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Research in Brief

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Confronting Domestic Violence: The Role of Criminal Court Judges

Gail A. Goolkasian

The judge told him, in no uncertain terms, that the law doesn't allow him to assault me just because I'm his wife. He said that he'll send him to jail if he's brought back for another offense. Right there in the courtroom

... you should have seen the look on his face. I think he knew the judge wasn't kidding, and that's when he decided to do something about it.

—a former battered woman

The facts

"Domestic violence," also called "battering" and "spouse abuse," refers to assaultive behavior involving adults who are married, cohabitating, or

From the Director

The family is the fundamental unit of American life. Thus, public policies that support the family are imperative for the survival of our society. To help families thrive within our communities, we must address the serious problem of family violence.

Family violence too often shatters families from all walks of life. Once considered a "hands off" issue, to be dealt with in the privacy of a family, these cases increasingly are brought to the criminal courts. No longer viewed simply as disagreements, arguments, or "family spats," they are recognized as violent crimes with victims suffering physical and psychological scars.

Research has found that such violence often continues and escalates over time, becoming both more frequent and more severe. Spouse abuse can mean a push down the stairs, a kick in the abdomen, a series of beatings, or even murder. One study found that in over 50 percent of domestic homicides, the police had previously been called to the residence five times or more.

Recent National Institute of Justice research has found that arresting the

abuser can deter future violence in families. By making informed decisions based on careful evaluation of police methods, it appears that policies can either contribute to the decline or escalation of violent assault within the family.

Judges play a critical role in forming the criminal justice reaction to this kind of violence. Spouse abuse has traditionally been handled in family court. As police departments increasingly have developed arrest policies for both misdemeanor and felony domestic assault, more family violence cases are being heard before criminal court judges.

Within their own courtrooms, judges determine the kind of attention paid to family violence cases by probation agencies. They ensure that court orders and probation agreements are monitored closely. Special statutory provisions for protection orders are available in some jurisdictions. Judges can have an impact simply by talking to the parties involved in family violence cases.

Both the President's Task Force on Victims of Crime and the Attorney

General's Task Force on Family Violence recognized that family violence is often much more complex in causes and solutions than crimes committed by unknown assailants.

To assist criminal justice professionals who deal with these cases, the National Institute of Justice sponsored a study, *Confronting Domestic Violence: A Guide for Criminal Justice Agencies*. Gail Goolkasian, of Abt Associates, the principal investigator of that report, is the author of this *Research in Brief*.

The *Brief* draws on family violence research to give judges information about batterers and battering behavior. It reviews current practice that is considered state of the art and examines the various options available to judges in hearing and deciding these cases.

Judges are playing an ever stronger role in heightening recognition of the serious and criminal nature of family violence. The National Institute of Justice believes the research summarized here will inform policy choices in that effort.

James K. Stewart
Director
National Institute of Justice

have an ongoing or prior intimate relationship. In the overwhelming majority of cases, domestic violence is perpetrated by men against women.¹

The facts about domestic violence are alarming. It was not until the mid-1970's that activists first succeeded in sparking public attention to the problem.² A well-known survey conducted in 1975 shattered the common perception that battering is a rare and inconsequential occurrence in our society.³ Based on a national probability sample of more than 2,000 families, the researchers estimated that in the previous year over 1.7 million Americans had faced a spouse wielding a knife or gun, and well over 2 million had experienced a severe beating at the hands of their spouse.

These figures, which are based on self-reports, are believed to underestimate substantially the true scope of the problem. Ten years later, a 1985 replication of that survey found similarly high rates of spousal violence.⁴

Crime statistics bear out the lethal consequences of domestic violence: In 1985, for example, the FBI reported that 30 percent of all female murder victims were killed by their husbands or boyfriends.⁵

Other facts are equally troubling. Rarely is domestic violence a single isolated event. Data from the National Crime Survey, conducted by the Bureau of Justice Statistics, shows that once a woman is victimized by domestic violence, she faces a high risk of being victimized again.⁶

It represents a pattern of behavior that tends to escalate both in frequency and severity over time, and is often carried from one generation to the next. Even if they are not the targets of violence themselves, children who witness domestic violence in their homes learn graphically that "this is how families behave."

