life and every mistake you've ever made is just hanging out in the air for these two men to see, and then it all starts: "Do you want to tell us what's going on?" Where do you begin? "I married an asshole, a drunk, a shit father, and I want him the fuck out of my life, but I need the bastard." Somehow I don't think that's what they're looking for but that is exactly what's going on.—Nancy, former shelter resident (interview, May 19, 1995)

The police officer now represents both the state and, in a sense, the community. The advocate works with the individual woman to realize her goals. The institutional advocacy program works to define the role of the police officers, and of those practitioners who will take up the next stages of the case, as one of providing protection for this victim (and others) and deterring this offender (and others) from future violence.

The police officers, like the dispatcher, the prosecutor, the judge, and dozens of others, represent one part of the apparatus that defines, manages, and processes the experiences of battered women as "domestic assault cases" in a legal system designed to enforce social norms. Unlike other serious crimes, such as bank robbery, kidnapping, or drug dealing, "wife beating" is not yet considered an absolute breach of social norms.

I sat in the back of the courtroom that day and the probation officer told the judge that [my husband] was the hockey coach to my son's team and then he said that he had admitted to beating me up. So I guess because of that he was telling the judge that he didn't think my husband should go to jail. He told the judge that he should go back to the Domestic Abuse Intervention Project [men's rehabilitation group]. I thought, oh great, more misery, because he always found a way to make me pay for him having to go to those groups because of the protection order. It's like, why did I go get a protection order and then go through the arrest thing if the judge was just going to say, "Well, Mr. Hansen, let's give it one more go and see if you can get it right this time."—Former women's group member (interview, May 25, 1995)

D. E. Smith (1987) explores how everyday life in the modern state is administered through complex sets of "textually-mediated" processes. That is, people and their experiences are constantly processed through forms, files, memos, protocols, and records that turn an individual's experience into a "case." Lived experiences, such as a woman's experience of violence, is represented in and replaced by different organizational "texts" (forms, files, and so forth). The gap or disjuncture between the textually mediated administrative procedures and lived experience, between a woman's experience of violence and the way her experiences are inaccurately reproduced in texts and administered as a case, can be enormous. Nancy's story illustrates that from the first moment of intervention by the police, the case and her experience are in danger of becoming increasingly unrelated: "Somehow I don't think that's what they're looking for," observes Nancy, but she knows that what they're looking for is not "what's going on."

When we think about the state and power, we often think about repression or the use of armies and police forces and knocks on the door at night.^{xi} But it is important that legal advocates think carefully about the other ways in which power is practiced by the modern state. The gap between a woman's experience of violence and the way the various agents of the state treat it as a case is neither benign nor politically neutral. It is a gap that carries the imprints of the practice of power that produce it. Thus in U.S. society, the disjuncture between lived experience and the way this experience is administered is a profoundly gendered,^{xii} raced, and classed one.

Power in modern societies operates more pervasively through knowledge and social technologies such as professions and disciplines than through repression and coercion. Fraser (1989) draws on Michel Foucault (1979), who likens the practice of power in the modern state to a capillary, whereby power is widely dispersed and disseminated through multiple discourses and technical or professional processes, such as those of law, psychiatry, or social work. These discourses, she explains, work by defining the proper or normal conduct of everyday behaviour so that "power touches people's lives more fundamentally through their social practices than through their beliefs" (p. 18). That is, hegemony works through the disciplinary practices of the

professions or other occupational groups and through the day-to-day operations of institutions. Education programs to change the attitudes of police officers or judges therefore simply won't work by themselves. Battered women's advocates must challenge the way power works through dominant knowledge practices. Joan Scott (1988) defines knowledge broadly:

Knowledge refers not only to ideas but to institutions and structures, everyday practices as well as specialized rituals all of which constitute social relationships. Knowledge is a way of ordering the world. . . it is inseparable from social organization. (p. 2)

Thus not only is knowledge deeply implicated in power relations, but power relations are embedded in the kind of knowledge that is institutionally produced about a woman's experience of violence. For D. E. Smith (1990a), knowledge created in this way carries in it (and is part of) the social relations of ruling. She shows how such knowledge is an ideological practice "that subdues the lived actualities of people's experience to the discourses of ruling" (p. 4).

Thus, for example, as a woman's call for help is recorded by the 911 operators, the technology of the system sets into motion a methodical and consistent administrative process of structuring, analyzing, and ordering her experience so that it is reduced to a form through which those practitioners who operate the court systems eventually can know and resolve the case ideologically: that is, as the object of court and legal practices rather than as the subject of lived experience.

Legal documentary practices produce accounts of violence against women as a series of criminal incidents rather than as a sustained, pervasive pattern of coercion and intimidation. As such, each incident is treated as the crime to be processed. This conceptual practice is reinforced by similar practices in the social sciences, which produce understandings of violence quite unrelated to the way women experience it.

Conceptual Problems in an Incident-Focused System

The criminal court process is incident focused. The goal is not to determine if a defendant is battering his partner, it is to determine if he assaulted her on a particular day. Let us begin this discussion by starting in what D. E. Smith refers to as the pre-categorical place of the everyday lived experience. Marilu has not yet been pulled into this institutional maze. One Tuesday night she is punched in the face by her husband during an argument over who is going to use the car. Their youngest child hears the argument and her mother's scream. She runs down the stairs and sees her mother bleeding, holding her nose, and yelling at her father. She is afraid and calls 911, which she knows as the police number. It is early evening. Marilu has to be at work the next morning, as does her husband, Jerry. Dinner is just about ready. Two of the children are leaving

for camp at the end of the week. The third child has been sick all summer with a viral infection. This is not the first time Jerry has hit Marilu, although it has been over 2 years since the last physical abuse occurred. In the past year he has thrown things, screamed in her face, punched walls, and taken her car keys. She's done some of the same, called him names, kicked him in the shins, thrown his favorite shirt in the garbage. There are literally dozens of details about this woman's life that are important to her. In a few moments when the police arrive and ask, "What's going on?" everyone will know they don't mean, "Tell me everything that's going on." They want to know about *this* fight and *this* blow to the face. And so from the first point of contact, the everyday lived experience is being "worked up" for institutional action.

There is Marilu's life and its particulars, and now there will be another reality into which her reality will be drawn and reshaped. A woman told me once, "Calling the police on your husband is what it must be like to get beamed up to the Enterprise." For her, calling the police had meant she'd entered another world with words she understood but sentences that made no sense. Everyone asked her questions, but no one sat down with her to figure out what to do. She knew she was the object of everyone's gaze but not a part of the discussion about what to do with her.

The criminal court system is designed to determine if an incident that occurred in a community was a criminal offense. If so, who was the offender? If the offender is identified, can it be shown beyond a reasonable doubt that this person committed this crime? If so, what should the state do to deter this offender from committing similar acts in the future, and what can be done to deter others from committing similar crimes? Typically, the goal of the woman is to stop the violence, not to secure a conviction (Ford, 1983).

An incident-focused system does not routinize a method for practitioners to account for contextualizing the events surrounding an assault. It does not require the observer to account for the power relations, the history or pattern of violence that surrounds an event, or the way that violence arises in a relationship.

Advocates are not the only ones who find working within an incident-focused system problematic. In my discussions with prosecutors, probation officers, and judges the issue was repeatedly raised. One prosecutor discusses a case in which she tried to stretch the confines of the incident-driven system. The case involved a man with a long history of psychological, verbal, and minor physical abuse of his wife. But his obsession with her as she tried to leave the relationship made advocates bring this case to the attention of the prosecutor as potentially quite explosive. He had been arrested for an incident in which the physical contact was minimal. The hearing shows the limitations of an incident-focused system. The prosecutor's observations when I interviewed her serve as a good introduction to the court transcript, found in its entirety in

Appendix A:

I just wanted to get some controls on him [the abuser]. He was dangerous, and of course you can see from the transcript I failed, but later the police arrested him with a gun and a suicide note. Eventually he got put away, but he could easily have killed her and we would have once again failed because we aren't able to look at the whole picture of what's going on. In this case the judge fought me the whole way. He was mad that I was insisting on bringing this to trial. He wanted it dismissed at the pretrial for lack of probable cause but I asked for a Rasmusson hearing.^{xiii} I think the judge thought I was being just stubborn by not just dropping it. And I was, but I really had a feeling that this guy was going to do something. This transcript will show you that I made a mistake by focusing on if she was in fear and not focusing on his intent but still it's a good example of trying to get the incident in perspective. (Interview, September 15, 1995)

(Excerpts from Appendix A)

[Prosecutor]: Thank you. Our first witness would be Cindy Andrews.

The Court: Go ahead.

TESTIMONY OF CINDY ANDREWS,

Q What I would like to do is go into that a little bit with you. At the time of this incident on January 1st, did you have an Order for Protection in place?

A No, I did not.

Q You've subsequently obtained one, is that right?

A Yes.

Q Had you had any Order for Protection in place throughout the nine-year relationship, or at any time?

[Defense Attorney]: Judge, I'm going to object to this line of questioning. It's irrelevant to this. The issue at hand is whether there's probable cause for the assault charge which occurred on January 1st.

[Prosecutor]: Your Honor, I expected that objection and the State's reasoning here is that the type of assault that we're talking about, as the Court will hear in the next few minutes, does not involve actual harm being inflicted. It involves physical confrontation but without actual harm. And the theory—the section of the statute the State is proceeding under is Section 609.224, subdivision 1, parenthesis (1), as well as (2), which indicates that it is a misdemeanor to commit an act with intent to cause fear in another of immediate bodily harm or death. The State's theory here is that Ms. Andrews was made to be afraid and her fear is based on the whole history of this relationship. That the history of the relationship is relevant to the determination of whether she was afraid on January 1st of 1995.

The Court: I'll let it go for a while. You don't have to go on forever in detail with regard to prior orders and the like.

[Prosecutor]: Okay.

Q (Ms. Hewler, continuing) Briefly, Ms. Andrews, can you tell us if you've had two prior Orders for Protection?

A Yes, I have.

Q When did you obtain the first order?

A The first order was July of '89, and second order was the summer of '93.

Q Has there been a history of physical violence in your relationship with Mr. Andrews?

A Yes, there has.

Q And can you describe briefly for the Court the time period under which that has happened?

[Defense Attorney]: First of all, she tried to block him down in the basement from taking property, and then he in turn goes up and calls 911. She follows him back up and then she disconnects the phone. While at one time she is saying she's afraid of him and being afraid of being assaulted by him, she interferes with calling the law. People want law-enforcement to come if they were really afraid . . .

[Prosecutor]: Your Honor, I would argue there is probable cause. The state clearly indicated that it is an assault to place someone in fear of immediate bodily harm. That's how we're proceeding here. Yes, there were no threats. Yes, there would be no injuries . . . But there was definitely an assault. . . . Officer Bronte described her as being upset and in tears. . . . It was suggested that a normal person wouldn't unplug the phone, but this isn't a normal situation. That's the whole point of this particular case. . . . This is a situation where there has been an extended history of violence. . . . I believe she testified to that very clearly when she said she knew what his patterns were, what his habits were, and if he was angry that he wouldn't leave the home. That she sensed something worse was going to happen.

The prosecutor here has worked to have testimony entered into the record that puts the relatively minor incident into the context of a relationship in which there is an extended history of violence. By doing this the prosecutor is arguing that one cannot look solely at the behavior of the defendant that evening; the way his past use of violence impacts every exchange he has with the woman he has beaten must also be considered. Ultimately the prosecutor is unsuccessful in proceeding with this case because she is unable to convince the court that the fear that the victim felt was intentionally inflicted by the defendant.

(Excerpts from Appendix A)

The Court: Wait a minute. We have to deal with it now or deal with it later. The State does not say it's against the law to place one in fear of bodily harm—I don't have any qualms about the fact she was in fear of bodily harm. The statute you're talking about is an act done with intent to cause fear of bodily harm. So—

[Prosecutor]: That's right.

The Court: So your argument should not be related to her state of fear, which I don't question with the history, etcetera, but his intent with what he was doing. That's where the problem is.

[Prosecutor]: This is a man who has an underlying history of being violent in his relationship. A push from him would mean something far different to his wife and [he] knew that. He knew that. He knew that he could make her afraid by pushing her. He knew that his voice—all of his actions because of what she has come to court to say—she knew how to read his signals. . . .

[Defense Attorney]: Judge, it just isn't there. There isn't any evidence showing that his intent was to harm her or even cause her to be afraid. . . .

The Court: . . . Now, I think the police did what they had to do under the circumstances. They were called to potential problems. But you're talking about taking into consideration all the circumstances when you determine intent, and I think you also have to take into consideration that she was blocking his path. I don't think that there is—you know, we're going to have to do this now or do it again. I don't think you'll be able to get it to a jury, to be frank, Ms. Hewler. I don't think there is enough to get it to a jury . . . I don't like it, but I'm going to have to dismiss it for lack of probable cause. That is all.

Here both a prosecutor and police officer attempt to step back, look at the whole picture of what is happening in this relationship, and make the criminal law act in ways that protect the victim. Both are prevented from doing so, not because they don't have the personal consciousness to see that this is a pattern of abuse, but because of both the specialization of the court system and the way the law produces an account of violence that conceptualizes it as a series of incidents rather than as a sustained pattern of abusive, controlling, and intimidating tactics used by batterers to establish authority and power over victims.

