

When Victims of Battering are Charged with Assault: Exploring Effective Advocacy Responses

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October 16, 2013

- **[Voiceover]** Welcome, and tell us a little bit about the Clearinghouse for the Defense of Battered Women, if you will.

- **[Voiceover]** I certainly will. Thank you very much for that introduction, Rose. The National Clearinghouse for the Defense of Battered Women is a tiny national organization. We're located in Philadelphia, Pennsylvania, but we work on cases around the country in all states, in all communities, including many, many rural communities. And where we really are most helpful is in cases where there's a direct relationship between someone's experiences of abuse and the crimes with which they're charged. So we give typical assistance to defense attorneys. We work with expert witnesses. We work with advocates all the time, basically anyone that could be a member of a defendant's legal team we work with. The assistance we provide is case specific based on the unique facts of a particular defendant's circumstances. We also give a lot of training programs around the country, and are happy to participate in webinars like this where we can talk with folks who maybe we wouldn't otherwise get a chance to speak with. We are a sister organization with the Battered Womens Justice Project in Minneapolis, Minnesota as well.

- **[Voiceover]** So for today what will be exploring, Cindene?

- **[Voiceover]** Sure, the focus for today is really going to be on some concrete things that we can do as advocates in our communities to ensure, as best we can, a just response to victims of battering who end up as defendants in the legal system. So we're gonna talk about how to do that. We're also gonna talk about why it's so important that we do that. I mean, Rose, as you said, once somebody is in the legal system, there's just tremendous risk for people, including the fact that maybe the police, who may have one time been a resource for them, will no longer be looked to as a safe option for calling if somebody actually ends up getting arrested when seeking help. We're gonna talk about ways that people advocating for battered women can support and work with a woman's legal team. And finally we're gonna talk about some ongoing things that programs can do and that advocates can do, and resources available to people who end up doing this work.

- **[Voiceover]** Great. So you know, perception is a big issue in relationship to this problem. Can you say something about that at this particular juncture?

- **[Voiceover]** Absolutely, and I'm glad you asked that. This is one of those issues that I think can be really invisible, so it's important to talk about because the fact of the matter is that even before the first word gets uttered in court, battered women defendants face a lot of barriers because they're battered, and

because they're defendants. So let's all think for a second about some of the things that come up for us when we hear that someone has been charged with a crime. When we hear it on the news, when we read it in the paper, when we hear it in our communities. We all know that there's this presumption of innocence, but that's not where a lot of people really go. There is an overwhelming perception that if somebody gets arrested, they must have done something, right? And we've heard about people charged with crimes getting called criminals and felons and perpetrators and batterers, even before they're ever convicted of anything. So there is this idea going into the system that if you got charged, you probably did something. And we also know that for victims of battering, whether it's a criminal case or not, there's always going to be some kind of suspicion if their experiences of abuse get raised in court. It's certainly something I've seen. I'm sure all of you who have worked in the legal system have seen it as well. But if she raises her experiences of abuse, is she automatically believed? Or is she looked at as someone who makes excuses? Is she looked at someone who is maybe a little crazy? Is she looked at somebody who might be trying to do a little bit of manipulation? So combine that with the prejudgment that people often have about the defendant, and just recognize the extra burden that a victim charged with a crime has when they enter into the legal system. They're not necessarily going to be seen as a quote/unquote real victim because real victims, of course, never get charged with a crime, right?

- **[Voiceover]** Well, and it really sounds like a double whammy. I mean, first of all you've got the onness of being battered, and now you're somebody who is actually not battered, you're the perpetrator. And it really can reinforce some stereotypes. Is it worse for some than others?

- **[Voiceover]** It's absolutely worse for some than others. I mean, the things that we've already talked about. It's bad enough going in the door, but when we think about additional oppressions that many people face, it gives us a new perspective on how daunting the legal system really can be for some defendants. I mean, even before somebody gets arrested, people of color are more likely to get arrested. People of color are more likely to get targeted by law enforcement. So that's an additional burden. Once you're in the courtroom, different oppressions come into play about who gets believed and who doesn't get believed, and even how somebody is treated once they're in court. Are they somebody to be believed? Are they somebody who's just angry, who's got a bone to pick? If somebody's got immigration issues, there's a whole host of ways that the criminal legal system can put them at tremendous risk due to whatever their status might be now that they're facing a criminal charge. So yes, there's definitely groups of people for whom this is particularly daunting, Rose.

- **[Voiceover]** Well you know, I'm reading this book by Beth Richie about the prison nation, and I highly recommend it to anybody who's in a CCR because you know, what we don't wanna do is become part of the incarceration of anybody based on the fact of their status as an oppressed group, let's say. So anyway, I know that at the end we'll be sending out some of these resources, and at the end as well we will also be sending out your bigger slide presentation, Cindene, 'cause this is an abbreviated version, and the larger slide presentation will be very useful I think for CCRs who are trying to talk about and address this topic in your communities. So today when we're talking about victims and witnesses, tell us about some of the language we'll be using here.

- **[Voiceover]** Sure. The reason we like to be really explicit about this is because when we're talking about working in different legal systems, language can get really confusing. For example, a lot of times in the criminal legal system the person who, against whom a crime has allegedly been committed is referred to as the victim. And that can get really confusing when we know that the defendant is a victim of ongoing battering. So just for clarity's sake, for the remainder of this presentation if I use the word victim, I'm referring to the victim of ongoing battering or trauma or sexual assault, no matter whether they're also a complainant or a defendant, or no matter who they are. That's what I mean by victim. And if I'm referring to the complainant, I will say complainant or complaining witness. And I think, you know, this isn't just a semantics thing. To me making this kind of distinction reminds us that just because somebody is charged with a crime doesn't mean they're unbattered, doesn't mean that they're suddenly not a victim anymore. Where somebody sits in the courtroom has nothing to do with whether or not they've been a victim of ongoing battering.