Those who study and work with groups of abusers and battered women have found that many grew up in homes where domestic violence

occurred.⁷ Furthermore, there is a substantial body of evidence which indicates that children who are exposed to domestic violence suffer immediate and serious psychological harm.⁸

The dynamics

For people whose lives have never been touched by domestic violence, it can be difficult to comprehend. To understand domestic violence, one must consider its context and its history.

For centuries men were legally and socially permitted to chastise their wives; "modest" battering or "modest" force was considered a legitimate way for men to maintain their ultimate control in the family.⁹ But as wives and children ceased to be viewed as a husband's legal property, that rationale became obsolete.

Why does he do it?—Are batterers sick? Are they ignorant or poverty-stricken? Are they violent because they are addicted to alcohol or drugs? Do they batter because there is too much stress in their lives? Or do the women simply drive them to it?

The answer to all these questions is an emphatic no. Research has shown that domestic violence occurs within all social, economic, ethnic, and religious groups, although battering among disadvantaged socioeconomic groups is more likely to come to the attention of public agencies.

While many batterers abuse drugs or alcohol, many others do not. Countless numbers of people experience extreme stress without resorting to violence. And, while most batterers find a way to blame the victim for their own violent behavior, this is just an excuse.

There are two basic reasons why battering continues to exist today. First, violence is a highly effective means of control; often the victim of a domestic assault will spend a great deal of energy on trying to avoid subsequent assaults, including attempts to anticipate the needs, wishes, and whims of the abuser. Men who batter often explain their violence by saying that their victims will not do what they want them to, and they feel that as men they have a right to control "their" women. Second, men batter

because they can; that is, because in most cases no one has told batterers that they must stop.

Recent research suggests that violence is less likely to recur once a clear message is given that battering is inappropriate behavior which will not be tolerated. Sherman and Berk found that domestic violence offenders who were arrested had almost half as much repeat violence during the following 6 months as offenders who were not arrested.¹⁰ Langan and Innes' analysis of data from the National Crime Survey indicates that simply bringing a domestic violence incident to the attention of police seems to help prevent recurrences.¹¹

In recent years, the battered women's movement has made tremendous strides in broadening awareness about domestic violence issues in public institutions as well as the community at large. There has been a great deal of legislative reform at the State level aimed at protecting battered women, treating domestic violence as a crime, and holding abusers accountable for their violent acts.¹²

Why does she stay?—For many people, this is perhaps the biggest puzzle about domestic violence. There is no simple answer.

The experience of battered women can be likened to that of a hostage or a prisoner of war; she is subjected to random violence and often forced into isolation from her relatives and friends. She frequently is threatened with increased violence if she tries to take any action against her abuser. Never knowing if the reality of violence might lead to death, battered women can be immobilized by fear.

Economic dependence is another factor that can prevent battered women from leaving. A woman without financial resources or a job outside the home may have to rely on the abuser to support herself and her children.

Furthermore, many experts point to the cyclical nature of domestic violence. Battered women are not constantly being abused, and batterers frequently become loving, kind, and contrite for a period of time following an attack.¹³ Often the batterer knows he has gone too far and tries to convince the victim that it will never happen again. The victim wants to believe that this is true, that the

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violence has ended, and may succeed in believing it until the pattern is repeated time and again.

Despite these dynamics, many battered women do try to end the abuse by seeking outside help. Communities that have opened shelters for battered women and improved the institutional response to domestic violence report a huge influx of victims seeking an end to abuse. But pleas for help from battered women often go unanswered.

Public institutions and professionals in the community often fail to provide needed support and assistance. They may see the batterer when he is calm and articulate, and fail to believe that he is capable of such violence.

Physicians, hospital staff, welfare officials, mental health professionals, and the clergy have typically overlooked, ignored, or failed to act appropriately in domestic violence cases. Traditional training in these fields reflects a bias toward keeping the family together at all costs.

Barriers to action are even greater for women from certain racial, ethnic, religious, or cultural groups. For example, some women feel compelled to remain in abusive relationships because of their religious views on divorce, or because separation carries a tremendous social stigma in their community.