In this case police officers arrested because they knew the history of this abuser and wanted to try to get the case into the system. The prosecutor here is trying to make an incident-focused system account for a pattern of abusive behaviors. Even though the judge says he's familiar with the whole case and refers to it as a "chaotic situation," he rules to dismiss because the prosecution has not adequately shown that Mr. Andrews' actions that evening were specifically intended to cause Ms. Andrews fear. The prosecutor tries to argue that the whole relationship is based on his knowing how to place her in fear, but in this instance the argument fails. The prosecutor has a weak case because the incident must stand alone in a criminal proceeding. The prosecutor's efforts to use this arrest as a way of gaining some leverage for state intervention and protection is thwarted in an incident-focused system.

Social Science's Reinforcement of Counting Incidents

I want to briefly discuss how the work of sociologists can link into the law's focus on the incident, decontextualizing the violence women experience and masking the danger many women face. Murray Straus, Richard Gelles, and later, Susan Steinmetz were among the first U.S. sociologists to take up the task of scientifically defining and describing woman abuse as a problem. They have since become the foremost U.S. academic authorities on the subject of family violence. In 1975, Straus released the findings of their National Family Violence Survey, which he had conducted with Gelles. It confirmed what shelter advocates had been saying: lots of women were getting hit, many quite severely (Straus, Gelles, & Steinmetz, 1980). The survey involved 2,143 members of "intact couples" in order to document the number of people who physically abuse their partners. The study also measured the frequency with which these acts of violence were committed. The researchers designed the "Conflict Tactics Scale" (CTS) to measure objectively what they called "conflict tactics." The survey identified the number of times in a year that 1,179 women and 964 men had engaged in the use of violence against their partners. Each survey respondent was asked to choose from a list of 18 possible conflict tactics, about half of which are "assaultive" (Straus, 1979). The list includes items such as "threw something," "pushed," "grabbed," "slapped," "used a knife or a gun." The scale does not measure injury; instead, it divides assaultive tactics into two categories, "minor" and "severe,"

paralleling the legal distinction between simple and aggravated assaults. The perspective of the victim did not figure in the measurement of "minor" or "severe": The so-called hard data were detached from the actual experience. Thus, on the CTS, a woman who kicks her husband while he is choking her will be scored as having used a severe tactic of violence (Okum, 1986).

This measuring instrument obscures everything that needs explaining. Let us take the fictitious case of a mother with three children. Her husband works for an accounting firm and she is a homemaker. She has twice been hospitalized as the result of his abuse. One night he comes home several hours late, appearing to be drunk. She yells at him and calls him names. He starts to walk toward her and she tells him not to touch her. He smiles and continues toward her; she throws a vase at him and it hits him in the arm. He grabs her by the hair and tells her that if she doesn't shut up he will smash her face. So far it's 1:2 on the CTS. She then kicks him hard in the shins. It's now 2:2. He pounds her head into the wall several times and she reaches out and scratches his face. He lets go and she runs out of the house and goes to her sister's for the next three days. It's 3:3 on the CTS.

The study by Straus and Gelles confirmed that battering relationships constitute a social problem of enormous magnitude. It also claimed, however, that equal numbers of men and women are victims of domestic violence. In their initial reports the mutuality was downplayed as not as dangerous to the men, but by 1977, Straus, in collaboration with Susan Steinmetz, began making claims that husband abuse was a large and ignored social problem (Steinmetz & Straus, 1977; Straus, 1989). The claim got good press play and gave currency to the argument that battering is not so much a gender problem as it is a problem of intrafamily violence. Once again the particulars of women's experience are lost as scientific screening devices are institutionalized, allowing scientists to manufacture data which are taken up as fact by practitioners in institutions of social control (Yllö & Bograd, 1988). The origins of their making disappear.

For a battered woman violence is part of her relationship with her partner. She does not experience or reflect on the violence as a series of incidents, yet this is how it is taken up by the legal system and analyzed by social scientists. The notion of counting blows and documenting specific incidents of violence becomes a conceptual practice. It prevents interveners from seeing how dangerous many abusers are to the women they assault. However, as the case of Cindy Andrews demonstrates, both advocates and practitioners alike are cognizant of the legal system's inherent limitations in protecting women who are abused. The practitioners who attempt to push the boundaries defined by legal processes tend to be the ones who form alliances with community-based advocates in the effort to transform the system.

Issues of Leadership in Reform Efforts

Community-based advocacy projects brought women without law degrees or any official legal standing in a case into the courtroom to advocate for individual women. Institutional advocacy programs extended their presence into the administrative workings of the system, inserting advocates into discussions on the managerial practices of the court system and demanding a voice on behalf of women as a class. Their presence was met generally with resistance and occasionally with cooperation. In some cities, they were charged with practicing law without a license or accused of "man hating," gender bias, and obstructing justice (Davies, 1995).

While many advocacy groups and shelters have had tense relationships with police departments and the courts, there was often a recognition that a cooperative relationship would be in the interest of both groups. Shelters gave police as well as the courts much-needed resources to deal with a crime they had previously been ill equipped to handle. Besides offering emergency housing for women, shelter programs coordinated the legislative initiatives to expand police arrest powers, judicial authority to quickly remove violent offenders from the home and to hold them following arrest, and prosecutorial ability to bring certain evidence into the courtroom. With these expanded powers came rising expectations that the court act to protect women and children in far-reaching ways.

The judicial system in any community is a collection of agencies with ties to different levels of government. Decision-making power is not centralized in any one agency or person. Some practitioners work for the state (judges), some work for the county (jailers, dispatchers, probation officers, and county prosecutors), some work for the city (police officers and city prosecutors), and some work for the federal government (appellate court judges). In Minnesota, each judicial district has a court administrator who works essentially under the direction of the judges of that district. The administrator supervises the courthouse staff, clerks, and bailiffs and the administrative processes they all perform, such as creating court calendars, dealing with the flow of paperwork, developing forms, maintaining filing systems, and operating computer systems. Judges hold bi-annual elections to choose a chief judge to coordinate their administrative processes.

Making changes in procedures or policies in this network is complicated by the multiple sites of decision making. There is of course the formal, recognized division of tasks and power as well as the informal and often more contested terrain of policy making. Systems advocacy requires advocates to promote changes that take into account the multiple agendas of intervening agencies while maintaining their own priority of victim safety. There is no single person in the legal system whom advocates can approach to revamp the court's response to these cases. Each agency has to be brought into the process of change and each change in an individual agency has to be coordinated with the other agencies either affected by the change or necessary to make the

change take place.

Advocacy programs attempt to achieve changes both at the macro level (e.g., passage of new laws or adoption of new prosecution, probation, or police policies) and at the micro level (e.g., making changes in procedures and in daily court and police practices such as setting court calendars, arranging a safe waiting space for women and advocates, determining what information belongs in a police report, and presenting sentencing recommendations to the judge). Both levels of advocacy require careful attention to the way one change will impact another part of the case processing. Legal advocates generally consider any change they or others propose from the standpoint of how it will impact battered women, both as a class and as individuals.

Legal advocacy projects which have made a commitment to avoid the stereotypical assumptions about the “universal” battered woman also analyze proposed changes from the point of view of women occupying different social positions in the community (Weisberg, 1993; McAllister, 1982). In our society, women’s experiences with multiple forces of oppression—as African American, Latina, Native American, poor, illiterate, lesbian and immigrant women—means that although there is a common ground that women share as battered women, there is no universal experience of being battered. These socially different subjective positions of women do not mean that a woman is first battered as a woman, then as a poor woman, then as a South Asian poor woman. Being a woman and South Asian and poor are simultaneous experiences that compound and mediate each exchange as she negotiates her way through the legal bureaucracy .

When an institutional legal advocacy project first organizes in a community, it typically has an ambitious agenda for major policy changes in several agencies. Often the goal is to ask key agencies to simultaneously adopt new written policies. Negotiations for this kind of coordinated change take months and even years to complete. The absence of a central administrative body or person in the court system requires that change which impacts several parts of the system be negotiated with several key policy makers. Local politics as well as the adversarial nature of the legal system affect the negotiations. Frequently the tensions are such that practitioners become openly hostile to each other. In some cities, particularly those at the forefront of community intervention, legal advocacy projects have played a key role in drafting, negotiating, and strategizing for the implementation of changes. In other cities, advocates have worked closely with one or two administrators within the system who assume the main leadership roles but closely ally themselves with the advocacy program (for example, San Diego). Elsewhere the advocate’s role in influencing reform efforts is severely curtailed and marginalized by practitioners who have no commitment to a victim-referenced reform effort.

In the past 5 to 8 years a growing number of policy makers inside the legal system have taken up

the banner of reform. Advocates in the battered women's movement do not claim a monopoly on the right to speak about domestic violence, but as Gillian Walker (1990) argues, we do insist that the standpoint of battered women become the prerequisite grounds from which to be truly self- and institutionally reflective about proposed reform of the court system.

The battered women's movement's legal agenda is one of reform. It does not actively pursue a fundamental restructuring of the law or the law's role in sustaining race, gender, and class oppression. It does not challenge the underlying assumptions of heterosexist concepts of family or friendships or intimacy (Rich, 1980). Indeed, this reality has led to a critique of legal reform efforts by a number of feminist theorists (Brown, 1992; Currie, 1990; Pateman, 1987; Smart, 1989). They find the legal system to be so hopelessly masculinist that there is no possibility for producing meaningful change for women. Wendy Brown argues,

If . . . state powers are no more gender-neutral than they are neutral with regard to class and race, such an appeal involves seeking protection **against** men **from** masculinist institutions, a move more in keeping with the politics of feudalism than freedom. Indeed, to be "protected" by the very power whose violation one fears perpetuates the specific modality of dependence and powerlessness marking much of women's experience across widely diverse cultures and epochs. (p. 9)

Through its legal reform efforts the battered women's movement calls into question the way the law sustains one practice of male dominance: the physical chastisement and control of women in their intimate relations with men. The legal advocacy work within the battered women's movement works within an institutionally acceptable framework of community activism to influence the way the law is practiced. Many of the demands of the battered women's movement are achievable precisely because they do not require a basic restructuring of the legal system. During my conversations with battered women's activists in Minnesota about their work, many expressed awareness of a boundary around legal reform efforts that left the basic organization of the legal apparatus intact as they focused on how people within that given framework go about their work.

I'd like to think of myself as doing something really big, even historically significant, and in a way this is, but it's also a lot of tweaking. Making the law be better, given what it is. We don't ask some of the really big questions, like why don't we do away with this whole idea of an adversarial system producing truth or justice. (Interview, May 26, 1995)



Well, where do you start? I know we can change a law. I know we can change lots of outdated practices. I wouldn't have any idea how to restructure the thing—besides, I can't

think of who would fund a proposal to reorganize the entire legal system. (Interview, May 26, 1995)



Lots of little things don't make sense to me—like the way they do arraignments, so much time is wasted—but also big things don't make sense, like why isn't the battered woman the client to the probation officer, why is the batterer? They spend all this time asking him things he'll never tell the truth about and then they make a reasonable, or good faith, or something like that, effort to talk to the victim. Why not spend time trying to find out what happened and talk to the woman and people they both know? But we never really discuss changing people's jobs totally, we mostly just look at how people are doing jobs that are already agreed should happen. (Interview, May 31, 1995)

The Key Activities of Institutional Advocacy Projects

As they work toward court reform, community-based advocacy projects engage in a fairly complex set of activities that occur simultaneously. I'd like to provide here a general description of the kind of activities that constitute an advocacy project in order to later demonstrate how a community audit on centralizing victim safety in the management of domestic violence cases can have crucial implications for a reform strategy. Most reform work falls into one or more of eight general program categories:^{xiv}

- (1) Creating a coherent philosophical approach centralizing victim safety
- (2) Developing “best practice” policies and protocols for intervention agencies which are part of an integrated response
- (3) Reducing fragmentation in the system's response
- (4) Building monitoring and tracking into the system
- (5) Ensuring supportive community infrastructure of support
- (6) Intervening directly with abusers to deter violence
- (7) Undoing the harm violence to women does to children
- (8) Evaluating the system's response from the standpoint of the victim

(1) Creating a Coherent Philosophical Approach Centralizing Victim Safety

Successful intervention projects require the negotiation of a philosophical framework that will provide a network of interveners a basis around which it can organize and through which the

negative impact on victims of contradictory philosophies, different perspectives, and fragmented response systems will be lessened. The practice of referring all actions back to the priorities of victim protection, accountability, and deterrence offers such a core organizing framework.

A central goal of institutional advocacy projects has been to eliminate the pervasive victim-blaming practices of the current system and to shift the onus of holding offenders accountable from the victim back to community institutions. In practice, this means changing the way practitioners think about the cases before them. It means changing how they understand domestic violence, how they understand the relationship of the offender to the victim, and how they understand the potential for further violence. It also means changing who they see as responsible for undoing the harm caused by the violence and what they understand to be the respective roles of the offender, the victim, and the community in ending the violence. A legal advocate describes what it is like to do this kind of work:

I think we spend a great deal of our time fighting against the notion that these assaults are logical extensions of relationship problems or dysfunctions. We have picked up some allies in the mental health profession, but the mainstream is still a powerful force in the legal system and their way of seeing violence as an individual pathology has been hard to overcome. We also battle endlessly against the blatant and subtle ways that people in the system blame women for getting battered. But our biggest effort still comes down to getting systems people to develop a sense of urgency in these cases. In towns like ours, 80 to 90 percent of homicides are domestics, but the sheer volume of these cases lulls people into a passive intervention role. (Interview, May 26, 1995)

Advocates have used safety as an organizing framework for a legal reform agenda, which in practice has meant that the violence cannot be decontextualized. But there are many ways to put violence into context. Mahoney (1991) suggests that contextualizing power means that we must understand what its use accomplishes for men.