- **[Voiceover]** You know, in my work with CCRs, just personally and in other programs, I know it's a difficult issue to bring up because people go, oh well, you're saying because she's a woman she should just get outta jail free.

- **[Voiceover]** Right.

- **[Voiceover]** And so, I mean, how do you address that? How do you address what you're really saying as opposed to getting out of jail free?

- **[Voiceover]** Right, well Rose, we've definitely had that same experience. People think that we're trying to say, OK, if only you can prove that you're battered that means you should win in court, or that means that you shouldn't be held accountable. But that's not what we're saying. The way we respond to that is simply by saying that what we are putting out there and what we're arguing is that battered defendants, just like any other defendant, deserves to get a fair trial. And that what that means for defendants who have experienced ongoing battering is that context is really important. And in the appropriate cases, with all appropriate considerations, someone's experiences of abuse should be considered in their criminal case, if that's the right legal strategy. And we're also saying that if what we're trying to do is help victims of ongoing battering achieve safety and justice, we have to really be deliberate and careful about what we wanna do when victims of battering face criminal charges.

- **[Voiceover]** And let me just highlight that because I think that is a particularly effective statement or position to take when we're talking about CCRs because we're really looking, when you do a CCR, at ending the phenomena of battering, right?

- **[Voiceover]** Right.

- **[Voiceover]** And so to be battered is different than to be arrested for an assault or a domestic violence assault, right?

- **[Voiceover]** Exactly. Yeah, yeah, whether somebody's a defendant or whether they're not is not gonna give us all the information to know whether or not they're a victim of ongoing battering.

- **[Voiceover]** And if you arrest the wrong person, let's say, or if you arrest somebody who has been a victim of battering, that their capacity to use the legal system has been diminished or it doesn't exist anymore because they're the one with the charges and the record, right?

- **[Voiceover]** Absolutely, and that can provide some increased risks and dangers. And there's others as well, which we'll certainly talk about during the duration of this conversation. And I also I guess wanna highlight at this point and make sure that even when we can't look at what the survivor of ongoing battering did and say, oh, she was wrongfully arrested, or she was defending herself, or whatever it is, even if we can't figure out where to put what she did, it doesn't mean she doesn't need advocacy and support. Even if she committed an act that is technically illegal, no matter what that is, that doesn't diminish her need for ongoing support and advocacy.

- **[Voiceover]** Very good.

- **[Voiceover]** And if I just did something to this slide, I apologize. I kind of fell on my keyboard there.

- **[Voiceover]** Actually to be honest my phone cut out, and now I'm back in, so in terms of legal relevance and thinking beyond self defense there's a couple of things that I think are salient here about how victims end up being charged and incarcerated, and the legal relevance question.

- **[Voiceover]** Sure. So there's a few ways that victims of ongoing battering end up arrested and charged in the criminal legal system, and I think the self defense cases are what a lot of us often think of, and certainly at the National Clearinghouse self defense cases represent the bulk of the, well not the bulk, but I'd say we have more self defense cases than any other kinds of cases. And what these often look like are battered women in a direct confrontation needing to defend themselves because they have a imminent and reasonable fear that they're going to be harmed by their abusive partner. And their state of mind in knowing that is informed by the experiences that they've had at the hands of that batterer in the past. So that one is pretty straightforward, and those are the kinds of relationships that are gonna be most important to defense attorneys in knowing how to adequately defend a case. So when we talk about this issue we just wanna make sure that people don't stop at self defense. And we also wanna make sure that people don't misunderstand self defense. I mean, I don't think that's necessarily an issue for the people on this call, but we've seen it over and over again where people that we work with think that battered womens' self defense is somehow different than quote/unquote real self defense. That battered women only, you know, kill their abusive partners when they're sleeping. Or they only hire hit men, or whatever it is. That does happen, and sometimes there is this real limit to options that put survivors in that position. But the vast majority of self defense cases really are these confrontational situations. Most of them are not homicides, and so we just wanna make sure that we're kind of expanding our thinking beyond self defense. We also see other scenarios entirely. I hope that nobody on this call has worked with someone charged with parental kidnapping, but I'm sure that you have. This is one where most often a battered women or survivor flees with her children to protect herself and/or her children from her abusive partner. Certain jurisdictions will instantly drop a warrant on her for parental kidnapping, and she has to go back and explain why she left. She's at extreme risk of not getting her kids back after that, etc. And those cases are obviously really heartbreaking and really hard because

she's battling the criminal legal system and the civil system and her abusive partner, all the while trying to protect her children. And then on the flip side of that we have women charged with crimes under a theory of failure to protect. We see this in dependency court, but I'm really talking about criminal charges accusing people of not acting in an appropriate way to protect somebody that they're in charge of, almost always their children.

- **[Voiceover]** And that's a big one out there, I think. That's really, we see that happening, a lot of really negative effect of being arrested yourself, so I think that, and for me that seems like the biggest injustice let's say, that you've been battered, and then maybe you used violence at a particular point because of your battering, and then you lose your children. So I think if nothing else that should alert everybody in the community that something's gone awry when the person who has abused the mother has now got custody of the children. But we don't see that.

- **[Voiceover]** Right, right.

- **[Voiceover]** So anyway, when we're talking about, what are some of the other crimes there? You mentioned failure to protect, I mean, drug trafficking, human trafficking, economic crises, purchasing firearms, prostitution, those are all sorts of crimes that victims of domestic violence will be involved in. I mean, one of the things that comes up for me is we'll need more advocates to take this on. Or what do you know about that piece, Cindene? How does a person make a decision about, you know, where to put their efforts?

