

## Appendix 1C

### Training Memo—Interventions with Victims of Battering as Suspects or Defendants

Many victims of ongoing abuse use violence against their abusers. Some of that violence is legal and some is not. Intervention in these cases can and often does produce unintended consequences. A key intervention principle is to intervene in ways that do not make the victim of *ongoing abuse* (who we will refer to as the victim/defendant) more vulnerable to a batterer's violence. At the same time the intervention should be focused on preventing the victim/defendant from using force against the abuser as a means of attempting to protect against future violence and coercion.

The victim of *ongoing abuse* is someone who is being battered by their partner, not someone who has simply been the victim of a past incident of abuse. Battering means the victim/defendant is being subjected to a pattern of coercion, intimidation and violence and that abuse has limited the victim/defendant's autonomy and ability to act in her or his interests without being subject to abuse. Battering almost always leads to the element of entrapment in the relationship. By this we mean that a person is not simply free to say, "This is not working for me I'm leaving". Instead the victim is, through psychological, economic and/or physical controls compelled to stay with, protect, or in some way act in the interest of the abuser.

Most batterers will claim to be the victim of abuse by the person they batter and intervening practitioners who are not positioned to make the distinctions between battering and resistive force are likely to intervene in ways that protect neither and perhaps embolden the batterer. Thus the multi-agency effort to make visible the pattern and scope of violence occurring over time in these cases is critical.

Because the criminal justice system tends to be event and therefore incident focused it is difficult for the system to uncover and make visible to practitioners acting on the case the pattern of abuse occurring in the relationship. If that

pattern is not uncovered, the criminal justice system intervention may be misguided.

Recognizing that many prosecutors will legitimately feel concerned that this approach creates a double standard, we have posted the thoroughly researched, and thoughtful arguments for differentiated treatment of cases involving victims of domestic violence on all three “Blueprint” web sites. In *At a Crossroads: Developing Duluth’s Prosecution Response to Battered Women Who Fight Back*, the chief prosecutor for the Duluth City Attorney’s Office, Mary E. Asmus, discusses these issues in detail and explains the theory and practice supporting a differentiated criminal justice system response to defendants who are victims of battering.

Victims of ongoing coercive control (battering) who are arrested and convicted for fighting back or “retaliation” can be easily and unintentionally made more vulnerable to violence by the perpetrator of the battering following that state intervention. The challenge facing the criminal justice system is one of balancing what in these cases may be complicated goals of holding the defendant accountable so that the violence does not recur while at the same time enhancing the safety of the victim who is most at risk when the defendant is also the victim of on-going abuse.

The Blueprint focuses particular attention on the cases where victims of battering use acts of violence against their abusers. In some narratives we refer to this person as a victim/suspect or defendant pre-conviction and victim/offender post-conviction.<sup>1</sup> While this will typically be a woman who is being battered there will be cases where the victim/defendant is male. It is rare in heterosexual relationships that a woman has the capacity, opportunity and socialization to batter (as distinguished from using violence) but while uncommon, such cases do occur. In gay relationships the male victim of abuse will sometimes use illegal violence against his partner and thus fall into this category of cases involving a male victim/defendant. The objectives in these cases are the same. Intervene in

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<sup>1</sup> Many people find the term victim/offender to be a misnomer because so many victims of battering who are convicted of assault were in fact acting in self defense but for a myriad of reasons the batterer was able to successfully point the finger of blame at the victim.

ways that a) offer the victim of battering who is using violence alternative ways to cope, manage, or respond to being battered and b) reduce the violence and coercive control the victim/defendant is being subjected to by their batterer. The following procedures are used to process cases involving a victim/defendant with attention to these inter-agency goals.