Violence is a way of “doing power” in a relationship . . . The stereotypical image of a battered woman—dysfunctional, helpless, dependent—is alien to the self-image and self-knowledge of most women who encounter violence from our partners . . . These reciprocal, mutually reinforcing forces of popular perception, law, and litigation have made it difficult for women to identify ourselves and our experience as part of a continuum of power and domination affecting most women’s lives. The challenge is to identify legal and social strategies that allow us to change law and culture simultaneously, by illuminating the context of power and control within which a woman lives and acts. (p. 82)^{xv}

The battered women's movement has generally maintained that men batter women as a way of establishing control. This analysis is feminist in that it makes visible the power relations present in abusive relationships. However, centralizing safety as a goal and power dynamics as an indicator of safety still marginalizes much of what needs to be explicated to fully understand this violence. Obviously there is a link between battering and what Rich (1980) calls "compulsory heterosexuality." Men's violence may not be so much a need or desire for power as it is a logical extension of their place in the economic and socially organized relations of ruling in society.

(2) Developing "Best Practice" Policies and Protocols

for Intervention Agencies Which Are Part of an Integrated Response

Training wasn't going to do it. We've had to push for written policies and protocols that provide some kind of standard of response. She calls 911 and from then till she's done with the whole mess there could easily be thirty or forty people who have something to do with her case. In a city like ours several hundred different people get involved in some part of the case. Without some fairly clear guidelines as to what are acceptable responses and what are not, we are going to be all over the map in what we do as a community. — Legal advocate, interview, June 15, 1995)

Victim protection will not be achieved simply by having actors in a coordinated response system think differently. They must act differently. The actions of those located in different parts of a coordinated system need to be both oriented towards victim safety and organized in ways that complement rather than undermine or subvert each other. With this goal in mind, practitioners' decisions and actions need to be guided by sets of protocol standards and, in some cases, direct policies. These are sometimes referred to as "best practice" standards, policies, or protocols.

But questions arise. When should the discretion of the individual practitioners be restricted by such protocols? Under what conditions should police officers be required to arrest? Should prosecutors pursue convictions when victims have asked to have cases dismissed? These sorts of questions, however, cannot be easily addressed from one site. Change needs to occur at numerous places within the system.

Protocols generally govern three things. First, they govern individual practitioners responses to specific cases. For example, they specify under which conditions police will arrest, probation officers will recommend jail time, or jailers will release suspects. Second, protocols govern practitioner's interactions with other practitioners in the system, with victim advocates, and with other community-based agencies. Protocols reduce system fragmentation. They help coordinate the often widely scattered parts of a coordinated response. Third, protocols address the issue of accountability by linking the agency with a monitoring system and a mechanism through which practitioners' actions can be questioned.

To make protocols victim referenced, therefore, one needs to ask the following questions: Does this protocol enhance the victim's safety? Do case management considerations supersede victim safety? How do this policy and procedure impact victims' self-determination and autonomy? And how does this policy account for the power differential caused both by the violence and the differing social positions of the victim and offender?

(3) Reducing Fragmentation in the System's Response

I can't tell you how many times I've seen a total breakdown in communication cause a case to be lost or dismissed. Every time somebody gets seriously hurt or killed, everybody scrambles to the files to make sure they didn't mess up. If they didn't there's a big sigh of relief, but there's always this awareness that on so many cases there's a screw-up. —Court clerk (interview, January 15, 1996)

Typically, the work of legal practitioners is bureaucratically organized. In occupationally specific ways, each has been trained in a method of subsuming the specifics of individual cases so that they fit the available repertoire of problems or issues with which that practitioner works. Practitioners fit the experience of the real world into the terms, categories, modes of organizing, accounting, and evaluating provided by their work and its location in the relationships of ruling in society. Individual women's experiences of violence become absorbed into bureaucratically sanctioned, objectifying accounts, designed for "case management" and the control of people who are part of "the case." Officially sanctioned "knowledge" is expressed in terms of management-relevant categories and becomes part of the way power works in the reproduction of gender inequality.

This fragmentation creates troubling contradictions for the work of legal advocates in the battered women's movement. As I will show, the terms of their activism are shaped by the practices of fragmentation and specialization in the system they are trying to change.

Legal advocacy can reduce the consequences of a fragmenting bureaucratic process by promoting procedures which orient all of those processes to victim safety. The procedures include documenting the history of abuse, promoting interagency consultations on cases, and helping change job descriptions—for example, questioning why a probation officer's primary client in a domestic assault case is the offender rather than the victim. Advocates constantly focus on the issue of justice by linking each step in the legal process to the experience of the woman who has been beaten, asking, "Does this community response protect women?"

(4) Building Monitoring and Tracking into the System

We needed to keep pushing for accountability. We wanted the court to see itself as accountable to a community, to women who were being beaten, and to in turn hold the abuser to some standard of accountability.—Legal advocate (interview, June 22, 1995)

One of the most crucial aspects of a community intervention program is accountability. Practitioners need to be held accountable to each other and, ultimately, to the priorities of victim safety, deterring individual batterers from further use of violence and creating a general deterrence to the use of violence within intimate relationships.

The Duluth DAIP has negotiated an interagency tracking system to provide its participating agencies with information. The tracking system allows information to be shared, allows cases to be followed from inception to closure, and reveals trends in the way cases are handled. Figures 1 and 2 illustrate the collection and distribution of information within this system. A DAIP staff member collects this information and disseminates it on a predetermined "need-to-know" basis.

Figure 1: Collecting Information

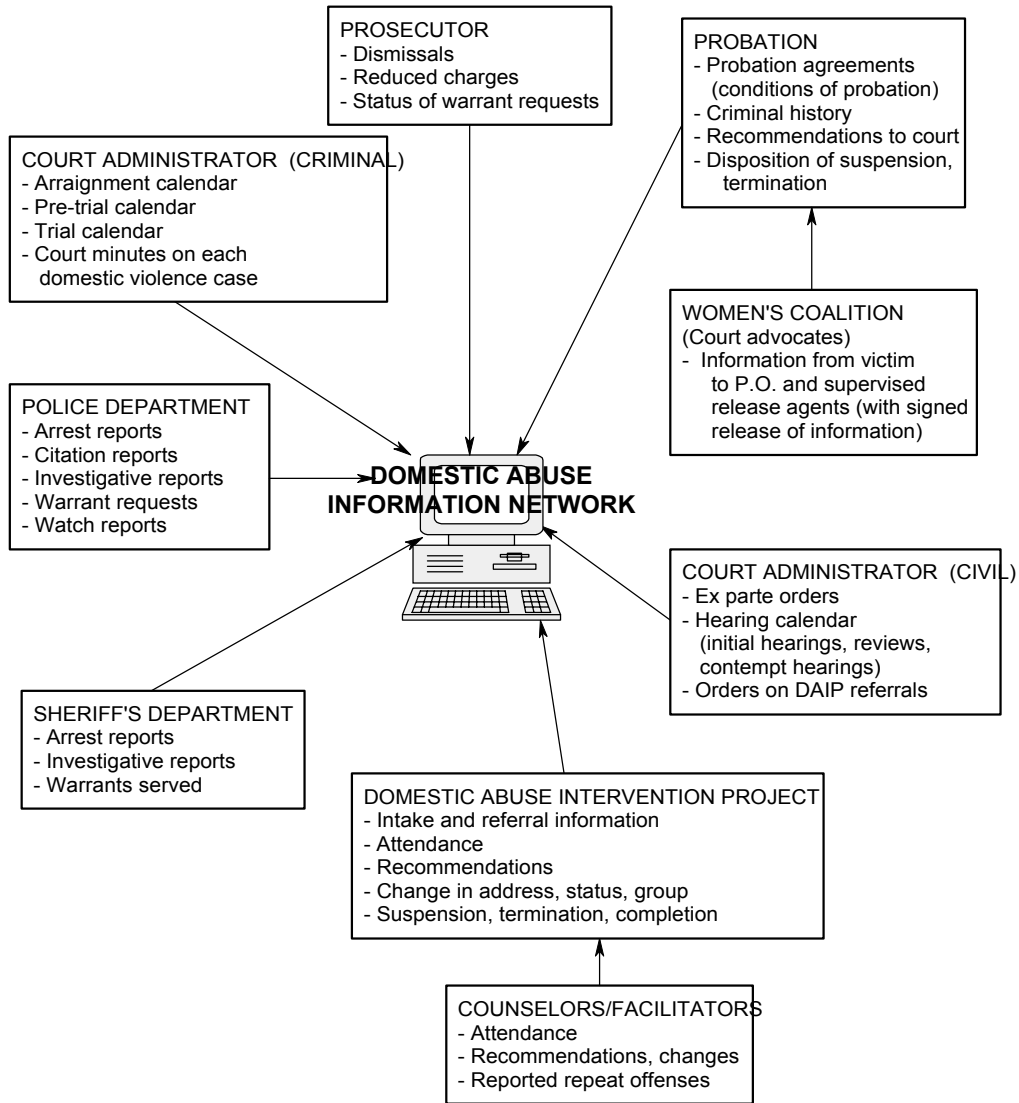
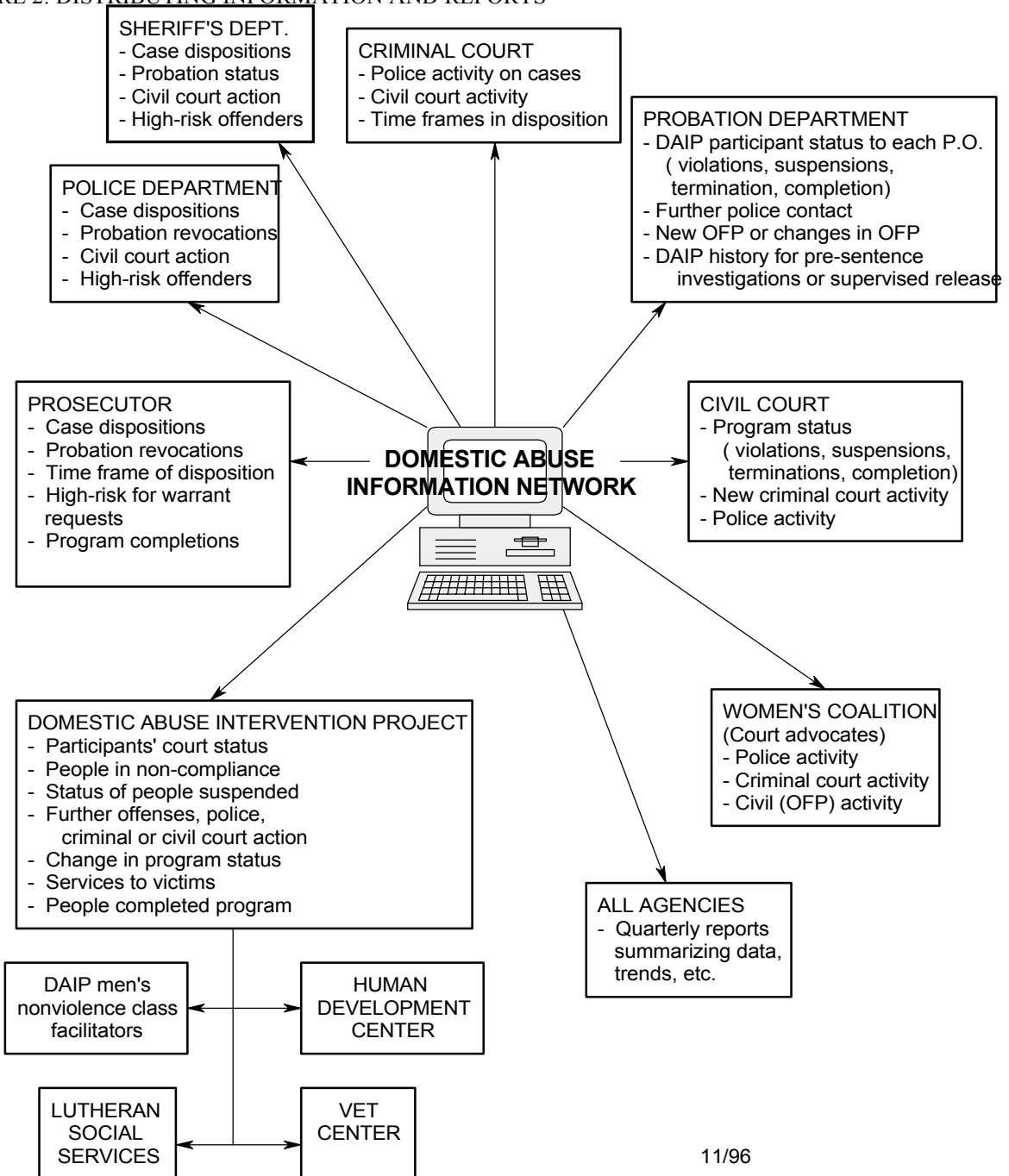


FIGURE 2: DISTRIBUTING INFORMATION AND REPORTS



A tracking system allows a review of large numbers of cases in short periods of time. The DAIP issues a monthly report that alerts readers to patterns and problems not visible when cases are responded to individually. For example, a recent probation report from one Minnesota community revealed that there were 37 men on probation who had been reported by their rehabilitation program for failure to complete the program. All 37 of these defendants were thus in violation of the conditions of their probation. In 11 of these cases the probation officers had known about the violation for more than 14 days but had not issued a warrant or contacted the defendant; 9 of the cases belonged to the same probation officer.