- **[Voiceover]** How does somebody in a advocacy program decide what to do?

- **[Voiceover]** Yeah.

- **[Voiceover]** Well, I think that anybody who's charged in the criminal legal system and is also battered, if they're reaching out for advocacy and support, I mean I would say that that's where there is an extreme need. And I know it sounds daunting because so many battered women are involved in the criminal legal system, but if we are looking to screen people in rather than screen people out, and we're looking at the additional burdens that people who are facing the criminal legal system really have, it seems, I know sometimes this is easier said than done with funding and that kind of thing, but what somebody is charged with shouldn't matter so much in terms of whether or not we're going to provide advocacy. Does that answer your question, Rose?

- **[Voiceover]** Yes, yes, right. And I think perhaps in a CCR it comes up with when advocates are providing response to victims after an arrest, but then they are, what they find out is that the victim in a particular case is actually the offender in the ongoing relationship. So in that case I guess it comes up at that point because the advocacy program may be involved as a matter of a protocol within the community. So anyway, those are the ones I think people are going to be most aware of. But let's talk some about the need for advocacy for charged victims. You have a slide here that goes over some of the data related to the issue. Could you talk about this a bit, Cindene?

- **[Voiceover]** Absolutely, Rose. There's been a lot of studies done trying to measure incarcerated peoples' experiences of childhood and adult violence. And the studies are a little bit all over the place, but the lowest estimate put prior abuse rates of incarcerated women to be around 50%, which is really quite high. But when smaller, more qualitative studies get done by researchers who have a framing about domestic violence, about appropriate questions to ask, about ways to ask those questions, we get much, much higher rates, up to 95%. And that makes some sense to me because large government-sponsored studies, people aren't getting the kind of contextual question that they're gonna get from researchers who know a little something about domestic violence, right? But all this is to say that our jails and prisons are full of survivors of ongoing battering, of child abuse, of sexual abuse. As I recently heard a trainer put it, being battered can be considered a pathway to jails and prisons. And when we think about it that way, I think it really lets us know what incredible need there is in the criminal legal system on the defense side for ongoing support and advocacy from our anti-domestic violence and sexual assault communities.

- **[Voiceover]** So yes, and you know, it's kind of interesting to me because when I started working on CCRs lo so long ago I thought I was gonna be primarily interested in getting consequences for the batterer and justice for the victim, and you know, it's still the issue, but it gets confused, and particularly looking at the fact that, you know, when you're involved in the criminal justice system regardless of whether you've been a victim of domestic violence yourself, there's a detrimental impact. But for victim defendants it's much worse, and some of the consequences of arrest for victims of battering are unique. So say some about that. What are some of the consequences?

- **[Voiceover]** Certainly. And like you said, I think we all kind of have an idea of the extremely bad impact that being arrested and convicted can have on anybody, but there really are things that are unique to the battered women, or to battered defendants in general. So we're gonna focus on those here, but please don't forget about the ones involving housing and benefits and education and that kind of thing. First of all, I wanna talk about the increase in physical risk if a survivor has been arrested, charged, incarcerated, whatever it is, particularly when her abusive partner is the complaining witness. That gives him a tremendous amount of leverage. For example, if she's being held in jail pretrial, he's likely the one who's going to be in charge of the purse strings about whether her bail is gonna get paid or whether it's not gonna get paid. So that can, he can use that as a huge sort of amount of leverage. If she gets released on pretrial bond or something like that, he is gonna know who he can call to get her locked up for a violation of a bail condition if she doesn't comply with whatever it is he's trying to get her to do. So that's before we're even talking about having something on your record. That's just after arrest. That adds right up if she's on probation or parole. If he's got a line into her parole officer, and he wants to either force her to drink and then get her in trouble for that, or lie and say she's drinking or using drugs and get her in trouble for that, it's gonna be pretty easy for him to do at that particular point, especially if he's considered the complaining witness in the case. Does that make sense?

- **[Voiceover]** Yeah, you know when I ran a batterers group for a number of years, and I can't tell you the number of batterers that I worked with who would say, you know, if I could get her to hit me first, then I knew, and this is back in the day when it was about, well, before there was good predominant aggressor investigations let's say, but he could just take that to the bank as a batterer to make her do what he

wanted. Even if she wasn't convicted, but had been arrested, but just to say, look, you want the cops to show up again? You're the one who has been in trouble with them before, and it was just a real good strategy for getting him to do what he wanted without having to beat her up anymore. Now he had the community on his side in that way.

- **[Voiceover]** Absolutely, and having that kind of police power behind you is a tremendous amount of control over somebody, absolutely.

- **[Voiceover]** Right, right. So what about, I know immigrant survivors can be particularly disadvantaged by an arrest. What do you know about that? And what does your work show you?

- **[Voiceover]** Yes, I'm glad you asked that. Immigrant survivors obviously have an uphill battle anyway, especially if they don't have permanent status of some kind. But once you're an immigrant survivor and also a defendant, you're now walking a whole different mine field here. So again, going back to the abusive partner's leverage, he may have, especially if he's a United States citizen, he may have threatened or actually called ICE before. But now if she's got an open criminal case, the likelihood that they're gonna listen to what he has to say very well may go up. And even if ICE isn't interested in her, it's still gonna be extremely scary. I've got an open criminal case, and my partner can call ICE at any time, and I don't know what's gonna happen to me. If her status is something that's going to be affected by a criminal conviction, and he's the complainant, making promises to show up or not show up to court can be huge. You know, provided that she's not held in ICE custody pretrial, he has this huge bargaining chip now, right? Because he can, I mean, he has this anyway whether she's an immigrant or whether she's not, but with a conviction and incarceration and deportation on the line, that's a huge amount of power for him to have. If she complies with whatever it is his demands are, he can promise not to show up for court. And that can be something that's really scary and really compelling. And he probably also knows a lot about what her immigration status is. One thing that I learned when I was a public defender is that it's not so clear all the time whether somebody's documented or undocumented or what their particular status is. It can be something that's really, really complicated. It can be something that changes from one day to the next, and he might have control over a lot of that information. And I think that's important for two reasons. One is that he may have the ability to keep information about her own status from her, which is really scary. But he also might have the ability to disseminate information that's not helpful to her about her status. When you have an open criminal case, and your freedom and your location in this country is on the line, that's an extremely scary situation.