They may also feel that officials in public institutions hold racial and cultural stereotypes which will affect the amount of help they receive. Some women of color are more hesitant to press charges against their partners due to the common belief that minority men are sentenced more severely than white men for similar crimes. Therefore, a woman of color who chooses the court system may do so at the expense of terminating the support systems, including family and friends, within her own community.¹⁴

Finally, given the nature of domestic violence, the question "Why doesn't she leave?" seems misdirected. To say that the victim should leave does not address the conduct of the person responsible for the violence.¹⁵ One former abuser put it simply: "If you don't deal with us, you're going to have the problem for the rest of eternity."¹⁶

Overview of the criminal justice response

Although violence against the person is usually handled through criminal law, until recently most domestic violence cases entering the justice system were either screened out entirely or automatically routed to family courts. This practice reflected the view of society at large that domestic violence was a private family matter rather than a crime.

In the United States, most legal reform efforts have been aimed at the criminal justice process, instituting policies that reflect the serious criminal nature of domestic violence. The goal of criminal justice reforms is to eliminate the system's traditional avoidance and disdain for domestic violence cases, and to ensure that the law is enforced as vigorously as it would be if the parties were strangers.

It is also important to remember that domestic violence often involves a long history of abuse. Furthermore, because of the parties' relationship, a domestic violence offender typically has more access to the victim and is better able to intimidate and manipulate her.

Agencies within the justice system have begun to recognize their duty to provide legal remedies in domestic violence cases. Assault, battery, homicide, weapon use, kidnapping, and unlawful imprisonment are some of the most frequent crimes of domestic violence. More and more justice officials are realizing that a domestic violence incident constitutes a crime and, as with other crimes, the responsibility for taking legal action against an offender should rest with the justice system rather than the victim.

When justice agencies deliver a clear message that domestic violence is unacceptable behavior that will not be tolerated, this view is encouraged throughout society.

In many States, legislative reform aimed at improving the entire community response to domestic violence has forced justice agencies to modify past policies. For example, these laws can define the boundaries of proper police arrest practices, mandate data collection and reporting, require domestic violence training programs, provide for various forms of victim assistance,

authorize the use of civil orders for protection, and increase the penalties for repeat offenders. These and other provisions may be embodied in a single domestic violence statute, or may be included in two or more separate pieces of legislation.

Police—Most attention concerning the role of the justice system has focused on police and, in particular, on whether or not police officers should favor arrest when they respond to calls involving domestic violence. In the past, most police departments discouraged officers from making arrests in "family disputes," advising officers to try to calm down the parties and make referrals to social service agencies in the community.¹⁷

Nonarrest strategies were harshly criticized for treating domestic assaults less seriously than assaults involving strangers, and for failing to provide adequate protection to battered women. Recent empirical research evidence from Sherman and Berk supports the growing consensus that arrest, consistent with State law, should be presumed the most appropriate police response to these incidents.¹⁸

Police departments throughout the country are beginning to educate officers about the dynamics of domestic violence, and are adopting official policies encouraging or requiring officers to arrest suspects in domestic violence incidents. State laws are expanding officers' legal authority to arrest in these cases; in most States, officers are now permitted—or, in some States, required—to arrest suspects in misdemeanor domestic violence incidents without obtaining a warrant even if they did not witness the crime, provided that they have probable cause to believe that a crime has been committed by the person being arrested.¹⁹

Prosecutors—The result of proarrest policies is often a large increase in the number of domestic violence cases entering the justice system. In recent years, several prosecutors' offices throughout the country have proposed and adopted policy improvements for these cases.

The prosecutorial policies reviewed by Lerman include: establishing

domestic violence units in large offices to permit vertical prosecution and the development of prosecutor expertise on domestic violence cases; reviewing police reports on a regular basis to identify domestic violence incidents and conduct outreach to victims; developing objective filing and charging policies; and working with victim advocates, who can offer support and protection to victims and maximize the likelihood that victims will cooperate with prosecutors.²⁰

Judges—Judges play a crucial role in shaping a community's overall response to domestic violence. Members of the judiciary can wield tremendous power as system advocates, by proposing changes in legislation and helping to educate the public about the criminal nature of domestic violence. They can also encourage improvements in police and prosecutor policy and court data collection and recordkeeping.

Judges have the power to demand information from law enforcement agencies if a paltry number of domestic violence cases are showing up in the courtroom, and can communicate with city or State government officials about the need to devote more resources to the problem (e.g., for victim advocates, shelters, or counseling programs).

Within their own courtrooms, judges determine the kind of attention domestic violence cases will receive from probation agencies. Judges can give a strong signal to probation officers that court orders and probation agreements must be monitored closely in these cases. In some States there are also statutory provisions that give judges special tools to handle domestic violence cases, such as formal orders for protection.