Individuals reading this monthly report attach to it different meanings according to their location in the system. It alerts the shelter advocate, working outside the system, to contact individual women who may be at increased risk of harm: most men who reoffend in the Duluth project drop out of their groups just prior to using violence or shortly thereafter. It points out a potential personnel problem to the supervisor of the probation department. It warns the probation officer whose name appears on the list nine times to take action. It gives the legal advocacy project in the community a reason to meet with the probation supervisor.

A tracking system might also, for example, tell the reader that there are 60 outstanding warrants for batterers and that 35 of them are over 60 days old. Such a report can stimulate efforts to unclog the system. Perhaps the data shows that 90 percent of all those cases in which a charge of assault was reduced to a disorderly conduct were handled by the same prosecutor. Perhaps it shows that one judge consistently denies petitions for protection orders, or that 20 men who have been assigned to batterers' groups have not yet made contact with the program. A tracking system allows a community to hold itself accountable to the policies and procedures it has adopted to protect victims.

(5) Ensuring a Supportive Community Infrastructure of Support

Legal remedies are not enough. A community needs to provide some basic resources for women, like shelter, long-term housing, a decent income, and a place to talk with other women in the same situation.—Shelter advocate (interview, September 11, 1995)

In the U.S. the most effective legal reform programs tend to be located in communities with strong infrastructures of services for battered women. Coordinated community responses need to make some basic services available to women trying to negotiate a violence-free life for themselves and their children. These include emergency and long-term housing; legal advocacy; financial assistance, or access to employment, or both; a place to talk with other women and help to understand the social and personal forces in their lives; medical care; an opportunity to work in advocacy projects with other women; and community services that support women's roles as parents.

(6) Intervening Directly with Abusers to Deter Violence

For me the biggest shift was thinking about how to directly intervene with the man doing the violence. Do we try to fix him? When do we want to push for jailing batterers? Jails are not exactly places where men learn to respect women. I don't think we can claim to be standing with women if that means we say we're with you, except we won't ever deal

directly with the person beating you up. On the other hand, trying to individually fix every man who beats his wife is futile. This is a tough one because as soon as you start to say, "OK, let's do something with these men," all sorts of screwballs show up to get in on it.—Legal advocate (interview, May 20, 1995)

A coordinated community response to domestic violence needs to establish a consensus regarding the responsibility of state and community agencies regarding an abuser. As the violence is understood to reinforce unequal gender arrangements in society rather than the manifestation of individual pathology, this responsibility must be assumed by the relevant social and legal institutions and community organizations rather than left to individual women. Many community projects therefore engage in direct intervention with the abuser, usually through three courses of action: (1) creating a safety plan for the woman, which may include such strategies as obtaining restraining or other court orders on the abuser; (2) imposing sanctions and deterrents, such as arrest, incarceration, and mandated community service, aimed at the individual abuser and at the broader community; and (3) providing abusers with an opportunity for rehabilitation. This last component is contentiously debated—there is little evidence of the success of these programs. Rehabilitation programs are usually run by mental health practitioners. Many advocates argue that rehabilitation programs typically de-politicize and de-criminalize the problem by psychologizing male violence in ways that make neither individual men nor unequal gender arrangements in society responsible for the violence.

There is no agreement among intervention projects in the U.S. about the position or role the battered women's movement should take regarding rehabilitation programs for batterers. Most see monitoring such programs as part of their advocacy function. While some battered women's advocacy projects were drawn unwillingly into working with batterers, others were enthusiastic about their involvement. One of the major mistakes made by U.S. activists has been our failure to offer alternatives to rehabilitation taken up by the mental health movement. Despite early research which shows that highly structured education groups produce lower recidivism rates than groups using a more clinical, process approach with abusers, most batterers' groups are located in mental health centers rather than community-based education programs (Edleson & Syers, 1991). The failure of activists to successfully argue that rehabilitation or re-education programs for batterers should be located in community-based education programs has had long-term effects on the battered women's movement. The DAIP argued for using an educational approach using Paulo Friere's literacy and popular education process because it emphasizes the cultural aspects of working with an individual and links the individual to the social relations active in their lives (Pence & Paymar, 1993).^{xvi} However, nationally the trend has not been to locate projects working with batterers in a community-based educational setting. Instead we are now enmeshed in two powerful social institutions, the law and the mental health establishment. They share many of the same ways of conceptualizing the practice of "wife beating" (Pence,

1992).

(7) Undoing the Harm Violence to Women Does to Children

Somehow the children are always labeled as the innocent victims of battering. I suppose that means their mothers aren't so innocent. The system needs to see that when a man beats a woman in front of her kids, there are two innocent victims. It's so artificial to separate out—this is a child protection issue and this is a criminal court issue. No matter what, mothers come with kids and kids come with mothers.—Visitation center worker^{xvii} (interview, September 20, 1995)

The success of advocacy projects in improving community and court interventions in domestic assault cases has not yet been matched by a similarly coherent approach to the visitation and custody issues which usually accompany the end of a relationship in which there has been violence (McMahon & Pence, 1995). Children who witness violence in their homes are also its victims. When an abused woman leaves a violent partner, therefore, issues raised about children are not simply those of custody, but of responding to the totality of harm violence has done to the children. Advocates argue that the community, rather than individual women, has the responsibility to respond to this harm.

For women who have been battered, separation from an abuser often shifts the site of the conflict from the privatized setting of the home to the public arena of the judicial system. Custody and access workers report that abusive men are more likely than non-abusive men to fight for physical custody of their children (Taylor, 1993); evidence suggests that they are also more likely to receive favorable rulings from the courts (Saunders, 1992). Children and child custody issues are now a significant part of the politics of gender. Cain and Smart (1989) and Pollock and Sutton (1985) argue that a violent man's relationship with his children entails a power relationship with the children's mother, played out through the issues of custody and visitation.

Community intervention projects can play an important role in protecting children from violence, distress, and harm as their primary relationships are re-ordered. One cannot think about children or the "best interests of the child" as if children stand alone and are not integral to the power relations of which violence against women is part. To protect children and undo the harm done to them by domestic violence, community intervention projects and legal advocates argue that the mother's and child's interests must not be pitted against each other. The response of the system must be informed by an understanding of the role violence and power play in shaping the social relationships of families.

(8) Evaluating the System's Response from the Standpoint of the Victim

It's important to agree on the standard that we will use to judge our work. If it's more

arrests or more prosecutions or a speedier process, we may find a successful project that's failed to improve women's lives. We need to use what's happened to the women who are being beaten as the basis for judging ourselves.—Prosecutor (interview, September 20, 1995)

Finally, a successful community response to domestic violence needs to establish the means to evaluate state and community interventions from the standpoint of women seeking protection. This standpoint must be contrasted with a standpoint of effective case management or a “law-and-order” perspective that measures success in terms of arrests, conviction rates, and incarcerations. Perhaps because it allows them to speak with "authority" to the voices of authority in the U.S., most criminologists in the U.S. are wedded to using quantitative research methods that are inadequate for addressing the problem of domestic abuse.^{xviii} Most of their quantitative research offers activists little to deepen our understanding of the social relations that support violence against women or remedies that would be useful to women who struggle to stop the violence. Both the strategy used to protect victims from violence and the means used to measure their effectiveness must be grounded in women's experience, not in the priorities of the organizations that manage domestic violence cases or in the perspectives of the professionals who organize community responses (Busch & Robertson, 1992).

Conclusion

Generally speaking, the activities that constitute the work of legal intervention activists and projects such as the Duluth DAIP can be described within one of these eight categories. I do not mean to suggest that all projects have clearly articulated these activities as objectives, nor do I want to limit the activities that can be thought of as institutional legal advocacy. On the contrary, I suggest that institutional change cannot be limited to organizing an interagency policy council to improve arrest and prosecution rates, nor to creating a plan which centralizes a batterers' treatment program, nor simply to better coordinating a fragmented system. It must operate at many critical levels of change from the consistent standpoint of making women safe from continued abuse. In the next four chapters I explore the role of texts in the processing of criminal cases and propose an advocacy approach that inserts attention to victim safety into the daily work routines of court practitioners.

CHAPTER FOUR

INSTITUTIONAL TECHNOLOGY, JOBS, AND SPECIALIZATION

Workers in the criminal justice system are typically organized to work on cases in very specific and standardized ways. Actions are coordinated both through the design of the practitioner's working space and through the establishment of standardizing documentary practices performed throughout a sequence of actions that culminate in case closure. Some practitioners, such as dispatchers, always operate from the same work setting, the dispatcher's console. Others, such as police officers, might perform several different tasks on a specific case, operating from a variety of sites, including the squad car, the booking room, the police station, and the home of the offender and victim. In this chapter I first discuss how the organization of the work setting is designed to influence the way individual practitioners act on a case and then show how a case is processed through a sequence of documentary practices that we might think of as *processing interchanges*.

Processing interchanges are organizational occasions of action in which one practitioner receives from another a document pertaining to a case (e.g., a 911 incident report, a warrant request, or a motion for a continuance), and then makes something of the document, does something to it, and forwards it on to the next organizational occasion for action. It is the construction of these processing interchanges coupled with a highly specialized division of labor that accomplishes much of the ideological work of the institution. Workers' tasks are shaped by certain prevailing features of the system, features so common to workers that they begin to see them as natural, as the way things are done and—in some odd way—as the only way they could be done, rather than as planned procedures and rules developed by individuals ensuring certain ideological ways of interpreting and acting on a case.

Work settings, routines, and the documentary practices used by practitioners to process a case constitute an institutional technology.^{xix} The technologies of our jobs usually predate our employment. We step into a work setting with varying degrees of authority to change its character. The authority that individuals have to define their own jobs is based on several factors, including their position of authority in their agency, the rigidity of the institution they work within, and the type of work they do. However, in general, workers in the legal system, no matter what their position of authority, cannot alter the fundamental character of their jobs. A judge, for example, cannot independently choose how to conduct arraignment hearings or order for protection hearings. The proceeding will be marked by a particular judge's personality or judicial demeanor, but it will still essentially be what it is institutionally designed to be.

My investigation is based on a notion of seeing court processes as part of an institutional

technology. To fully understand how the system is put together and functions requires more than simply being able to identify each of its component parts. If I were to take my lawn mower apart, carefully label each of its pieces, and draw a diagram of it, I would know a lot more about my lawn mower. But I wouldn't necessarily learn how it works. I might still not understand what makes the blade whirl to cut the grass. To mow the lawn I need only know how to put it back together, and my diagram will help me do that. But to make it do something different I need to see how it works; I need to see how each part operates and how it interacts with all the other parts. I also need to understand the principles of internal combustion. I need to understand the theory behind what I am observing. In this investigation I similarly attempt to discern how pieces of the technology are put together and how it is that they work together to produce certain institutionally authorized courses of action.

The Design of the Work Space

When I walk into the office of the agency at which I work, I enter through the reception area. Two women share the position of receptionist. Jodie works mornings and Jackie works afternoons. I've heard Jodie describe her job to others by saying, "I work the front desk." On her desk are four trays marked "Outgoing mail," "Incoming mail," "To be copied," and "To be faxed." To the right of her desk is a phone with fifteen buttons (mine has four); behind her is a computer; to the right of that are the agency mail boxes for each employee (except for her and Jackie); and a few steps away are a fax machine, a postage machine, a scale, and a copier. The file cabinet to the left of her desk stores copies of the articles and descriptions of the materials and programs that callers most frequently request from us. On the wall in front of her desk is an "in and out" board listing the names of all the staff members (followed by the names of the dogs of four staff workers who bring their pets to work on occasion). Next to that is a large twelve-month calendar which lists all the trainings coming up, the name of the staff person assigned to conduct each training, and the city in which it will be held. On her desk is a sign, "Kindly leave your junk on your own desk." The posters on the wall are not of the receptionists' choosing but instead reflect the politics of the agency. One poster shows Desmond Tutu hugging Winnie Mandela; another is a map of the U.S. identifying the names and location of hundreds of indigenous tribes in the fifteenth century.

The receptionists' work setting tells a lot more about their job, the tasks they are expected to perform, and the questions callers ask than does the title "receptionist." This work setting is designed to let the receptionist efficiently respond to callers, to let her know who is in the office at any given time, to enable her to immediately send out brochures on trainings conducted by the agency, to let her know when and where the next training on legal advocacy will occur, to ensure that she will be the first to talk to a visitor. She is tied to the phone, so anything she needs in order to respond to callers is located within reach of the phone. She cannot be expected to do

things that require concentration. During the course of a given day, she never has a period of more than three minutes in which she is not interrupted by a phone call or by someone coming into the office.