- **[Voiceover]** Yeah, indeed. So one of the things that we touched on a bit was child protection, but also, I mean there can be consequences in regard to custody as well, right? I see that on your list up here. But say some more about the custody concerns. What are you seeing?

- **[Voiceover]** Absolutely. Well you know, worse case scenario, if a survivor ends up incarcerated, particularly for a long period of time, she might risk her parental rights altogether being terminated. Now I know that in child protection work, incarceration without more is not supposed to be enough to terminate somebody's parental rights. But the partner, at that point where she's incarcerated and he's not, has a tremendous amount of power. He's gonna be a reporter to CPS about whether or not she's

visiting the children when they're brought to see her, or whether or not she's interacting with them in an appropriate way if they're brought to see her. And the fact of the matter is they're probably not gonna be brought to see her very, very much, particularly if she's in state custody. And all these things matter to a final determination about whether or not somebody's parental rights are going to be terminated. So that's kind of the worse case scenario, but even not going so extreme as termination, her credibility takes a huge ding once she gets locked up. Whether it's for drugs or for anything else, but maybe particularly for domestic violence. So if he gets her locked up for either defending herself, or he just lies or whatever it is, she's now coming into civil court to try to fight for her children under the suspicion that she's somehow dangerous. So her credibility gets affected in that way. If he doesn't have anything on his record, now he looks like the good guy. And now if she tries to bring up her experiences of abuse in court, how is that gonna look when she's the only one who has been arrested for it, and he never has? And so there's just numerous ways in which having something on your record, having an open case, or even having this intangible veil of suspicion over you because you've once been charged, can affect somebody in civil court.

- **[Voiceover]** Hey, say Cindene and Rose, this is Mar, and there's an interesting case that a participant is sharing from Alaska about a battered woman who was charged with DUI. He called 911 to report that she was speeding as she was fleeing basically for her life in a rural road, and she had been using, and so they did pull her over, and she was arrested and was fined, charged with DUI. I was wondering about defense for those types of situations, if you have any experience.

- **[Voiceover]** Well, that's a great segue as we move towards advocacy strategies. Cindene, what do you think?

- **[Voiceover]** Oh, boy.

- **[Voiceover]** You wanna take that one, answer that?

- **[Voiceover]** Sure, no, I can. I wish I could say, oh, we've never seen a case like that, but we have. The DUI cases are often complicated because driving under the influence of something is almost what they call a strict liability offense, OK? Meaning that there's almost nothing, if you were in fact driving, and if you in fact test positive over the legal limit for something, whether it's drugs or alcohol, you're guilty. There's very few ways that somebody can get out of a charge like that.

- **[Voiceover]** So context doesn't matter there.

- **[Voiceover]** Well you know, we try to argue that it always does. We're not always successful. We have seen battered women who are fleeing their abusive partners succeed with an argument that's called necessity, OK, meaning that they knew that there was something, they were about to do something wrong, but what they were about to do that was wrong was less wrong than the other thing, which would be staying and getting beaten up. So it's not very common we see that work, but we have seen it work. You know, usually the questions that come up, obviously in rural areas this can be somewhat ridiculous, but why didn't she call the police? Why didn't she go to a neighbor? Why didn't she do this, why didn't she do that? Why didn't she walk? You know, all these things that we know based on

survivors experiences, aren't gonna keep her safe, so she probably did employ the only option that she had. And so we have seen them succeed. We've also seen them go horribly wrong. So DUI is particularly tough to make that nexus, yeah.

- **[Voiceover]** Yeah, those are hard cases.

- **[Voiceover]** Yeah.

- **[Voiceover]** Yeah, so just talk some about then advocacy strategies for victim defendants. And you know, the information that you just provided is, I think it's so important for communities to be able to talk about it and to, you know, get support for the concept that some of the crimes that victims are charged with is because of their victimization, and that to reduce crimes committed by battered women it's really important to address the violence that they are experiencing. But OK, we're at the, let's say right now moving forward we got victim defendants. What should an advocacy program do?

- **[Voiceover]** Yeah, let's spend a good amount of time here. And from the outset I wanna say that a lot of the things we're gonna be talking about are things that advocacy programs can do for charged survivors, whether or not there's necessarily this kind of causation that you were just talking about, Rose. Whether or not we can specifically identify, you know, in our own minds or even in the courtroom that what she did was a direct result of domestic violence. So first of all, there's a lot of questions that come up when we're talking about the response of a community. Obviously in an ideal world what we would wanna do is prevent inappropriate arrests and prosecutions in the first place. And I think there's a lot of other organizations and people that can talk about ways to do that, involving the police, involving discretion of the prosecutors. And then there's also the kind of obvious solution of making sure the defense bar is better equipped to represent battered women defendants, but where we're really going to be focusing on is how once a battered defendant is already in the system, we can be helpful as advocates in helping her get through that, and hopefully get out of it as soon as possible. And too, to come up with some of the things that we can do I think it's really helpful to step back and maybe look at some of the things that get in the way of doing this work because, I mean, knowing that our jails and prisons are full of battered women, and knowing that there's an extreme need here, sometimes it's surprising to see that there's actually not very many programs that can or will do this kind of work. So thinking about some of the reasons that that happens I think can be really helpful in analyzing what's going on in our own communities if we're not seeing this kind of work take place. And Rose, I think you referred to one of these kind of relationships that has been institutionalized over time, and that's the relationship between the police and prosecutors and advocacy programs. So often advocacy programs are working, I think as you put it, to get consequences for batterers and to get justice for survivors that there's this kind of assumption that the bulk of the work is going to happen on the prosecution side of things. And those relationships that have been in place for so long, we get a lot from those, and those are important, and it's scary to think about the possibility that by working with defendants we're gonna jeopardize that.