1. 911: The more explicit and detailed the call taker can be in conveying to responding officers what the caller saw or heard, the more likely the officer will make an accurate determination regarding self defense and predominant aggressor.
  - The emphasis for 911 is to convey accurate information about what the caller has heard or seen to assist officers in determining who did what to whom when at the scene. The information from the caller accurately conveyed by dispatch to the responding officer is an important factor in determining which party to arrest. (See Saint Paul Blueprint for Safety, Ch 2, 911 Protocol 1: Receiving Calls 4 (b); 911 Protocol 2: Dispatching Calls 4 (a) and (b).)
2. Patrol officer: In a well functioning system most cases involving victim/suspects will be screened out of the system by patrol officers who a) make sound self defense determinations and b) in cases where both parties use illegal violence, make sound predominant aggressor determinations.
  - When both parties have used violence determine if either party was acting in self defense and if they were arrest the party who used illegal violence.
  - When both parties use illegal violence arrest the predominant aggressor.
  - The prosecuting attorney will determine if charges should be brought against the non-arrested party.
  - Predominant aggressor is generally defined as the party to the incident who, by his or her actions in this incident and through known history

and actions, has caused the most physical harm, fear and intimidation against the other.

- If there is a compelling safety issue officers may arrest both parties.

These policies seem simple and uncomplicated but at times they can be extremely challenging to carry out in cases where nothing at the scene seems straightforward. During an audit of patrol responses to domestic violence cases in three Minnesota counties a group of deputies, police sergeants, advocates and prosecutors read over 200 patrol reports evaluating their strengths and weaknesses. Just over a third involved women using violence. Of those 71 cases officers appeared to make appropriate self defense and predominant aggressor determinations in half the cases. In 8% of those cases only the woman was arrested either because she was the predominant aggressor or she was the sole aggressor. In over 70% of the cases there was sufficient information in the patrol report (or past patrol reports reviewed) to conclude that the woman was being battered by the man she assaulted.

In half of the cases (35) police either arrested no one, or both parties, or persons who appeared to have been acting in self defense. These actions were further discussed and a number of patrol practices were identified as contributing to unsound outcomes. The identified practices were:

- Officers did not question the suspect at all and based their decision to arrest on the statement of the first party to claim an assault.
- Officers conducted an inadequate interview with both parties to ferret out contradictory statements, failed to link statements to observable evidence, failed to interview other witnesses or 911 caller.
- The lack of visible injuries especially in strangulation cases led to hasty conclusions that there was no probable cause and that the person who claimed they were being strangled (choked) was not acting in self defense.
- Male parties claiming to be victims stressed mental health issues of the woman; primarily that she was on medication, bi-polar or suicidal. In

many of these cases the woman was not seen as credible, not interviewed or only asked a few basic questions about her emotional state.

- The victim/suspect was often drinking and while not always incapable of giving a coherent story the fact of her drinking appeared to undermine her credibility as an assault victim with the officer. There is a high correlation of alcohol and drug use with repeated victimization. This means that victim/defendants are frequently going to be using alcohol as a coping mechanism for the abuse.
  - In two cases the victim/suspect could not communicate to the officer in the same language. The male party who claimed victim status interpreted for the officers who were communicating with the woman who was a suspect. .
  - The officers had arrested the other party on several occasions often mentioning the need to try something different and this time arrest the female.
  - The officers didn't link the victim/ suspect with an advocate.
  - These practices were addressed in the new training program offered officers and by changing the report writing format and guidelines the officers were using when responding to cases involving victim/defendants. For a detailed description of solutions to these problematic practices See St. Louis County Sheriff's Office Domestic Violence Handbook and Training Guide for Patrol Deputies (2001) available on the Praxis website, [http://www.praxisinternational.org/lib\\_criminaljusticesystem.aspx](http://www.praxisinternational.org/lib_criminaljusticesystem.aspx).
3. Prosecutor: With respect to prosecution, if the defendant is a victim of on-going domestic violence, consider a course of action that will help place controls on the person's continued use of violence without making her or him more vulnerable to ongoing battering or abuse. In misdemeanor cases, consider whether a deferred prosecution might not gain enough control on the victim/defendant to secure the help needed to end her or his violence. If it

appears that the investigation of self-defense assertions or predominant aggressor analysis is incomplete, consider referring back to law enforcement for further investigation.