Like Jodie and Jackie, workers in the criminal court system, such as police officers, probation officers, and judges, all have work settings that make available to them certain tools and resources to perform their tasks. These work settings are designed to make possible certain activities and to make other activities either difficult or impossible. The work settings of criminal justice workers are designed to orient workers towards a case, a case file, an event or incident, the task of proving guilt or innocence, the management of the case paperwork, and the priorities embedded in the legal system. Many levels of government and a number of distinct and autonomous agencies make up the legal system, and no one person is in charge of the dozens of practitioners who intervene in these cases. While each practitioner works within a hierarchical bureaucracy headed by a director, the institution itself has no equivalent of a hospital administrator or board of directors. There is no CEO of the courthouse. Within the legal system there are multiple sites of power, where interests competing for resources, control of administrative processes, and case management priorities are played out in the political maneuvering that is the substance of courtroom gossip and lunchroom conversation. This lack of a single point of hierarchical power does not mean, however, that practitioners or agencies within the system are free to act in whatever way they see fit to perform their tasks. A highly organized system of routines and processes governs how each task in this maze of procedures is performed. As D. E. Smith (1990a) notes,

Textual realities are the ground of our contemporary consciousness of the world beyond the immediately known. As such they are integral to the coordination of activities among different levels of organization, within organizations, and in the society at large. . . . Depths and complexities of the social organization of ruling interpose between local actualities and textual surfaces. Still, textual realities are not fictions or falsehoods; they are normal, integral, and indeed essential features of the relations and apparatuses of ruling—state administrative apparatuses, management, professional organizations, the discourses of social science and other academic discourses, the mass media, and so forth. (p. 83)

A work setting is designed to standardize key aspects of a worker's activities. Specifically the work setting is organized to ensure that certain information is made available to the worker, to ensure that the action the worker takes is institutionally authorized, to standardize how and what the worker produces in the way of information or reports, and finally to ensure that the appropriate people receive the information needed to continue processing the case through the system.

Institutionally Accessible Information and Resources

One feature of a work setting is the way it is constructed to make information available to the worker. Access to information is a key determinant of the way a given practitioner goes about doing a job. The availability of certain information and resources has significant implications for what gets worked into the case. If we think of the dispatcher as occupying the first in a series of work settings, we can see how its design becomes a determinant of practitioner actions. In Duluth, dispatchers work in a communications center situated about ten miles from the Duluth police department. The center is housed in a partially renovated building amidst the ruins of an abandoned U.S. Air Force base. It is in a remote area. Workers there dispatch emergency services for all of St. Louis County, which is the size of the state of Delaware but has a population of only 200,000. They dispatch fire, police, and ambulance services, sitting in a large circle at computer stations with their backs to each other. In the center of this circle is a huge lazy Susan–like resource center containing maps of each town, back road, creek, and river in the county, manuals on resources by geographic and problem area, instructions on emergency medical care, descriptions of the habits of bears stuck in trees, procedures for responding to chemical spills, and information on fighting all types of fires, from grass to gas.

The dispatcher has a computer console linked to the patrol squads via a mobile data unit situated next to the driver of the squad car. This system, computer aided dispatching (CAD), allows the dispatcher to quickly retrieve certain institutionally owned data on residences and citizens. Dispatchers can pull up on their computers a listing of all of the emergency services dispatched to a given address in the past 12 months. That record is a document institutionally accessible to the dispatcher, who therefore has more information regarding a case than what is offered by the caller. The nature of the state's response means that the woman who has been beaten and dials 911 is not calling another community member for help; instead, she calls into a system in which the dispatcher responds not as an individual but as an institutional worker. Thus the dispatcher is organized to treat the caller as one source of data, not as a co-actor in the process which is about to occur. This is a one-way communication system, one in which the woman has no active voice. She becomes a source of information that will be used selectively to make decisions crucial to her safety. The institution's data bank is another source of information. It allows the dispatcher to communicate information to the responding squad that would not otherwise be available to the officers, such as whether there is an outstanding local warrant or current order for protection on any of the parties known to the dispatcher.

The data base and technology used by the St. Louis County dispatch center precludes dispatchers from being able to inform responding officers about arrest warrants or protection orders from surrounding areas. The county lacks the resources and state-of-the-art computer technology to

make this information available to dispatchers. Thus the design of the work setting does not give the dispatcher institutional access to this information even though it is information which is relevant to the safety of the woman calling for help.^{xx}

A second defining feature of a work setting is the tools available to practitioners to produce their work. For example, police officers are required to write several reports during the course of a 12-hour shift. Some calls result in three or four separate reports. All police reports are based at least partially on institutionally accessible information and all are made on forms designed to standardize the reporting procedure. But reports produced by officers using Dictaphones and then transcribed differ significantly from those produced on the same forms in the officer's own handwriting. In Duluth, the recent introduction of dictation machines has resulted in a significant increase in amount of the information officers record on a call, as several officers note:

I've gotten this dictation thing down pretty good now. I can take a few notes at the scene and as soon as I have a quiet moment I just talk it all in there. I used to write these things out longhand and I am the world's worst speller so I'd spend more time trying to think about what words I could use that I'd spell right than what I needed to say. I'd keep it short and sweet. Just enough to let them know what happened and why I did what I did. (Interview, July 17, 1995)



I write more now, but for a while I wrote less. The change was difficult because a lot of us had a hard time adjusting to the machines. Once we got some training and some formats to use, though, it got easier. I think most of the guys are—excuse me, guys like meaning both men and women—anyway, most of us are using the machines now. You're always going to have a few diehards that just won't make the switch. (Interview, July 21, 1995)



I have been reviewing reports for years and I think there's been two major changes in the quality of reports. First, the use of dictating machines—officers include so much more detail than they did before. And second, more use of specialized report forms. Everybody wants reports produced in a certain way. Sometimes an officer will write the same incident up on three different report forms, one for the state, one for court, and another one for the BCA. (Interview, July 21, 1995)

The availability of certain technologies has implications as to how thoroughly, and how efficiently, workers can perform their tasks. These technologies are not neutral in their role of producing facts or accounts of events. Technology becomes a part of what it produces.

Finally, work settings are designed to make certain resources available to the practitioner. The police administrator below talks about his early days on patrol, when there was no shelter and no

arrest statute.

We would go in there and if the situation was bad and we couldn't talk the guy into leaving we'd often arrest him for disorderly conduct. A couple of times I know I just let the guy take a swing at me so I could haul him down to jail. It was scary leaving the women home in some of these situations, you knew the guy would be back and there was no shelter. He knew all the places we could bring her, her mother's or sister's, it just wasn't a good situation. (Interview, July 27, 1995)

A judge and police officer talk about the connection of time to safety.

Even the most conscientious judge can't make a good ruling when we have only a few minutes on these cases. We're luckier here than in the Fourth District [Minneapolis area] where judges have about one minute to deal with a bail hearing and three and a half minutes to hear a protection order and [there are] no pre-sentence investigations on misdemeanors.—Judge (interview, January 15, 1995)



A woman who gets beat up on a Friday night in the middle of the summer is going to get just the very basics from us. There are nights that I never get so much as a fifteen minute break. This might sound callous but if she gets beat up on a winter Wednesday I can do a lot more to help her. . . . For one thing, if he's gone I'll go look for him.—Police officer (interview, July 27, 1995)

Processing Interchanges

No one oversees a case from its inception to its final resolution. No single person hand-carries it from one processing point to another. The case is routed. Interchanges are connected through routing instructions and procedures. Some of these connections operate quite smoothly; others do not. Some of them are critical to women's safety. The dispatcher, or in civil court, the clerk, is the first person in a long chain of responders to a domestic assault case. The station of each responder has built into its information-collecting and information-producing functions mechanisms that link the information into an overall case construction. It is neither the worker nor the woman who was beaten who moves from one point to the next in the stages of case processing; it is the case file. This file stands in for the woman who was assaulted, for her assailant, and for those who act to intervene.

From the onset of a case, the hooking-up process is crucial to centralizing safety. The dispatcher takes a call at a console with a computer that allows information regarding the call to be entered into the CAD system. A receiving terminal for that information is in each squad car and at police headquarters. The file created by this call is assigned an ICR (initial complaint report) number, which becomes the number officially assigned to all future law enforcement documents

regarding this incident. If the same people are involved in a second incident the next evening, it will be assigned a separate case number, and each case will be processed separately until the prosecutor determines whether the cases will be combined for trial or plea-negotiating purposes.^{xxi} This system is responding not to the woman and man in the context of their ongoing relationship but to the event of a certain evening. As discussed in chapter 3 on the nature of an incident-focused system, the crime, which is a single act, not the abuse (a pattern of behaviors), organizes the system's response. The information recorded by the dispatcher is the first point of inscription in the system. The conversation between the reporting party, who is often the woman who has been beaten, is reduced to a few short phrases and summarized in the coded language of dispatching:

DOMESW: domestic with a weapon—priority 1
DOMESP: domestic physical—priority 1
DOMES: domestic verbal only—priority 2
GOA: gone on arrival
ADVS: advised

The police officer receives this information on a computer screen, and a printout of all calls goes to the supervisor of the patrol unit at the beginning of each regular work day. Anyone else who wants to look at this information must request it from the police department or the dispatch center. Copies of the actual tape of the conversation between the police dispatcher and the caller are available only to the police, the defense attorney, and the prosecutor.

The substance of the conversation between the caller and the dispatcher is in effect not available to the supervised release agent who makes recommendations to the court on setting conditions of bail or on releasing a man who has been arrested for assaulting his partner.^{xxii} Nor is the dispatch record readily available to the judge who decides these matters. Following is an excerpt from a transcript of a woman calling 911. It was not entered into the CAD system and therefore not available to the police, who might or might not have included it in the report used the next day at arraignment court to decide under what conditions the defendant would be released.

Caller: I think he's finally gone off his rocker. He's not even drunk and he's saying all sorts of wild things.
Dispatcher: Like what is he saying?
Caller: How he's going to hunt down my brother and my two uncles and how everybody that's ever helped me is going to wish they had just let me rot.
Dispatcher: Where are these people now?
Caller: They're back in Red Lake [Reservation, about 150 miles from Duluth], but he can find them, he's nuts right now.

As previously described, the dispatcher, who is oriented to the next step in the process, provides information to the responding squads that alerts them to the immediate safety of the responding officers and of the parties present. In this case the dispatcher did not include information about the threat, presumably because it did not constitute a present danger. This key piece of information about the ongoing safety of family members of the victim drops out of the process and is never again available to practitioners as they process the case. Below is an excerpt from the arraignment hearing which was held the following morning to determine the conditions of this defendant's release until trial. The supervised release agent addresses the court:

Your honor, Mr. James has no previous convictions or arrests for domestics or any other offenses. Except for two traffic violations his record is clear. I have not been able to reach Ms. LaPrairie this morning about a no-contact order, but Mr. James tells me that she has initiated contact with him since he was arrested, so. . .

The dispatcher is trained to select very specific information to record in the CAD system. She is communicating to the responding officer, not to practitioners further down the line in the intervention process.

Processing interchanges are designed to organize the information received by intervening practitioners and to institutionally structure the kind of information that is produced at each interchange. Almost all interchanges are structured by the required use of forms, administrative procedures, regulations, or laws which screen, prioritize, shape, and filter the information the worker uses to produce accounts, reports, or documents related to a case. The dispatcher's computer screen, the police officer's knowledge of what constitutes probable cause to make an arrest, the state law defining assaultive behavior, and the state sentencing guidelines are all typical determinants of what documents are produced at each interchange and more important, of how they are produced. These documentary practices play a role in mediating the relationship of the intervening practitioner and the people who are involved in the case as victims or offenders. The information that is communicated to officers by dispatchers becomes a part of the officers' assessment of the situation and a part of the report they will produce. In this sense, the dispatcher's documentary practice becomes a determinant of the police officers' report, generated at a separate work setting but linked to and shaped by previous interchanges. In chapter 6 I show how as dispatchers selectively communicate information to the squads and as they in turn selectively record that information in the police report, certain information given by the woman to the dispatcher is preserved and certain other information is lost. The police report becomes the central document in making decisions about the case and therefore its construction is key to women's safety.

The Construction of a Police Report

As with any text, the police report is shaped by the conditions of its production. When the police attend a call they do not have the equivalent of the dispatcher's computer screen. They carry a small notepad and record names, addresses, dates of birth, times, and a few notes for their narrative. They then dictate or write arrest reports sometime during the following 12 hours. The tapes are left at the end of a shift for a typist to transcribe. The typists produce a rough copy on all arrests for arraignment court at 9:30 the next morning of every working day. Investigative reports require several more steps and there is no rush to produce a copy for the court. Court dates and hearings are consistently the driving force behind the scheduling of work in the legal system.

Police reports, like all other reports considered by the court in these cases, are not the product of individual officers' idiosyncratic writing habits, although their writing skills do play a part in producing what would be considered a good report. Like all reports, it has a frame that holds it together. As D. E. Smith showed in her paper *K is Mentally Ill* (1976), it is the framing device employed in discursive practices of different professions that accomplishes the ideological work of the institution.

Framing a Police Report

I recently spent a month in Vancouver working at a friend's house. She lives a few blocks from a fitness center, which I used on several occasions. I had just joined a fitness center in Duluth with my friend Tineke, and we had been working out together everyday before I left. I had been trying to persuade a co-worker, Coral, to join us in our exercise routine. Coral had gained twenty pounds over the past several years and I was trying to convince her to come with us to the fitness center to work it off. She was reluctant to go because she didn't want to exercise next to a bunch of thin people. But my fitness center is part of a hospital where the majority of the clientele are hospital employees or patients recovering from all types of illnesses and operations. After I had gone to the Vancouver fitness center several times I sent each of them an e-mail about my discovery. Tineke's read:

There is no treadmill so I'm using the Stairmaster. It is quite a bit harder. There are also a lot more weight-lifting devices so I'm getting into muscle building. This will undoubtedly change my routine when I get home. They only have one rowing machine and I have to wait to use it . . . it isn't as nice as the ones at our place. This place is part of a community center. It's just a few feet from the library that I'm working at and just one block from the sushi place I go to for lunch everyday. . . . I couldn't have found a better place to do my writing.