Furthermore, judges can have a positive impact by simply talking to the parties in domestic violence cases. Smith's study of the criminal court response to nonstranger violence found two ways that judges are critical in deterring future violence:

First, judicial warnings and/or lectures to defendants concerning the inappropriateness and seriousness of their violent behavior apparently improved the future conduct of some defendants. Second, judges occasionally counseled victims by telling them that they should not tolerate violent

abuse, by suggesting counseling programs, or both. For some victims, this official affirmation that they did not deserve to be hit helped them to realize that the abuse was not something which they simply had to tolerate. It seems likely that the judges' conduct would be especially critical to those individuals, both victims and defendants, appearing in court for the first time.²¹

In this vein, the Attorney General's Task Force on Family Violence urged judges not to underestimate their ability to influence a defendant's behavior, noting that "Even a stern admonition from the bench can help to deter the defendant from future violence."²² As one judge told a defendant, "I don't care if she's your wife or not. A marriage license is not a hitting license. If you think the courts can't punish you for assaulting your wife, you are sadly mistaken."

Not surprisingly, the nonstranger violence study also found that the way a judge talks to the victim and defendant in court affects the victim's level of satisfaction with the justice system. Victims were more satisfied when judges were well-informed about domestic violence, provided referrals to shelters and other community organizations, and lectured defendants about the seriousness of their assaultive behavior.²³

Restrictions on pretrial release

The vast majority of defendants in domestic violence cases are released prior to trial, usually on their own recognizance. The victim is especially vulnerable during the pretrial period, when the defendant may try to retaliate for her role in having him arrested, or threaten her with more violence if she cooperates with prosecution.

The court can protect the victim during this period by restricting the defendant's access to her as a condition of pretrial release. Practitioners feel that this kind of protection is needed in most domestic violence cases. State laws commonly authorize the issuance of protection orders (also called restraining or stay-away orders) in civil court. In most States, civil and criminal relief can be sought simultaneously, and a civil protection order can help the victim to get the protection she needs during prosecution.

Some State statutes which provide for civil protection orders also authorize criminal court judges to issue protection orders as a condition of pretrial release in domestic violence cases. This is preferable in criminal cases because victims are not required to go through a whole separate process and bureaucracy in order to get the necessary protection while charges are pending.

Lerman notes that criminal court judges can issue protection orders even without specific statutory authority, since they have wide discretion to impose conditions on the release of any defendant.²⁴ When there is no enabling legislation for issuance of protection orders in criminal cases, judges may find it useful to consult civil protection order statutes for guidance on what to include in such orders.

In most jurisdictions, a probation agency is responsible for investigating the defendant's eligibility for ROR (release on recognizance) and the need to attach specific conditions to pretrial release. As part of this investigation, probation officers should contact the victim for information about her particular safety needs. The probation officer and victim should explore release conditions available to the court and conditions that the victim feels she needs to protect her safety, such as limited or no contact by the defendant, allowing the defendant only supervised child visitation, or the temporary removal of weapons from the household.

Some judges are reluctant to issue an order of protection that excludes a man from his own home, fearing that this may violate his constitutional rights. However, State supreme courts that addressed this issue have found that such conditions do not violate due process, even if the order is administered on an ex parte basis.²⁵

The importance of enforcing protection orders cannot be overemphasized. In some jurisdictions, critics have charged that the orders "aren't worth the paper they're written on." Indeed, an unenforceable order is worse than none at all, because it gives the victim the illusion that she has protection. Orders are most effective where violation constitutes a separate criminal offense, and police officers in the field can verify the existence, validity,

and terms of an order when a violation is alleged. But even if violation is not a criminal offense in and of itself, charges such as trespassing or disturbing the peace can often be applied in addition to civil contempt.

Protection orders, or restrictions on the defendant's contact with the victim, can be imposed as a condition of bail as well as ROR. In certain cases, the circumstances may warrant a high cash bail to make pretrial release unlikely. This action is appropriate in especially serious cases, cases where the defendant has continually threatened the victim with more violence upon his release, and cases where the defendant has reassaulted the victim in the past even though a protection order was issued.

Pretrial court appearances

If possible, defendants in all domestic violence cases should be required to appear in court at the first opportunity following arrest, preferably before pretrial release. This demonstrates to the defendant that domestic violence is considered serious criminal conduct. If the defendant will be released prior to trial, holding him until a court appearance gives the victim time to seek safe housing. This requirement is embodied in some State domestic violence statutes.