- Consider whether charging the widest range or most severe crime furthers the goal of enhancing the victim's safety or whether charges that do not trigger the full range of domestic violence consequences may be appropriate.
- With respect to bail and pre-trial release, if the defendant reasonably appears to be the victim of ongoing domestic violence consider whether requesting the full range of conditions of release in domestic violence cases is appropriate. Consider whether more limited conditions will meet the goal of victim and public safety and prevent the victim/defendant from becoming more vulnerable to abuse.
- With respect to disposition/sentencing, make a determination if a deferred prosecution might not gain enough control of the victim/defendant to secure the help needed to end her or his violence. Inform the court of the relevant context of this victim/defendant's use of violence. If the motivation of the violence was to protect the person from future harm or to stand up to a pattern of abuse the court should be encouraged to consider it a mitigating circumstance. In cases where the defendant is an apparent victim of battering, the presentence investigation (PSI) writer should document the scope of violence and abuse both *experienced by and used by* the defendant. If the defendant reasonably appears to be the victim of on-going domestic violence and deferred prosecution is not an appropriate resolution of the case, consider a plea to a lesser offense and/or an agreement to a stay of imposition with probationary conditions that include support services that will aid in reducing the likelihood of the victim/ defendant using violence in the future and preventing her/him from becoming

vulnerable to more abuse.<sup>2</sup>

4. Supervision of probationer: Supervisors are directed to meet with defendants to understand the scope and context of their use of violence and to refer them to rehabilitation services that are relevant to their particular circumstances. In cases of victims of battering who use violence against their abuser referring to domestic violence programs that can work with the client as a victim/offender is important. The use of a batterers' program for these probationers, unless it is clear that the program has specialized options for victim/defendants, is inappropriate and would be counter productive. Don't place victim/offenders in batterers' programs unable to offer victim/defendants specialized programming that recognizes the context and scope of violence they are experiencing as victims as well as using against their abusers.
  - Be cognizant of and responsive to situations and behaviors associated with an increased risk for re-offense with probation clients who have documented histories of being abused by the victim in the current case and who are on probation for using reactive violence. Such situations and behaviors include but are not limited to:
    - Increased sense of entrapment
    - Reacting to harm done by their abuser to their children (including sexual abuse)
    - Inability to stop excessive drinking or drug use
    - Being continually subjected to sexual and/or physical abuse

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<sup>2</sup> For a more extensive discussion of possible dispositions, see Mary E. Asmus, *At a Crossroads: Developing Duluth's Prosecution Response to Battered Women Who Fight Back*, pages 65-69 (2007) (Describing the process in Duluth that resulted in the determination that for eligible defendants who are victims of battering the disposition will be a deferral of prosecution with an oral admission on the record and conditions, including attendance in an educational group so that for these victim/defendants there is no automatic conviction).

- The probationer believes the victim is using the courts, child protection, and/or the mental health system as a form of harassment and abuse.
- The victim/defendant's abuser is engaging in acts of abuse recognized in the Practitioner's Guide to Risk and Danger in Domestic Violence Cases as particularly associated with lethal violence.

A critical step for supervisors in these cases is to anticipate the potential for both parties to use severe or lethal violence and attempt to prevent this by a) getting the client connected to a domestic violence advocacy program that can help the client with resources and options that counter the client's sense that only the use of violence can help them and b) exploring with police and prosecutors the possibility of initiating a process to obtain control of the abuser's behavior.

Research shows that many victims of ongoing domestic violence will use violence against their abusers at least once. Many victims use force more than once. This does not mean that the two parties are engaging in "mutual combat." In almost all of the cases entering the criminal justice system, one party is using violence as a pattern of coercion and intimidation, and the other is reacting to that violence. In almost all cases one person is far less able to stop the violence against her/him and one person is suffering greater injuries, greater levels of fear, and greater degrees of emotional stress.

It is vital that the context of the violence be taken into account if interveners are to engage in actions that enhance victim safety and offender accountability rather than inadvertently place the victim of ongoing violence who is a defendant in this particular case at further risk. Tailoring the response of each intervener based on differentiating the context and severity of the violence provides the opportunity to modify the intervention to the specifics of the case. It facilitates employing the intervention most likely to improve case outcomes when the defendant is a victim of ongoing violence.