- **[Voiceover]** Right, right, I mean that's the whole issue of oh, you're biased. If it's a guy, throw the book at him. If it's a woman, well, he had it comin', right?

- **[Voiceover]** Exactly, exactly. And that perception of bias, we can be nervous that that's gonna get increased even more if oh, all of a sudden our programs are not only working with women who are complainants, but are working with women who are defendants. You know, there might be a concern that people are gonna look at the common denominator, not as people who are survivors, but as women. So yeah, that's a huge concern, too. And then what sometimes we hear is that people have been doing this prosecution sided work for so long that as soon as somebody gets arrested, they're automatically considered the perpetrator, and the program can't work with perpetrators.

- **[Voiceover]** That's a big one.

- **[Voiceover]** Yeah, yeah.

- **[Voiceover]** And I think that, I know you won't go too much into that today, or will you? I mean, there's an issue here of being able to say who's eligible for our services, right?

- **[Voiceover]** Right.

- **[Voiceover]** And so, OK, you get a call from law enforcement saying Sally Jones was arrested for domestic violence, and her victim is Bill Jones. I mean, how do you make the distinction there? Maybe you're going, OK, Sally, Bill, it's a female. The profile of the crime suggests that she may actually be the victim, but you can't look at it from the perspective of the gender as something that automatically makes you want to go provide advocacy for her, right?

- **[Voiceover]** Right, but I think there's a lot of other things that we can look at because as we know, there's so many survivors that we work with all the time who aren't involved in the criminal legal system at all. And so we don't have that she got arrested or she didn't get arrested way to make our distinctions about who we're gonna work with and who we're not gonna work with. So I would just really encourage people to see gender as we have to because we know the nature of the domestic violence is often gendered, look at that and a whole other list of things, but don't use somebody's status as the defendant as a deal breaker because we know survivors get arrested all the time.

- **[Voiceover]** And so is that a part of how you talk to the community about your services? So in the past maybe you say we work with victims of a criminal assault, and now you're saying we're working with, oh, help me out here, Cindene. I mean, is it how you market yourself? Is it a mission statement? Is it a procedure? How does that work?

- **[Voiceover]** Yeah, that's a really good question, and I think for a lot of programs going back to the mission statement can be something that's really helpful. Are we an organization that works with complainants in criminal cases? Or are we an organization devoted to reducing intimate partner battering and increased justice for survivors of ongoing battering? Those two things are mutually exclusive, and we have to remember that an anti-domestic violence community, our definitions don't have to be the definitions of the criminal legal system. You know, we have way different goals than the criminal legal system, and I think it's important to remember that moving forward.

- **[Voiceover]** And I think it's a good discussion for a CCR. Maybe it's a good topic for a quarterly meeting or something. Let's talk about this particular problem, and we've maybe been defining ourselves too simplistic, or there's some misunderstanding about who we are and how we do what we do. I think that in some states there's gonna be problems in terms of who their mandated to provide services to, but those are all discussions that can take place at the local level, right?

- **[Voiceover]** Right.

- **[Voiceover]** OK so, you know, and I wanted to get some more into this. So looking at your mission statement might be one thing. starting those conversations. I would say also identifying how frequently this is a problem, right? You know, if you're tracking and monitoring and you're seeing that you have a lot of, let's, we know the profile of the crime is generally that men are able to use violence most effectively to establish power and control in an ongoing relationship, right? And that's to be distinguished from somebody who uses let's say violence in this case to end their, to stop the violence of their victims to 'em. This is where it gets complicated talking about it, but you know, so those discussions need to take place. What else needs to happen? I mean, obviously I've got the slide up here, but it sounds like there's a real strong role to be working with the defense bar, huh?

- **[Voiceover]** Absolutely, and I wanna spend a little bit of time here. And I'll say from the outset I totally realize this can be complicated, and I know that this is easier said than done. But the more the defense bar, and I'm talking about public defenders particularly because that's who usually represents the survivors that we work with, but the private bar as well. They have to know who we are, and they have to know what we do, And to illustrate that I just wanna tell a little story if I can about when I was working at the public defenders office here in Philadelphia. For part of the rotation process, you know, they move us in and out of different systems and different courtrooms and that kind of thing, and everybody gets a stint in domestic violence court, right? And so when I was doing my time in domestic violence court, these were felony preliminary hearings and misdemeanor trials, I knew there was some people there who identified themselves as advocates. And I kind of looked at what they did, and they would check in the complaining witnesses, and they would always be talking to the prosecutor. Sometimes they would be sitting at the prosecutor's table. Sometimes they would be holding out subpoenas for people to sign. They'd be answering the phone in court, that kind of thing. Well little did I know that these people were community-based advocates who could have been available to some of my defendants who were victims of ongoing battering. The court culture that got created was that they were definitely a part of, another arm of the prosecution. i actually thought they worked for the prosecutor or they worked for the court or something like that. And that's just because of the court culture that got set up by having that particular dynamic. There was no reaching out to the defense bar letting us know that we're domestic violence advocates, and we're interested in serving anybody who's a victim of ongoing battering, that kind of thing. So not only making sure the defense bar knows what you do, but paying attention to the perceptions that get created in criminal court can be huge. To make sure that people are getting to you who are battered and who are also defendants. Does that make sense, Rose?