In States without legislation mandating appearance at arraignment, a change in court rules may be necessary to impose this requirement. The initial court appearance is the best time to issue an order of protection, because it eliminates the need to locate the defendant to serve him with the order, and to verify that service took place. The defendant should be informed about the specific terms of the order, and should be required to sign a statement indicating that he understands these conditions before he is released from custody. A copy of the order should be given to the defendant, the victim, and the local law enforcement agency.

Victim reluctance

Judges, along with police and prosecutors, frequently express frustration at the unwillingness of some battered women to "follow through" with prosecution. Victim reluctance raises some difficult issues.

To the extent that it results from intimidation by the defendant, reluctance is best addressed by protecting victims during the pretrial period. Reluctance may also stem from confusion, inadequate emotional or financial support, or lack of understanding about the process and end results of prosecution. In several courts, judges report that battered women are more willing to cooperate and testify when they receive information, emotional support, community referrals, and trial preparation from victim advocates who are assigned to each case.

There is considerable disagreement among experts regarding what action should be taken when victims are given protection and support, yet still refuse to testify. In some jurisdictions, victims are subpoenaed to give the justice system more control over prosecution and to demonstrate to the parties that the prosecutor is responsible for the case, thereby relieving pressure on the victim not to appear in court.²⁶ In other jurisdictions, subpoenas are issued to shield victims from pressure not to testify, but only if the victim so desires.

If a battered woman refuses to testify and is found in contempt, the judge can impose a disposition that addresses her needs, such as participation in a battered women's support group. Some experts argue that it is unfair to force all victims to testify, and that subpoenas are sometimes used to invoke inappropriate punitive measures against battered women.²⁷

Ford asserts that at least some battered women use the threat of prosecution and punishment as leverage on the defendant to secure an acceptable arrangement, such as separation or participation in batterer counseling.²⁸ For these women, a refusal to testify may not be placing them in greater jeopardy or wasting the system resources that were already expended on their cases, but may in fact signify that the criminal justice system has enabled them to end the abuse.

While followup data on one small sample of cases support this view,²⁹ further research on the long-term impacts of prosecution is needed to guide policies in this area. If subpoenas are issued in battering cases, they should be used to protect battered women, not to punish them.

Even when prosecution is clearly in the best interest of the victim and the community, cases can sometimes be tried successfully without forcing victim testimony. Corroborating evidence may be available in some cases. For example, testimony may be available from a police officer or family member who was an eyewitness to the event or its consequences.

Judges can also permit expert testimony from qualified authorities, who can speak generally about the nature of battering. An expert witness who has interviewed the victim can confirm that she is a battered woman and identify some of the reasons why she is not present to testify herself. Expert testimony has the added benefit of educating the judge and jury about some of the dynamics and complexities of domestic violence.³⁰

Sentencing

In the past courts often imposed lesser sanctions for domestic violence compared with violent crimes involving strangers. As one attorney observed:

Sentences in this area are very much lighter than comparable situations of stranger violence. It's very discouraging when...the sentence is so light that it's, in a sense, a final way of condoning the violence.³¹

Sentencing options and practices cover a wide range in domestic violence cases. In general, sentences should be aimed at holding offenders accountable, ending abusive behavior, and meeting the needs of victims and other family members. Multiple interventions are often appropriate. What "works" with one offender might fail completely with another, even in cases that are similar in many respects.

For example, some offenders comply with no-contact orders and court-ordered counseling because they are frightened by the prospect of serving time in jail, while others readily violate these orders, especially if they have gotten away with it before.

Fines can be imposed in accordance with State statutes. The amount of the fine, and the way fines are used, may be strictly defined by law. Sentences involving probation with a suspended jail or prison term are very common in domestic violence cases. Incarceration

tion is both appropriate and necessary in cases involving more serious violence, a long pattern of abuse, significant threat of continued harm if the offender were released, or failure at previous alternatives to incarceration.

Restitution should be considered in communities where restitution programs are available for crime victims. Offenders should be ordered to reimburse the victim for expenses resulting from the crime, such as lost wages; shelter costs; medical, counseling, and other treatment fees; and replacement costs of any destroyed property.³²

In an increasing number of jurisdictions, victim needs and preferences regarding sentencing are being communicated to the judge—sometimes as part of a probation agency's presentence investigation, a prosecutor's sentencing recommendation, or a formal victim impact statement.

