

# **EXHIBIT 63**

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**LAW SCHOOL TEACHING EXPERIENCE:**

- 1988 - present    **Lecturer in Domestic Violence Law & Director of Domestic Violence Practicum**, Berkeley Law (Boalt Hall School of Law), UC Berkeley. First law school seminar on this topic in US. Authored and published first textbook and teacher's manual on this topic, updated it regularly, used throughout US and in Taiwan (See Publications).
- Spring 2010      **Lecturer in Domestic Violence**, Legal Studies Dept. (undergraduates), UC Berkeley.
- Spring 2011      **Co-taught Girls, Women and the Criminal Justice System**, with criminologist Barry Krisberg, Berkeley Law School. Created course materials.
- Spring 1991      **Lecturer, Domestic Violence Law**, Golden Gate School of Law.

**ATTORNEY EXPERIENCE:**

- 2012 - present    **Co-Founder and Legal Director, Family Violence Appellate Project**, Berkeley. Created new non-profit agency housed at Berkeley School of Law with students and former student. Will appeal Ca. family law cases in which abused parents lose custody. Serve on board, raise funds, developed strategic plan. Will supervise student writing, work with pro bono appellate attorneys, educate family law bar and judges.
- 8/89 - 12/90  
& 7/92-10/93    **Staff Attorney/ Intern and Volunteer Coordinator**, Family Violence Law Center, Berkeley. Recruited, trained and supervised volunteers and interns. Interviewed battered women, drafted restraining orders, represented clients at hearings, dealt with Spanish-speaking clients. Advocated with DA's, mediators, police.
- 9/83 - 12/87      **Legal Advocacy Program Director**, Battered Women's Alternatives, Martinez. Drafted TRO's and represented clients at hearings. Trained and supervised attorney, paralegals, volunteers. Incorporated program, wrote grant proposals. Set up two branch offices. Trained police and sheriff personnel. Created liaison program with DA.
- 2/82-8/83        **Legal Program Coordinator**, Mid-Peninsula Support Network, Mt. View. Trained, supervised volunteers. Drafted TRO's and accompanied clients to court. Advocated with DA and law enforcement agencies, co-wrote police policies, trained police officers.
- 5/81 - 4/82       **Director, Domestic Violence Unit**, Legal Aid Society of Alameda Co, Oakland. Represented domestic violence victims in restraining order proceedings. Supervised law clerks. Trained attorneys, shelter workers, Oakland police. Wrote grant proposal creating So. Alameda Co. Domestic Violence Law Project.

**EDUCATION & CREDENTIALS:**

- 8/77 - 5/80       **Boalt Hall School of Law, UC Berkeley. J.D.** Highest honors in three courses, honors in most. Judicial extern spring '79. Admitted to bar Dec. 80.
- 9/71-6/75        **UC Santa Cruz, B.A. in Women's Studies.** College honors, Board honors, thesis honors. Co-founded major, served on its decision-making body, hired staff and faculty. Co-taught Introduction to Women's Studies.

## **Community College Teaching Credential, Law**

### **AWARDS:**

- Manuel P. Wiley Pro Bono Award (Ca. State Bar, 1993)
- Alameda County Women's Hall of Fame Award, for Justice (1994)
- PEACE Award, Sunshine Lady Foundation (North Carolina, 2000)
- Fay Stender Award, California Women Lawyers (2001)
- City of Berkeley Commission on the Status of Women, Outstanding Woman of Berkeley Award (2009)
- Lifetime Achievement Award, Ca. Partnership to End Domestic Violence (2009)

### **WRITING AND PUBLICATIONS:**

Co-author, Amicus Curiae Brief to Ninth Circuit Court of Appeals in *US v Kenia Munguia*, on behalf of Ca. Partnership to End Domestic Violence, regarding admissibility of expert and lay testimony on domestic violence in prosecution of battered woman for aiding abuser in drug crime. (2011).

How New Technologies are Changing Domestic Violence, 3(3) Family and Intimate Partner Violence Quarterly 271 (2011).