That same day I wrote to Coral about the same fitness center. Her e-mail read:

Well it's not like Miller-Dwan, where there are lots of people with big bodies. This place must be some kind of a meeting place for the young, thin, and restless. I finally found out what time the old folks come and I'm planning to join them. It makes me appreciate Miller-Dwan.

Tineke's e-mail was framed by my relationship to her as a user of a fitness center, Coral's by my relationship to her as a sister who understands her reluctance to expose her body to "in-shape" people. This reader-writer relationship serves as a frame for the two very different e-mails describing the same experience. Textual frames are invisible but can be discovered in a text. Each text is framed by concrete methods being actively employed to produce accounts for the court. Discovering how a report is framed does more than simply expose an institutional bias. It shows the work of practitioners that has been glossed over and then links that work to the extended relations of ruling that determine work practices and in so doing organize local social relations.

I am specifically interested in how these frames shape the relationship of the court practitioner to the woman seeking safety. We have already seen that the administrative form creates interchanges and hooks various workers together while marginalizing or cutting others out of the connection.

In my police ride-alongs I asked officers how they decide when to write a report, how they decide what to record in their narratives, and how much leeway they have in making these decisions. Following are responses from several officers.

Well, that depends, by leeway I have none when it comes to deciding if I should write one. The state legislature has taken care of that decision. Basically if someone says they got popped I'll be filing a report. Some of it is a waste of time . . . but on the ones where you've got something, there is kind of a format to follow.

First you summarize the case. I always dictate that last, but they type that in first. Then you kind of set the stage, you know, who was there, what was the fight about, what was the general situation, were people drinking, that kind of thing. Then you basically lay out what you had as far as the elements of a crime, was there a statement that someone inflicted harm on another, was it intentional, does the story match up with any of your observations. So, say she says he busted up the house but the place looks perfect, I write that up. If there's furniture laying around or broken lamps, doors etcetera, I put that in. . . . I'm looking for something that will back up what either party says . . . and I suppose I'm looking for something that would question what they said. . . . If I'm going to arrest I have to be sure everything is there. Do they live together or have they ever lived together, did the assault happen within the last four hours, did it happen in Duluth. That last part is sort

of a conclusion saying what you did. . . . We've had a lot of training on report writing so most of us have it down. There are some of the old timers that don't want to use the dictating machines but for the most part the reports are pretty professional. They pretty much have to be decent or it'll get kicked back to do over. (Interview, July 17, 1996)

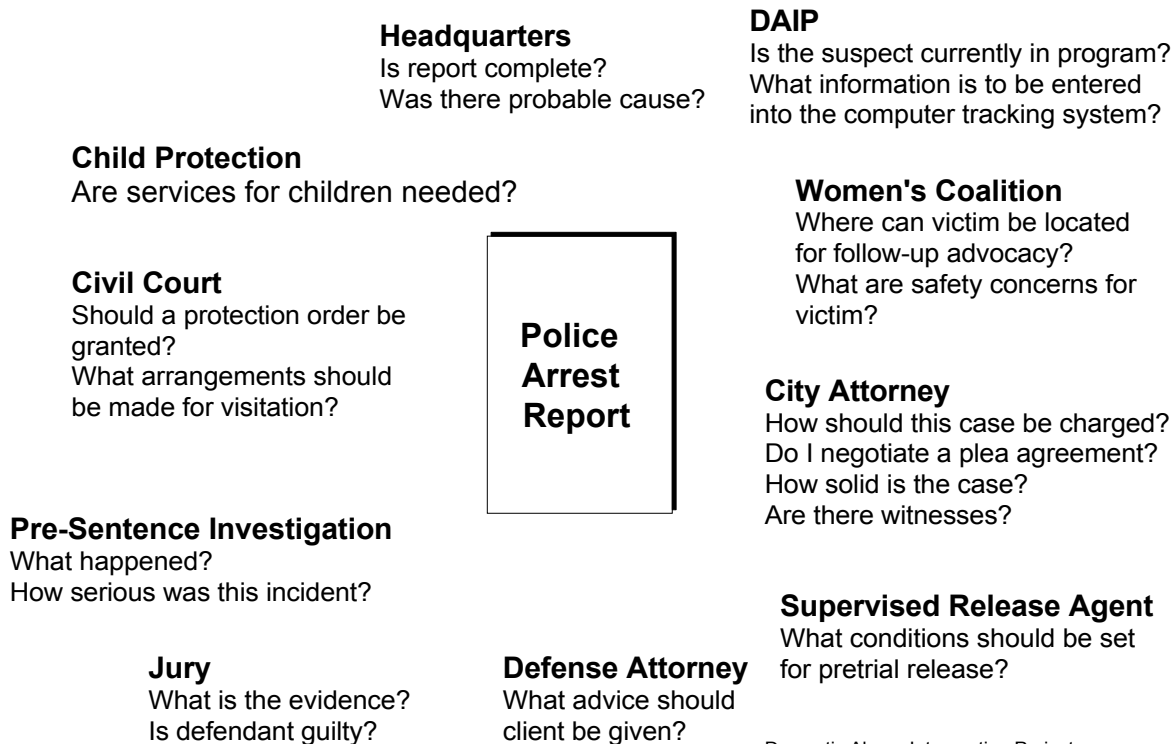


I'm looking for the elements of a crime . . . was there infliction of bodily harm or the fear of bodily harm . . . was there intent . . . did the person knowingly commit the offense. (Interview, July 16, 1995)

Both of these officers point to the criteria used to convict a person of assault under Minnesota law as the primary device framing their writing.

The police report is arguably the most influential document in the processing of a domestic assault-related court case. Here I am not simply referring to a criminal assault case, but to all the other legal proceedings a police report hooks into. Although the intended reader of the police report is the prosecutor, the report is used by almost every practitioner involved in the case, as shown in Figure 3, Multiple Readings of a Police Report. Police officers responding to a domestic disturbance call become the system's official observers of the situation.

FIGURE 3: MULTIPLE READINGS OF A DOMESTIC ASSAULT REPORT



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Each of these practitioners reads the report with a different intent. The detective bureau reads the report prior to arraignment in order to determine if the officers have correctly charged the suspect. If, for example, the person has been convicted of a previous assault within the past 2 years against any other person, even a relatively minor act of violence will be charged as a gross misdemeanor. As the seriousness of an offense increases, so do police efforts to strengthen the prosecutor's case by gathering more complete evidence.

The production of the text is framed by the institutional tasks of the next practitioner to take it up. Here the report is written with a prosecutor in mind, but it is then taken up by others with quite different purposes. The probation officer, who won't read the report until after a defendant has been found guilty by the court, is looking for aggravating or mitigating circumstances relevant to a sentencing recommendation. Two examples of probation officers' oral reports to judges follow. Both are based on police reports.

Your Honor, I believe that the situation here calls for a deviation upwards because of the fact that the assault included the defendant throwing a pot of water off the stove and he had no way of knowing how hot that would be. The stove was on so he could have caused grave bodily harm. In addition the report indicates that Mr. Slater pushed Ms. Gafney's ten-year-old daughter out of the way to get out of the house and he admits to that, Your Honor, so we really have two assaults here.



This case is a bit unusual, Your Honor, in that Mr. Teil has no contact with the victim and had not seen the victim for almost a year prior to this incident. According to the record Mrs. Teil asked him to come over and get his belongings from the home. Mr. Teil was apparently reluctant to come over without a third party present, which according to the report is why his brother was with him that evening. . . . I was unable to contact Mrs. Teil so I only have her statements to the police.

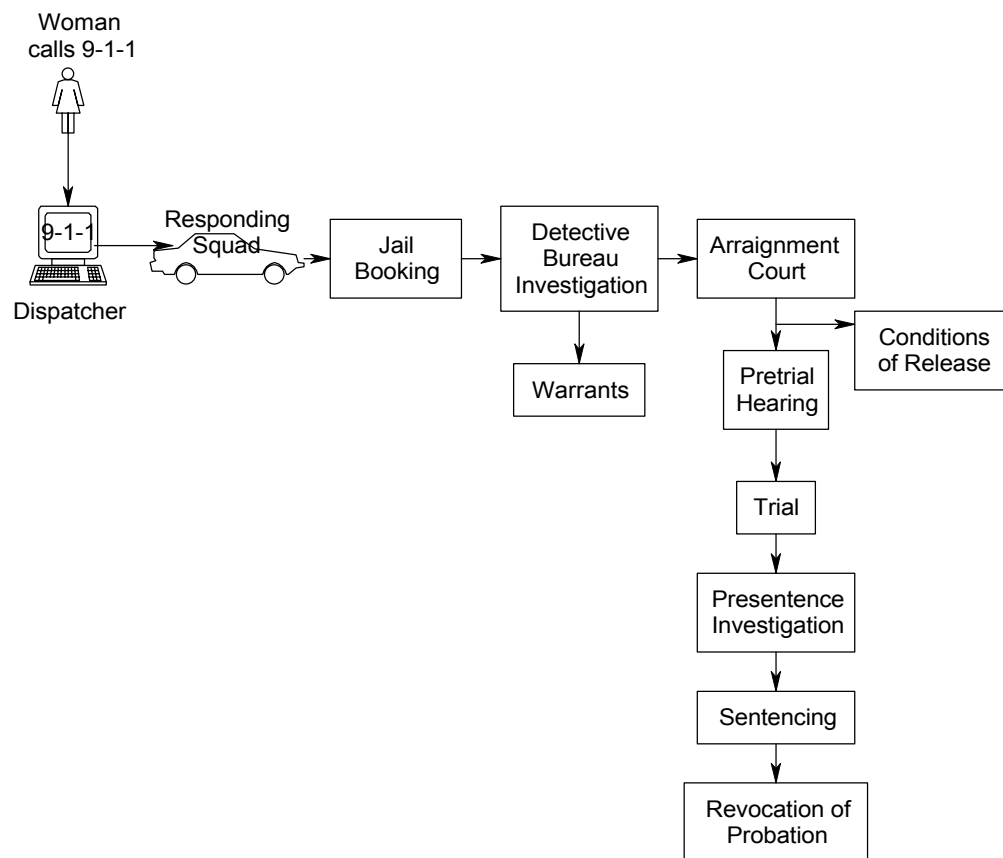
Because the frame these officers use to write their report is the elements of a crime, the probation officer has limited access to information about the context of the violence and therefore does not have much to say about it to the court. Much of what actually happened is not made available to practitioners in diverse settings as they take up the report in their specialized tasks of case processing. The particulars that the officers are organized to select and record are embodied in a language that is distinctly police talk. Child protection workers, divorce attorneys, and advocates for battered women will all attempt to apply the police officers' version of what went on to their functional tasks in the system. This version is rendered by applying a template of documenting the elements of a crime. If a child protection worker wants to get a sense of the harm done to the woman during the assault, she has access only to what the officers observed while establishing whether there was probable cause to arrest. But when using the frame of elements of a crime, officers are looking for injury, not harm. Injury is the condition which activates the police policy requiring officers to arrest.

Officers' comments are descriptive of what they saw and what they observed as the victim's physical state (for example, impaired vision or difficulties walking or speaking). In none of the more than 200 police reports that I read did an officer ever ask a woman to describe the pain she was experiencing. Others' access to information is confined to the boundaries set by the schema which provides a template for police reports on domestics. The information in the report is *about* the woman but not *from* her.

Key Processing Interchanges in Criminal Domestic Assault Cases

There are dozens of actions taken on a domestic assault case from its inception to case closure. Each of these actions constitutes a processing interchange. Figure 4 is a chart of the most significant processing interchanges occurring in a criminal misdemeanor assault case in Minnesota's Sixth Judicial District. Several more steps exist in processing a gross misdemeanor or felony case. These additional steps provide safeguards for the defendant, who if convicted faces the likelihood of incarceration through a proceeding which pits the individual against the more powerful and well-resourced state. The chart is followed by a narrative which explains in broad terms the purpose of each processing interchange.

FIGURE 4: KEY INTERVENTION POINTS IN PROCESSING A CRIMINAL DOMESTIC ASSAULT CASE



Typically a domestic assault case enters the system through a call to the 911 operator from a person being assaulted, a child or other family member, or a neighbor.^{xxiii} The operator collects information from the caller and from the data bank at the communications center and transfers the information to the appropriate dispatcher, who electronically dispatches two squads to a call.^{xxiv} Officers separate the parties and interview each alone. They then decide whether to separate them for the evening, mediate, or make an arrest. In Duluth, officers must arrest if they have enough evidence to establish that it is likely that one party assaulted and injured the other or if the suspect violated a protection order or used a weapon to threaten or harm the victim.^{xxv} If the offense included an assault with no observable injury, officers use discretion regarding arrest. If they make an arrest, they transport the suspect to the county jail and dictate an arrest report. If the suspect is gone at the time of the police investigation, the officers can issue a citation, much like a traffic ticket, or request that a warrant be issued for the suspect.