Many battered women seek help in stopping the violence without incarcerating the abuser, particularly if they want to continue their relationship with the offender or must depend on the offender for financial support. Weekend or evening incarceration may be appropriate in cases involving less serious violence when the victim wants the offender to continue to work and support the family. Lerman notes that sentences should reflect victim wishes when this will not result in overly lenient penalties.³³

Special issues for sentences involving probation—Probation sentences can be extremely useful in domestic violence cases, particularly in communities with batterer intervention programs that accept referrals from the courts. Judges usually have considerable flexibility in establishing the specific conditions of probation. It is essential to place restrictions on the offender that will protect the victim and other family members. Protection orders that were issued as a condition of pretrial release can often be extended through the probationary period. The specific terms of an order should be determined based on the victim's particular safety needs.

Participation in counseling or other intervention programs can also be ordered as a condition of probation. Specially-designed programs for

batterers, aimed at ending their violent behavior, are available in a growing number of communities. Many batterer programs accept clients on probation who are referred by criminal courts.³⁴ Judges have found that these programs offer a useful dispositional alternative for many domestic violence cases, particularly in light of crowded prisons and jails. Some batterers need other kinds of intervention in addition to that which focuses on stopping violent behavior.

Treatment for alcohol or drug abuse is needed in many cases. When alcohol or drug problems exist, they usually must be addressed before the offender enters a specialized program for batterers, although there are some programs that can address both kinds of problems concurrently.

Although judges have found mediation to be an excellent forum for resolving some types of disputes, mediation is not an appropriate sentence for domestic violence offenders. Mediation requires the victim to participate in the offender's sentence and relies on the mutual goodwill and fairness of both parties in a situation where one party has consistently controlled and manipulated the other. Mediation or couples' counseling is appropriate in domestic violence cases only if both parties seek it voluntarily, and the batterer has already succeeded in ending his violent behavior. Court-ordered intervention should focus solely on the offender.

Court-ordered counseling and education for batterers

Specially designed programs for batterers are a recent and promising dispositional alternative for offenders in some domestic violence cases. The number of programs is growing rapidly; they were virtually nonexistent a decade ago, and now there are over 100 across the country.³⁵

The programs are working more and more with local courts. One recent nationwide survey of batterer programs by Pirog-Good and Stets-Kealey found that roughly one-third of all clients are sent by the court system.³⁶

Many people are skeptical about court-ordered counseling for batterers,

believing that counseling can only be useful if an individual participates voluntarily and truly wants to change his behavior at the outset. However, there is compelling evidence that court-ordered counseling is appropriate and, in many cases, effective in ending violent behavior.

Experts agree that batterers tend to deny or minimize the seriousness of their violent behavior and are unwilling to accept responsibility for the battering. As a result, batterers typically refuse voluntary treatment. By ordering an offender to counseling in lieu of incarceration, the courts give him a powerful incentive to enter and participate in the program.

While there is a dearth of research on batterer programs in general, there is some evidence that criminal justice referrals are effective. Pirog-Good and Stets-Kealey found that judges are the most likely referral source for programs with the highest completion rates.³⁷ The survey also indicated that clients referred by the criminal justice system may be more likely to stop further violence than clients who are referred by other sources, such as physicians and clergy.

Types of programs—The primary goal of batterer programs is virtually universal: to stop the violent behavior. There are a variety of program affiliations among batterer programs that work with the courts.

Programs for court-ordered batterers are constantly being refined as we learn more about the complexities of domestic violence and as professionals gain more experience in working with this difficult and challenging group of clients. Group counseling and educational programs are the two major alternatives designed specifically for batterers that are currently available to the criminal justice system.

Effectiveness—Because the field is still new, there have been no formal evaluations of the long-term effectiveness of batterer intervention programs. Fortunately, some promising research efforts in this area are currently underway.