- **[Voiceover]** Yeah, I mean so that you're seen as somebody who might be of assistance when working with a victim of battering who's in trouble with the law, let's say.

- **[Voiceover]** Absolutely, absolutely. And another way that that can happen is that, and you know this sounds kinda like a no brainer, but we've just seen it be tremendously helpful, is by making sure that information about the resources that you can provide exist in local jails and prisons. You know, all kinds of programs drop off flyers and that kinds of things in their jails and prisons for the prisoners to look at, some of which are not relevant until they get released, but some of which are relevant while they're still on the inside. Making sure that information about your domestic violence programs exists in the local jail can be a huge way to make sure that people are getting to you.

- **[Voiceover]** So I don't know of a lot of programs that say here's what we do for victims who are charged with crimes. We are here to provide advocacy for you. And that would be something that would be helpful, huh?

- **[Voiceover]** Yes, that is definitely something that would be helpful. And the things that, you know, the services that you provide don't necessarily need to look too much different I think, than they look from the work you're already doing. I mean, there's gonna be some logistical things about whether people are physically located in the jail, and whether or not you have the resources to go in there. But a lot of the things about getting to court, about having a safety plan, about being supported, about finding housing, all the work that advocates normally do are things that defendants need, too. And defendants might actually be in a position where they need it a little bit more. And I'm not trying to say that some survivors are more oppressed than others, but for somebody, like this is just an example. For somebody who's incarcerated pretrial, if they can make bail, and say there's a restriction where they have to say where they're going to live or they're not gonna be allowed to be released from jail. If their abusive partner's house is the only address they can put down, that's gonna be really dangerous. And can we provide an alternative in that particular situation?

- **[Voiceover]** You know, one of the strategies that I'm always promoting is this whole idea of advocacy initiated response to the CCRs incorporate contact between the law enforcement agency and the advocacy program after an arrest. And so it seems to me that that's a critical juncture for the battered woman who has been charged with assault because those are the cases where law enforcement is contacting the advocacy program. And it would be good to have some method at that point for ascertaining, OK, here's a situation where we know this is a woman who's used our services before, and/or we just assume that it doesn't quite smell right so we're going to be, instead of working with this identified quote/unquote victim in this case, we're gonna go over to the jail and provide some advocacy for the ongoing victim, let's say. And so I mean it seems to me a lot of the problem for victims who are arrested too is that they cop a plea real fast, and then that gets them into trouble. So they may have a need greater than the typical victim let's say, to have immediate advocacy because they're gonna go into court the next day. They may say yes, I was guilty, and then lo and behold, all these consequences that you talked about start to pile up.

- **[Voiceover]** Right, right. Yeah Rose, I'm so glad you brought that up because it highlights the importance of getting to people as soon as possible. And so yeah, looking at these, I like the way you phrase that too, when something doesn't smell right maybe there's something that can be done. I think another point of early intervention can be if advocates are able to be present at pretrial arraignments. You know, sometimes that's, I know a lot of times those take place by closed-circuit TV or whatever it is, but just to sometimes even being there and seeing the defendant can give us an idea that, you know what, we might wanna look a little bit closer at this one.

- **[Voiceover]** Right.

- **[Voiceover]** You know, things tend to, some injuries will show up a couple hours later that didn't show up when the police responded to the scene. And so there's just so many critical things that can happen early on. And those early pleas that you talk about, that happens I think for a lot of reasons, and the main one probably is that, you know, sometimes when people take these early pleas it's because doing that allows them to get out immediately and get home to their kids.

- **[Voiceover]** Yes, and I think that's a good case for a prosecutor who's got a mission. What more do you need, right? Bingo.

- **[Voiceover]** Say, Rose? Say Rose, this is Mar, can I interrupt for just one second?

- **[Voiceover]** Yep.

- **[Voiceover]** There's a little bit of some chats going on right now about--

- **[Voiceover]** Yeah. I'm trying to catch it at the same time.

- **[Voiceover]** Yeah, I can do a little bit of summarizing. So we've been chatting about relationships with the public defense bar, and some folks have more official relationships and connections with them. Others are a little bit less formal. I'm really interested in this advocacy in the jail post arrest. I found out recently in the community where I did advocacy, on call advocacy, in other words I was that advocate who made that outreach call in the middle of the night. At that time that I was doing that we were visiting women in jail. They're no longer able to do that for capacity reasons, and some folks were talking about, in a rural community there was a lot of resistance to advocates visiting women who had been arrested. Just wondering if you could comment on some of that.

- **[Voiceover]** Cindene, you wanna take a swipe at that?

- **[Voiceover]** Well, I think when we're dealing with that kind of resistance it can be really helpful to do a little bit of detective work and figure out where that resistance is coming from. And the reason, I know that sounds kind of simplistic, but the reason I'm saying that is because sometimes in the end we can't pinpoint a reason. Sometimes we get calls from defendants who are told by whoever answers the phone that they can't work with them because they are charged with a crime. We'll call somebody else and get somebody else on the phone, and they'll say, oh no no no, we can work with defendants, that's not a problem at all. So identifying like is it a part of the mission of the organization that they can't work with

defendants because they are somehow structurally connected with the prosecutor's office? Is it a funding issue? And if so, are there other funds that can be used? Is it because there's a philosophical misunderstanding about somebody's status, for lack of a better word, as a victim once they get arrested? Figuring out the source of this resistance is the number one thing that can help to break it down.