The jail holds the suspect until the arraignment the next working day, at which point the suspect is charged with the offense and becomes a defendant. The arraignment hearing has five purposes: (a) to charge the defendant; (b) to ensure that the defendant is represented by counsel if he so desires; (c) to allow the defendant to make a plea; (d) to set conditions of release should the defendant plead not guilty; and (e) to set a date for the next court appearance, the pretrial hearing. The pretrial hearing for a misdemeanor is typically held within 30 days of arraignment.^{xxvi} The defendant has the right to post bail and can request that in lieu of bail he be placed on supervised release, through which he is released from jail and assigned to a probation officer during the pretrial period. A supervised release agent of the probation department interviews the defendant, makes one attempt to call the victim, reviews the defendant's criminal record, and makes a recommendation to the judge regarding his suitability for supervised release. The judge sets bail, offers to place the defendant on supervised release, or releases the defendant on his own recognizance, without bail or supervising agent. The judge may, at the point of release, issue certain orders effective until the trial is over, including ordering that the defendant have no contact with the victim, surrender his weapons, remain alcohol free, and remain in the county. The purposes of these orders are to ensure public safety and the defendant's appearance in court.

The pretrial hearing is the point at which the prosecutor shows the court and the defense (the defendant and his lawyer) the evidence the state has that the defendant committed a crime. It is typically the time when the prosecutor and defense attorney try to negotiate a settlement to the case without a trial. If the case is not resolved through negotiation then a trial date is set. Prior to this date the victim is subpoenaed as a witness and typically contacts the prosecutor asking that the case be dismissed; according to the Duluth chief prosecutor, more than 90% of victims request that charges be dropped or tell the prosecutor they don't want to testify (interview, May

8, 1996). Three percent of domestic assault cases in Duluth are dismissed, 36% are resolved with a guilty plea to a reduced charge, 52% are resolved with a guilty plea and no reduced charge, 5% are deferred, and 4% go to trial (Domestic Abuse Information Network (DAIN) coordinator, interview, September 18, 1996).

If the defendant at some point pleads guilty or if he is found guilty at a trial, the judge orders that a presentence investigation (PSI) be conducted. The PSI provides the basis for determining an appropriate sentence. A misdemeanor PSI takes about an hour and occurs on the same day as the trial or pretrial disposition so that the defendant is sentenced immediately. It consists of an interview with the offender, a review of materials supplied by the victim or victim advocate, a phone call to the victim, a review of the police report, and a records check for prior offenses.

The probation officer returns to the court and makes an oral recommendation to the judge.^{xxvii} The judge imposes a sentence of up to 90 days in jail, 6 months to 2 years of probation in lieu of jail,^{xxviii} a fine of up to \$1,500 (or community service work in lieu of a fine), or a combination of these. If the defendant is placed on probation (most are), his conditions of probation may include attending counseling for abusers, abstaining from alcohol, submitting to a urinalysis test at the request of the probation officer, having no contact with the victim (if the victim requests this, although at the misdemeanor level, most don't), surrendering his weapons, and checking in with the probation officer one to four times a month.

Once sentenced, the defendant is either incarcerated or placed on probation; a defendant on probation must sign a probation contract which specifies his conditions of probation. The probation officer notifies the counseling program of these conditions, sets up a monitoring agreement with the program, and sets up a schedule for the payment of a fine or, for indigent defendants, a community service program.

The probation agent monitors the defendant's compliance with conditions of probation and brings the case back to the sentencing judge for revocation of probation if the defendant fails to comply with the terms of his contract. (Of course, this is in the ideal world.) Probation officers have broad discretion as to which cases they bring back to court for a violation of condition of probation.

This is a very general description of the processing points of a misdemeanor case. At each point there may be several other processes, such as the processes used to issue a warrant, to book and incarcerate a suspect, and to initiate a revocation of probation. At each interchange an institutional opportunity to account for victim safety exists. However, the criminal system is designed to process cases for the purposes of determining whether to charge and prosecute a

suspect of a misdemeanor or felony crime and how to proceed with a trial or negotiated agreement that meets the state's goals. Issues that are specific to certain kinds of crime, as victim safety is to domestic assault-related crime, are not central to this design. The problems due to a lack of specialized routines which account for victim safety are significantly compounded by the highly specialized work force that carries out the activities depicted in Figure 4.

Specialization and Safety

I'm working at a friend's house today. When I look around her kitchen, I can't see a single thing that was produced by the labor of just one person. Even this dissertation is the work of many people. A co-worker is making my penciled diagrams into polished figures ready for publication; my advisor and true friends will read this several times, pushing me to make the next connection; my friend Kate will rid it of dangling participles, misplaced modifiers, and run-on sentences. My friend Shamita has offered to help me format my footnotes properly, and I'll never even meet the person who created spell check. We live in a society with a highly specialized work force.

This specialization has the effect of allowing large numbers of criminal cases to be disposed of fairly efficiently. It also allows practitioners to specialize in some aspect of legal work, which is crucial in a complicated and endlessly regulated field. Most of the people I talked to during this investigation became well versed in their jobs within 6 to 12 months. Still, the full impact of this specialization also has its drawbacks, particularly in cases in which there is an ongoing threat to someone's safety or health. The charts in Appendix B show the degree to which the system has organized its workers in specifically defined tasks. In this system the context of how and when violence is being used against a woman easily drops away as practitioners orient their work toward specific processes and incidents rather than to the full case and its outcome.

The highly specialized work force of the criminal justice system results in practitioners developing a very narrow definition of what it means to accomplish their task and what it means to do so in a fair manner. During many of my interviews with practitioners in the system, the issues of fairness, ethics, bias, and objectivity came up. I asked almost everyone I interviewed what their role is in ensuring that the overall process is fair and that it results in the court taking protective measures for women who are battered. For the practitioners, the concept of fairness was closely linked to their specific role in the processing of a case. Very few people took the position of standing back and looking at the whole case. One probation officer talked about it in terms of equity. We were talking about the impact on a particular woman's safety when both she and her husband were arrested for assault.^{xxix} She pled guilty and his case was still pending. The woman had been beaten by her husband after she had thrown a bottle of vinegar at him, hitting

him in the face during a fight over her decision to move out. He had been arrested twice before for assaulting her but hadn't been convicted either time.

I can't have a separate set of policies for men and women, so if I get a case in which the woman has kicked the guy, or scratched him, or punched him in the stomach, or like this gal threw something at him and she initiates that violence, I have to treat her the same way that I treat a man who assaults his partner or wife. (Interview, September 26, 1995)

A police detective referred to the many cases in which women call to have charges dropped and claim that they lied or exaggerated to the police the night of an incident.

My job is to figure out whether or not this person was forced to recant, or recanted on her own volition. If she was forced to recant, then I charge him with tampering with the witness. If she recanted on her own volition, then I charge her with filing a false police report or contempt of court. She can't have it both ways—she either has to tell me she was forced to recant or I charge her. . . . Oh sure, you could say that she recanted because she was afraid of some future outcome, but under the law, he has to directly threaten her in order for me to charge him with tampering with the witness. There's nothing in between. Either she recanted because she was forced to by him or she recanted for her own personal reasons. . . . I'm not saying she doesn't have her reasons for recanting, and even good ones, but there are lots of good reasons to break the law. (Interview, July 26, 1995)

Another probation officer made the next comment during a discussion on how to treat battered women who use violence against their abusers.

I have to treat everyone who walks through this door the same. I can't start making distinctions between, "Is this guy a batterer?" or "Is this woman a battered woman?" and if she's a battered woman I'm gonna treat her one way and if he's a batterer another. Everybody who walks through this door gets the same treatment. (Interagency meeting, September 7, 1995)

The following is an excerpt from a discussion about the responsibility of women to undo the harm of men's violence to their children. A social worker who had recently conducted a custody evaluation for the court was grappling with the dilemma of choosing between the mother, who has been traumatized by the father's violence, and the father, who has not been traumatized.

I needed to decide custody in a family where the man has repeatedly assaulted his wife. Because of the abuse she isn't in good shape. She is chemically dependent and is not being a very good parent. He has a job, he's sober, and he's stable. I know that it's the violence that has done this to her. But given where she's at compared to him, how can I not give him custody? Even though I know it's not fair to her, isn't it fair to the children? (Social workers' meeting, April 5, 1994)

Finally, a police detective and a judge comment on the limits of what they can consider in a fragmented approach to processing cases.

I'm not so sure what you mean by how do I get involved in the whole case. That's not really my job, to get involved in the whole thing. I'm an investigator. That means I investigate. If I get to having a need to own a case I'll go crazy with all the nutty things that happen in this place. I do my job and I think I do a fairly good job, but I don't want to be held responsible for how the whole thing turns out. I've seen a lot of goofy things happen here and all I can do is say, "Did I do what I was supposed to do?"—Police detective (interview, February 15, 1996)



We can only base our actions on what the state was able to prove and unfortunately the nature of these cases, being what they are, they are difficult cases to prosecute. I can't sentence someone for all the things I believe he's done, I sentence based on what the prosecutor proved in court.—Judge (interview, June 7, 1995)

These comments confirm that no one is tending the outcome. The totality of the case gets lost as practitioners attach themselves to specialized processes. The question "Was this fair?" gets asked of each step in the case rather than of the process in its entirety.

Even when practitioners do step back and see how the process is detrimental to women's safety, there is often little they can do about it in a fragmented system. One of the detectives at the police department expressed the frustration that practitioners have with the sluggishness of a specialized work force and its implications for women's safety in these particular cases. He gave me a memo he had written a year earlier, when he sat on a committee to review case-processing problems in misdemeanor court. He had used the processing of a warrant in a domestic assault case to show one significant problem. He told me it was a fictitious case but said, "This case is not one bit exaggerated, in fact, no one on the committee disagreed with me that this would be a typical scenario on a domestic." Below is an excerpt from that memo.

Jan. 1, 1993, a Friday: A domestic between a cohabitating couple occurs in the city. The victim gets a black eye and bloody nose and calls the police. A sqd. responds and finds the offender gone and is not able to locate him within the 4 hours. They go back to their business.

Jan. 2: The sqd. dictates a report.

Jan. 4: The report is transcribed and returned to the Patrol division.

Jan. 7: The report is signed by the supervisor and taken to the traffic division where it is logged as a warrant request.

Jan. 8: It is placed in the city attorney basket. It is Friday.

Jan. 11: It is logged into the city attorney's office and sent to an attorney. Some time within the next couple of weeks, an attorney will review it, decide to issue, direct a clerical to fill out the necessary forms.

Jan. 25: The file is returned to the DPD Detective Bureau clerical person with a summons attached.

Jan. 27: The clerical types out the summons information and mails the package out, including all of the reports, the victim and witness information and statements.

Jan. 28: The victim and offender, having continued to live together, share the first day since the assault that they have not thought or argued about it.

Jan. 29: The offender opens his mail and notes that his court date is set for Feb. 22.

Feb. 22: He doesn't appear for court. At the end of the day, the court file is carried back into the Clerk of Courts offices.

Feb. 23: It is placed into a basket where it sits for the standard two week minimum grace period.

March 10: It is removed from that basket and placed into the "return to city atty for warrant basket." It may sit there until a stack "worth" picking up or mailing back over accumulates but to be charitable, lets say it goes within a couple of days.

March 12: It is received in the city atty's office and sent to the issuing attorney.

March 17: It is dictated as a warrant and returned to the DPD.

March 18: Sgt. Nichols carries it to the court, swears to it and has it signed by a Judge. He then carries it into the Clerk of Court's office. There it is placed into a basket of complaints to be filed when they have time. This may take a week.

March 24: It is placed into the warrants basket to be picked up by the Sheriff's warrants office.

March 26: It is received into the warrants office, logged in, entered into the computer and placed into the basket for service.

March 27 and 28: The couple spends first weekend since his failure to appear, not worrying and arguing about what will or should happen.

March 30: He calls and agrees to come in the next day.

March 31: He appears and pleads not guilty. A jury pretrial is set for the first week of May (jpt's are always the first week of the month and he is now too late for April). April is a pleasant month for her, don't you think?

It seems to me that our only reasonable choices are to either do it right or stop aggravating

the troubles these people have.

It is within a highly specialized bureaucratized system that criminal justice practitioners are occasioned to intervene in the lives of women who are battered by men. The adherence to one way of doing things occurs as practitioners are artificially constrained from working on a case from beginning to end. Instead, practitioners are given pieces of the cases and organized to limit their intervention to those activities relevant to a very specific task in the case processing. Most workers grow detached from the reality of what it means for a woman to live with someone who beats her. How power is being used to manipulate the woman or how the court's intervention is causing the offender to escalate in his violence is not accounted for in these documentary practices and is therefore not accounted for in the practitioner's institutionally authorized response. An overly specialized work force in the legal system creates a fragmented response and allows fairness and attention to safety to slip simultaneously through its organizational web.