There is some evidence of success. A study commissioned by the Texas State Senate examined the clientele and effectiveness of three different programs that counsel batterers. The

study found that the programs were effective in eliminating or reducing physical violence compared with precounseling levels in most cases, by the accounts of both the men and women involved.³⁸ Shepard found evidence that batterer counseling and education in Duluth, Minnesota, reduces abusive behavior and increases knowledge about the use of abuse as a means of controlling victims.³⁹

While these programs do have great potential in many cases, their limitations must also be recognized. It is important to note that, for many offenders, battering represents a complex, long-term behavior pattern that is not easily changed. The kinds of programs currently available to the courts are simply insufficient to change these patterns in some cases. As Ganley observed, "It is very likely that, as in the field of alcoholism, different approaches will be successful with different individuals."⁴⁰

Because of this reality, some courts now refer domestic violence offenders to professional counselors for an assessment session before ordering participation in a particular intervention program. When individual offenders are found to be inappropriate for available programs, the criminal justice system must impose other suitable sanctions.

Putting teeth in court orders: monitoring and enforcement—

Probation gives offenders a chance to avoid incarceration by meeting certain specified conditions, such as participation in a counseling program, compliance with a protection order, and no further use of violence. If an offender's compliance with these conditions is not monitored and he is able to violate them without facing any negative sanctions, the court order—indeed, the entire criminal justice process—has failed in its mission. Probation should be revoked when the offender fails to adhere to the conditions that were established by the courts. In short, the court order must have "teeth."

Monitoring compliance—In most jurisdictions, probation officers are responsible for monitoring compliance with the conditions of probation. The probation department must work with intervention programs in the community to: (1) establish ground rules for

offender participation in court-ordered programs, such as the fees required and number of absences permitted; and (2) permit a two-way flow of information between counselors and probation officers, so that both parties can be informed about program attendance, reincidence of violence, and changes in probationary status.

Probation policies should require that a revocation hearing before the judge is requested according to court rules when an offender continues his violent behavior, exceeds the maximum number of absences from court-ordered sessions, violates the terms of a protection order, or otherwise fails to comply with probation conditions.

In courts without probation agencies, some judges have been able to establish special procedures to monitor compliance in domestic violence cases. For example, a judge in one rural Washington State area requires probationers to return to court at regular intervals with evidence of attendance at counseling sessions.

Revoking probation—When a judge determines that an offender has violated the established conditions of probation, it is essential that the offender face some additional sanctions or requirements as a result. When probation is revoked, judges' sentencing practices vary a great deal based on the reason that the offender was brought back to court and the number of times the offender has failed in the past to comply with probation conditions.

In most cases, revocation should result in a period of incarceration, however brief, to let the offender know that the courts mean business. For example, a first-time offender who exceeded the maximum number of absences from counseling might be placed in jail for a short period of time—even a few days—and then placed on probation again and mandated back to counseling.

When there is a meaningful threat of revocation, many offenders do take the court orders seriously. A recent sample of over 400 cases referred to the House of Ruth batterer counseling program in Baltimore revealed that 70 percent of offenders ordered through supervised probation had completed the full program. It was well-known in this jurisdiction that judges had

jailed some domestic violence offenders for refusing to cooperate.

Conclusion

Changes in the criminal justice treatment of domestic violence have created a range of alternatives to respond to and control this particular form of violence. As new methods evolve, judges play a critical role in shaping the community response to domestic violence and responding to cases that enter the criminal justice system.

There are some basic ways that judges can be more effective in these cases, even under a variety of legislative frameworks. These include: restricting the defendant's access to the victim during the pretrial period; communicating judicial concern about domestic violence to both the victim and defendant; considering a range of dispositional alternatives in an effort to impose sentences that reflect both the seriousness of the crime and the needs of victims and other family members; and strictly enforcing court orders and conditions of probation.

In most criminal courts, judges have the tools available to establish these kinds of procedures. Judges in many communities have taken a strong stand against domestic violence. In Baltimore, Maryland, for example, the Chief Administrative Judge of the District Court sends all new judges to a local domestic violence project to receive a 1-day orientation and training session on domestic violence issues and procedures to be followed in domestic violence cases.

Judge William R. Sweeney, who was instrumental in establishing domestic violence reforms in St. Louis County (Duluth), Minnesota, summed it up this way: "Being a judge, you make a lot of important decisions on a case-by-case basis. Unless you're an appellate judge, you can't have that much impact on the community as a whole. This is one thing that I feel good about, like I've really done something for my community."

Notes

1. Data from the National Crime Survey found that 95 percent of all assaults on spouses or ex-spouses during 1973–77 were committed by men. U.S. Department of Justice, *Report to the Nation on Crime and Justice: The Data* (Washington, D.C.: Bureau of Justice Statistics, 1983), p. 21.

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