- **[Voiceover]** You know, and let me add too that I think that it's a, it can be a training issue as well. And I don't usually go to training, but training in conjunction with implementing better let's say, I think it starts with law enforcement practices that look at the history and the context, and so we reduce the number of bad arrests, right? And that we aren't looking just at individual cases of violence, per se. We're looking at a historical relationship where the violence is occurring. And I think it goes back, Mar, you were wondering what they can do, I think it goes back to having these conversations. And I know that next month too we're gonna be going in depth a little more into this whole piece about, OK, our CCR is gonna be looking at this. How does our advocacy program position ourselves in a way to enable us to be there providing this kind of advocacy? So there's that piece, and then there was something I was gonna say that was just brilliant, and it slipped my mind for some reason, probably because it was brilliant. But you know, one of the things that I was looking at as people were scrolling below and talking about these things, I was wondering if we could do a show of hands about how many people are providing advocacy for victim defendants. So of those people on the line, how many of you are providing advocacy for victim defendants? (mumbling)

- **[Voiceover]** I was gonna, as people are still raising their hand, it looks like about of . Some people might not be, some people are listening just by audio too, and aren't able to raise their hand. I was wondering too, if people knew at this moment what are the arrest rates of battered women in your community? I think that's the question that is on our mind a lot lately, and when folks call us for help around these issues it's one of the first questions we ask because there's a lot, I think, Rose, this is where you were going. There's a lot that can be done on the law enforcement end around establishing policies related to self-defense determinations and predominant aggressor analyses, and the history and context that can reduce drastically those bad arrests. Someone earlier in the chat said that a lot of women who are arrested are, oh what did she say? These words never come to me. They're dismissed, the cases are dismissed, and then she works with them ongoing related to any mental health or substance abuse concerns, and she does other advocacy. One person's chatting in that 30% are battered women who are arrested, with about 20% dismissed.

- **[Voiceover]** You know, thanks for that, Maren too, because it jogged my memory some. I think if you had a, as a CCR and you're having issues about your capacity to provide adequate advocacy for victims who are arrested, victim defendants, it's always good to have, you know, do some focus groups. Get a sense of how big is this problem because then you're gonna be able to sell, first of all, if you're a CCR, generally your effort is to end battering. And so it's a waste of resources to be, first of all if you're arresting the wrong person. And if you've got like a 50% or even a 30% arrest rate for domestic violence, and I should say 30% of the arrests are women, just by the profile of the crime you can go, OK, there's something amiss here, and there needs to be better investigations and better collection of evidence and more attention to history and who does what to whom with what impact when the law enforcement

arrives at the scene because, you know, that's the first wrong move. And so if you can eliminate and bring that percentage down to like five percent, then you're talking more in line with what actually is out there, right Cindene? I mean, generally speaking when we're talking about domestic violence, we're talking about a phenomena that is very gender based.

- **[Voiceover]** Right, right.

- **[Voiceover]** And so any arrest rate that makes it look like it's equivalent or nearing equivalence is your first sign that something is amiss. And as a CCR you're gonna be wanting to know what is happening? Who is being arrested? What's the impact of that? Are there specific prosecutorial strategies that we might want to employ in those cases?

- **[Voiceover]** Yes, and I'm glad you mentioned the prosecutor's role in all this because even in communities that really have figured out a way to get this right most of the time, we still have to be thinking about survivors who get arrested where that arrest wasn't necessarily inappropriate. When you're looking at a statute, like say it was an assault statute, and every element of it, and technically yes, she violated that assault statute. I mean, the example that I always give, and it's one that I've seen a number of times is where say he's coming home from work or something. She knows because it's Tuesday or because of a phone conversation they had or whatever the reason is, that she's probably gonna get it tonight, right? And so she heads off his attack by throwing something at him once he comes in the door. You know, self-defense is gonna be a tough sell in that situation. It's probably not gonna fly. It's gonna pass every test for being an appropriate arrest, but we still have to ask if prosecuting her is a just and effective response, and that's complicated. And so prosecutors I think have a role in that by knowing that just because they can get a conviction, should they get a conviction?

- **[Voiceover]** Right.

- **[Voiceover]** This is Maren. I just wanna introduce on other sobering comment that a participant made about in her rural community, law enforcement are actually intentionally using dual arrests as a way to reduce the number of victims who call for help.

- **[Voiceover]** Wow

- **[Voiceover]** And the women who are arrested are then consequently order into batterer treatment programs. And I bring that up because this is a rural audience. We're talking about these rural realities, and I can't be reminded enough about that sort of resistance. This is what so many rural communities are facing, that level of resistance, and actually proactive intentionality behind it by by the criminal justice system folks.

- **[Voiceover]** Yes, and if this community is part of a CCR, I mean, technical assistance, I'm available to provide technical assistance about how to address that problem because you know, there's somebody in the community that's gonna care about that. I mean, particularly in a climate where we're saying, OK, our tax dollars are going for what? You know?

- **[Voiceover]** Right.

- **[Voiceover]** And so there's methods of addressing that, and by all means, please call because it's really, it needs to be taken on as an issue that your CCR is going to address, and there's ways of doing it that can be effective. And the same goes true for any of the callers on the line today who are talking about situations in your community where you have a high arrest rate, and maybe victims of domestic violence. And maybe you have a high rate of women losing their children or being threatened to lose them in the child protection system as a result, or they're losing custody as a result. Those are all problems that a CCR should be looking at, but it's not necessarily gonna be the problem that you'll bring up at a large group meeting on a monthly basis. There's a lot of work to do before you get to any point of addressing anybody in the system who's responsible for it. And a lot of that involved getting your data together. Who is this happening to? What's the result? Who cares about this in the community? So I'm particularly passionate about this issue because like I say, when I started a hundred years ago on this I thought I was going to be working to end violence against women. I didn't know that it would turn, and suddenly I would see battered women being penalized for having anything to do with the criminal justice system, let's say. So anyway, if you are a CCR out there, and you call in, or even if you don't have a formal CCR, I just think a lot of our programs now are organized around waiting within your program as an advocacy program for the victims to call you. And in reality, even though you may have started that way, and that you're there to provide services to victims who call you, part of being a CCR or thinking about doing a CCR working in the community is to be able to get to the other women who don't come to you who really need your help, right?