Attempts at creating linkages through routing texts, rather than simply making them institutionally accessible, may have unintended consequences. For example, last year the Duluth Police Department began routing all domestic violence police reports that mention the involvement of children to the child protection unit of St. Louis County Social Services. This procedure did create a needed link between the police and child protection workers. However, it brought a new level of state intervention into the lives of battered women, which was problematic on several levels. One child protection worker described an aspect of these problems:

We started getting these reports every morning and then when we had our morning assignment meeting we'd be given these reports. So I'd hop in the car and go out to talk to some of these women and bam, get the door slammed in my face. We weren't really sure what to do with them. You really couldn't tell from the report if there was a child protection issue or not, and I can tell you it wasn't very fun going out and asking these women if their child was OK after she had just gotten clobbered by her husband and regrettably got the police involved who regrettably got us involved. (Interview, June 14, 1995)

Unlike advocates, practitioners in the court system do not work with a woman throughout the entire process, nor do they work with her in aspects of her life beyond the particular case. Advocates deal with a woman's financial situation, her legal problems, her housing needs, her medical needs, her children, her divorce or custody problems, her need for coming to some kind of understanding of what has happened to her, and finally how she wants to maneuver her way through this legal process. Practitioners in the system try to accomplish very specific tasks. Much of what is attributed to victim-blaming attitudes or thinking in the system is directly linked to the roles that practitioners play in the processing of a case. These narrowly defined,

specialized roles lead practitioners to view a woman as either cooperative and helpful in the processing of a case or as uncooperative and resistant. No one attempts to stop a process when it is in its entirety unfair, because no one has strayed from doing his or her prescribed task. No one is assigned the task of stepping back to see the whole, to consider the context in which these events have unfolded. One may argue that considering the context is the role of the judge, but the judge is the recipient of a case file that was constructed in these specialized and highly routinized settings. An overly specialized work force contributes to the distortion of practitioners' understanding of or accounting for the complexity of these situations and frequently prevents them from acting in a way that accounts for the many forces that are operative in a woman's life as she struggles to be free of the violence. By the time the case gets to the judge, the information needed to contextualize the case has been eliminated from the manufactured case file and replaced with a version of the case that is institutionally actionable.

Mapping the System

To understand the complexity of this system of managing cases, I have developed maps of each phase of case processing. Like the detective's memo, a map of the system begins to provide a glimpse of the points at which opportunities exist for institutional action—points at which victim safety is either ensured or compromised. The charts, which started out as a simple road map and now look more like an atlas, illustrate the way dozens of workers from different agencies and levels of government are brought into the case-processing routine as they are individually organized to act in sequential operations.

I have found it useful to organize the dozens of sequential operations into general phases of case processing. The first phase begins with the call to 911 and ends with the police charging or releasing a suspect. Within that first 12-hour phase of a one- to three-year process, there are over a dozen organizational case processing sequences. I've called that phase immediate intervention and initial investigation. The second phase begins as the court arraigns the suspect, beginning the processing of the offender as an alleged criminal. Crucial safety-related decisions are made at arraignment court, in the pretrial release investigation, in the setting of release conditions, and in the process of releasing alleged offenders. The third phase of case processing occurs as the police and prosecutor build a case in an adversarial system against the defendant and the case is resolved in a dismissal, negotiated plea, or trial. This is the case determination phase. The fourth phase of case management is determining what to do with the convicted offender. It involves presentence investigations, sentencing hearings, reports to the court, and a sentencing decision. The fifth phase is implementing court sentence: incarcerating the offender or putting him on probation and linking him into whatever programming has been ordered. The case then moves into the last phase, ongoing surveillance and actions following new offenses. Appendix B, Immediate Intervention and Initial Investigation, is a flow chart of all of the major sequences

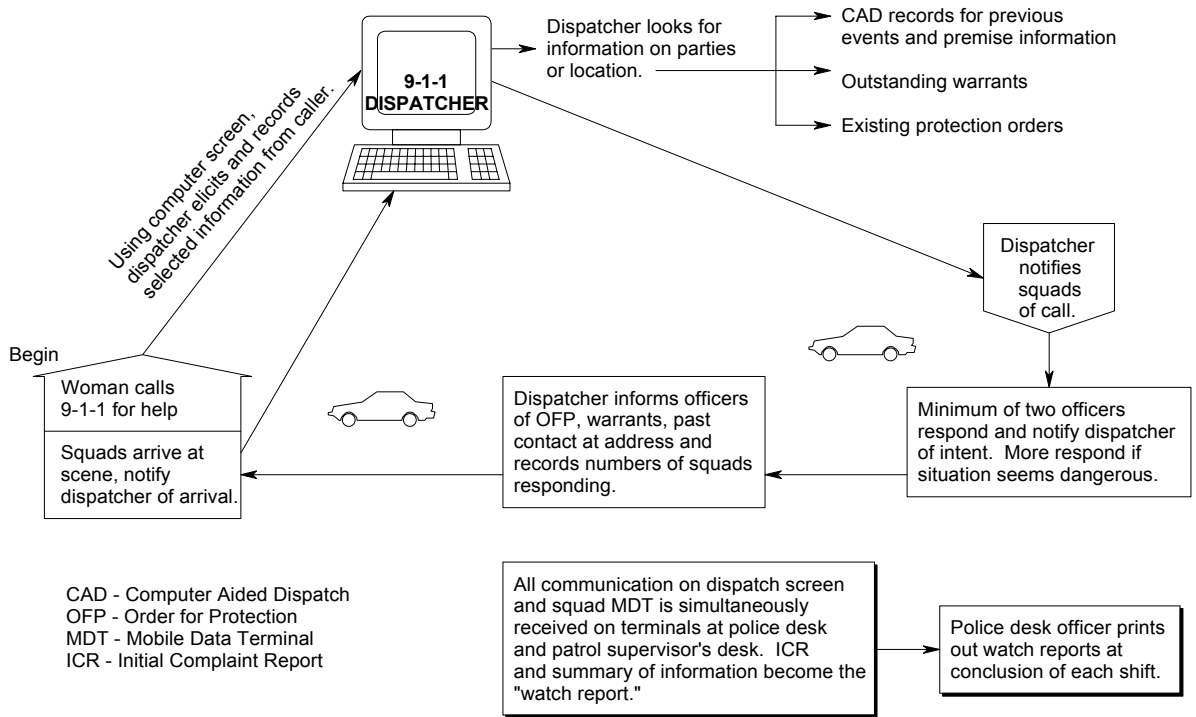
in phase one. I want to show one of these sequences in the first phase of case processing in order to illustrate the many ways that victim safety could be acted upon in a case.

There are five major sequences in this phase of case processing. They are:

- (1) 911 call and dispatcher response;
- (2) police response and initial investigation including police action at same arrest, mediation or separation;
- (3) booking and holding the suspect;
- (4) filing a police report on an investigation; and
- (5) follow up detective bureau investigation.

Figure 5 depicts the first sequence, the 911 call and the dispatcher's response. (The full series of charts appears in Appendix B.)

FIGURE 5: IMMEDIATE INTERVENTION AND INITIAL INVESTIGATION: DISPATCHING SQUAD



These charts show an orderly mechanism for processing a case, but as the detective's memo points out, it is often irrelevant to the lived experience of the woman who placed the call to 911 in the first place. He knows that she may in fact be placing herself in greater danger by activating this whole response.

At each processing exchange an institutional opportunity to account for victim safety exists. However, issues such as victim safety are not central to existing documentary practices. An institutional investigation helps to determine how such an objective could be incorporated into the design at each of these occasions. An institutional advocacy program uses this investigation as the basis for setting the agenda for proposed reforms of the system. As will be explained in chapters 8 and 9, the first step in accomplishing such an investigation is to create a map of the system, as I have begun to show here.

Conclusion

For the investigator, the work setting and processing interchanges become the units of analysis, the observation site. Action is taken at each interchange by a practitioner who is linked to others in the system, primarily through texts. The extended social relations among practitioners in the system, and between practitioners and the subjects of the criminal case (offender and victim), are textually mediated. The investigator is asked to follow the text. In the next three chapters I will follow the text to explicate how the extended relations of ruling that ideologically control these cases fail to attend to women's safety.

ⁱIn many states in the U.S. a worker in the battered women's movement is called an advocate, meaning a person called to one's aid. I will use the terms *advocate* and *activist* interchangeably throughout this work.

ⁱⁱThese experiments involve breaching normative rules of behavior to indicate the extent of our dependency on common and implicitly agreed-upon knowledge to carry on social interactions. For example, Garfinkel's students would answer simple questions from others such as "How are you?" with unexpected questions such as "What do you mean?" "In regards to what—spiritual, physical, emotional well-being?" The person asking would tend to get extremely angry and disconcerted at such a breach of common understandings. Of course, ethnomethodology is used to uncover not the background rules, but the processes involved in creating these rules.

ⁱⁱⁱI will also refer to civil protection order cases. In Minnesota many of these cases are simultaneously processed in criminal court and civil court. The civil court can issue an order limiting an abuser's contact with the person who has been abused. The court has broad powers to issue reliefs that are intended to protect the victim from domestic violence, such as counseling for the abuser, an order to surrender weapons, and limited or supervised visitation of children.

^{iv}I am of course aware of the use of violence by women against men in personal relationships. This study does not attempt to examine safety from a gender-neutral perspective. The legal response is highly gendered, as is the way in which men and women use violence in relationships. I am focusing here on cases in which women are the victims; however, the same documentary practices apply to cases involving men as victims.

^vI know this history because I worked as the Minnesota State Director of Programs for Battered Women from 1977 to 1980. During that time I worked extensively with the women organizing the shelter in Duluth.

^{vi}For example, a controversy recently surrounded Brooklyn Criminal Court Judge Lorin Duckman. Both New York

Governor George Pataki and New York City Mayor Rudolph Giuliani sought the judge's removal for refusing to believe that domestic violence is a crime (March 18, 96, *Speaking Up*). This high-level reaction to a judge's action on a domestic assault case would have been unheard of 20 years ago.

^{vii}Of course there is also work by many feminists exploring the power in silence, e.g., the 1983 Marleen Gorris film *A Question of Silence*.

^{viii}Immigrant women face the overlay of institutionalized sexism in their own cultures with the racism and xenophobia of the dominant culture in the U.S. (Dasgupta & Warrier, 1996; Dasgupta & DasGupta, 1996).

^{ix}In Minnesota, for example, between 1977 and 1990, battered women's movement activists were able to successfully argue for the passage of 16 pieces of legislation. These included establishing shelters for battered women, expanding the ability of law enforcement officers to make arrests in domestic violence cases, requiring jailers to notify victims of the release of their abusers, and requiring judges to presume that joint custody is not in the best interest of the child if there has been domestic abuse.

^xOf course who defines these needs is a major issue.

^{xi}Repression is reserved for the politically powerless and socially vulnerable.

^{xii}By gendered, I mean to include attention to sexuality.

^{xiii}A Rasmusson hearing is held if it is questionable that there is enough evidence to proceed with a trial but the prosecutor wants to do so.

^{xiv}These objectives were prepared by the staff of the Duluth Domestic Abuse Intervention Project in 1994.

^{xv}Mahoney provides an excellent discussion on the need for advocates for battered women to stop participating in the process of mal-defining battered women and to start understanding violence as men's way of doing power to keep women from autonomous action. She argues on behalf of a theory that defines men's use of separation violence.

^{xvi}In 1990, activists from 40 states spent 6 days with Friere in Duluth to discuss applying popular education methods to working with batterers and with women who are battered. Had the model proposed by the DAIP gained larger influence across the country, the influence of the "psy" professions I discuss in chapter 7 would perhaps be less dominant.

^{xvii}Visitation centers are sites at which non-custodial parents who have used violence against their partners can visit with their children.

^{xviii}The National Clearinghouse for the Defense of Battered Women publishes an annual summary of the most significant research in the area of women abuse. Of the 21 studies that focused on criminal justice reform work summarized in the 1995 edition, only one qualitative study was mentioned.

^{xix}Technologies shape the way we live and work together and what we are able to produce. Technologies are both the specific tools that workers use to accomplish their tasks and the institutionally organized procedures for accomplishing these tasks.

^{xx}This information is also relevant to officer safety and to the investigation of other crimes. I do not mean to imply that it is not available because domestic assault is "only a woman's issue."

^{xxi}Plea negotiations are agreements between prosecutors and defense attorneys in which the prosecutor agrees to reduce charges and/or support a particular sentence in exchange for a plea of guilty. The defendant then waives the right to a trial.

^{xxii}While the supervised release agent could request a copy of the tape, it would mean delaying the case for a day and would create a backlog in the system, so it is rarely done.

^{xxiii}Forty percent of calls are placed by the victim, 15% by other family members. (Interview with dispatch supervisor, June 11, 1994.)

^{xxiv}The Duluth Police Department assigns one officer to a squad and so dispatches two squads to all calls that may pose a threat to an officer.

^{xxv}The City of Duluth was the first in the U.S. to establish mandatory arrest policies for domestic assault and as such is recognized as a leader in the reform efforts discussed in chapter 2.

^{xxvi}In 96% of domestic assault–related cases the defendant pleads not guilty at arraignment. (Interview with coordinator of the Domestic Abuse Intervention Network [the interagency data collection and distribution system described in chapter 3], March 21, 1996.)

^{xxvii}This process is more detailed in felony cases. In some jurisdictions PSIs are not conducted on any misdemeanor offenses because of the volume of cases.

^{xxviii}A judge can put an offender on probation for less than 6 months, but this rarely happens. However, on August 9, 1996, the Associated Press ran a wire report of a Pennsylvania judge who placed an offender on probation for 5 minutes for seriously assaulting a man he found in bed with his wife.

^{xxix}In Minnesota a second charge of domestic assault is elevated to a gross misdemeanor. Many women are afraid to call the police again because if they used any violence in the attack they could be arrested and face an extended jail sentence.