- **[Voiceover]** Um hmm.

- **[Voiceover]** You know, so I'm looking at the time, Cindene, and we've gone through so many things, and I know it's not nearly enough time to give adequate coverage, but I was wondering who else would you recommend that people, who are key people in terms of addressing this? I mean, you mentioned the defense attorneys. You'll also be talking to the prosecutor, not necessarily on an individual case because you mentioned when we were talking before that if you talk to the prosecutor, and you haven't talked to the defense attorney about an individual case, there might be some problems with that. Do you have a, can you say something about that?

- **[Voiceover]** Sure, sure, yes, that's a really I think huge advocacy point here, Rose, because because of these really good and important historical relationships the advocates and prosecutors tend to have, sometimes our instinct can be, you know, when we see somebody arrested who shouldn't have been, or we're working with a victim who's facing a charge, we wanna march right to the prosecutor and tell them to drop the case. And you know, that can be something that's really effective. But it's just really important that we slow down a little bit when our instinct tells us to do that, and we make sure the defense attorney is involved in that conversation because the fact of the matter is we're not going to know everything that we need to know to be able to evaluate the potential impact that conversation can have. I'm not saying not to do it, but I'm saying to make sure the defense attorney is onboard before you do. I'll give you an example because sometimes this is really kinda hard for people. They're saying to me, if I can get a case dropped, why can't I just go do that? Well, think about the advocate who goes to the prosecutor and says look, I know she's charged with punching him in the face, but she only did that because he was strangling her. Well, the prosecutor had met with the complaining witness, thought he

was a total jerk and a liar and was gonna drop the case. But now the prosecutor has confirmation that the punch in the face actually occurred. OK? So there's just many ways that that conversation can backfire despite our best intentions. But if you're gonna advocate directly with the prosecutor for a charged person, just make sure that defense attorney's on board.

- **[Voiceover]** And I think, and we'll talk about this next month too with Melissa Skiah, but there are prosecution strategies now to be able to treat cases differently where it's a history of violence to the victim defendant, right?

- **[Voiceover]** Um hmm.

- **[Voiceover]** I'm moving forward here as we get to our last slide. You've got some other key people to think about. We've already talked about prosecutors, obviously police, probation and parole.

- **[Voiceover]** Yes, I mean when probation and parole officers, there's a lot of great people doing that work, and if they can be, if it's on their radar that their probationers are victims of ongoing battering, there's opportunities for them to do their job a lot differently in ways that aren't going to put that probationer at quite as much risk. Taking what the complainant says with a grain of salt, for example. If she tests positive for a urine screen, doing some investigation to find out whether or not that drug use was coerced, something that he made her do. So probation and parole can really help to mitigate some of these risks that happen when battered women are on probation and parole after they've unfortunately been convicted. And the same for the jail and prison staff. And I'm looking at the time, so I'll just leave it.

- **[Voiceover]** A smooth ending. The end, thank you very much. And we are coming to the end today. Cindene, your agency is available. I know you're a very small staff, but you have resources on a website too, for people to look at.

- **[Voiceover]** Yes, yes we do. Anybody doing this work can definitely give us a call. We'll be happy to talk with you. Whether you're looking to increase your advocacy reach in your community, or whether you have a particular case, definitely give us a call. And then yeah, look on our website. There's a couple of resources there I think you might find really helpful. One of them is particularly about working with women in jails and prisons.

- **[Voiceover]** Thank you, thank you so much Cindene, and you can also contact me at rosetieland@frontiernet.net, and I believe my number is on the website, so feel free to contact me as well for technical assistance. Maren, do you have any closing thoughts?

- **[Voiceover]** Yeah, thank you very much to both of you for this really engaging discussion, and thank you to the participants for being so engaged in the chat. I'm overwhelmed, I'm so excited that we're doing these calls now by webinar for this very reason. I will just say that we haven't publicized yet our topics for the next couple of months, but they will be on these theme. Next month we'll be talking with Melissa Skiah who has developed some really concrete strategies for advocacy for battered women who are arrested in a rural community in northern Minnesota. And then the following month we'll be talking

about advocacy beyond leaving. So if women do decide to stay, what is our role in advocacy? And Rose will be on both of those calls, and we'll have a featured guest? Who is that again in December, Rose? Another rural program.

- **[Voiceover]** You got me going there. (crosstalk)

- **[Voiceover]** Yeah, so these will be some really compelling and interesting discussions again through this webinar platform. So we look forward to seeing you then and there. In the meantime if you do have questions, please email me or Liz. I will be sending out an email tomorrow with follow up information that folks mentioned on the call today, with contact information, all of that. Thank you very much, and as our fearless leader who has since passed on used to say on the end of these calls, there's probably someone or something out there that probably loves you. And if it's not your mother, get over it. (laughing) I will close. I don't deliver it the way she did, but you all give me some poetic license there.

- **[Voiceover]** Thank you, bye bye. And Cindene and Rose, if you might hang on just so we can check in for just a second.

- **[Voiceover]** Sure.

This project is supported by Grant #2011-TA-AX-K103 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed during this webinar are those of the author/presenter(s) and do not necessarily reflect the views of the U.S. Department of Justice.