A Transformative Process: Working As a Domestic Violence Expert Witness, 24(2) Berkeley Journal of Gender, Law, and Justice 208 (2009).

Response to Christina Hoff Sommers in Chronicle of Higher Education, 8/10/09.

Admissibility of Hearsay Evidence Under the Excited Utterance Exception in Abuse Prosecutions, 1 Family & Intimate Partner Violence Quarterly 269-279 (2009) (with Anne Perry)

Co-author, Amicus Curiae Brief to Ca. Victim Compensation and Government Claims Board in claim of Cheryl Jones, on behalf of Ca. Partnership to End Domestic Violence, for over twenty years of wrongful incarceration. (2009) Pled guilty to killing husband, released on habeas corpus, retried and acquitted.

Co-author, Amicus Curiae Brief to US Supreme Court in *People v. Dwayne Giles*, along with DV LEAP, Legal Momentum, and Bingham McCutchen. Issue is whether forfeiture rule requires showing of intent to silence homicide victim. (see below re Ca. Supreme Court brief in same case). Court reversed conviction, but stated that domestic violence history very relevant to defendant's intent. 128 S.Ct. 2678 (2008).

Co-author, Amicus Curiae Brief to California Appellate Court in *In re Deborah Peagler on Habeas Corpus*. Appellate court issued Order to Show Cause 11/2/07, mentioning amicus brief, ordering secretary of Dept. of Corrections & Rehabilitation to show cause in evidentiary hearing why habeas relief should not be granted.

Co-author, Amicus Curiae Brief to California Appellate Court in *Maria Guijosa v. Rogelio Dominguez-Garcia*, arguing that trial court should not have summarily denied appellant's request for a temporary restraining order, and should at least have granted a hearing. Appellate court reversed, unpublished. (2007)

Co-author, Amicus Curiae Brief to California Appellate Court in *Yuka Nakamura v. John Marshall Parker*, arguing that trial court should not have summarily denied appellant's request for a temporary restraining order, and should at least have granted a hearing. Participated in oral argument. In published decision mentioning amicus brief, court of appeal reversed. 156 Cal.App.4<sup>th</sup> 327 (Cal.App., First Dist., 2007). Legislature enacted new Family Code section 6320.5, which requires stated reasons for denial of TRO's and the right to a hearing, effective 1/09.

*Domestic Violence: Benchbook for Criminal Courts*, Ca. Center for Judicial Education and Research, 1990, 1996, 1997, 2000 editions. (consulted on 2003 and 2007 editions) Curriculum for several statewide trainings.

Contributing Editor, *Violence Against Women* (Vol. 3) edited by Joan Zorza, reprints of articles in Domestic Violence Report and Sexual Assault Report, Civic Research Institute (2006).

"Access to Justice: Can Domestic Violence Courts Better Address the Needs of Non-English Speaking Victims of Domestic Violence?," 21 Berkeley Journal of Gender, Law & Justice 38 (2006) (originally presented at Pace University Law School think tank on domestic violence courts (2001))

Co-author, Amicus Curiae Brief to California Supreme Court in *People v. Giles*, arguing that the rule of forfeiture should be interpreted to allow prior statements by an unavailable domestic violence victim to be admitted in the prosecution of the alleged murderer of that victim, if it appears to the court that the victim's unavailability is due to the abuser's actions (2005). Decision, 40 Cal.4<sup>th</sup> 833 (Ca. 2007), held for this approach.

*Domestic Violence Law*, textbook, Austin & Winfield Publishers, 1996; West Group, 2001; West Group, 2005; West Group Supplement, 2008; West Group, 2009.

Teacher's Manual for *Domestic Violence Law*, West Group, 2001, 2005, and 2009.

Co-author, Amicus Curiae Brief to California Appellate Court in *Eldon Blumhorst v Haven Hills, Inc. et al*, arguing that it is not a denial of equal protection to exclude male victims of domestic violence from women-only shelters. Appellate Court affirmed due to lack of standing. 126 CA4th 993 (Cal.Ct.App. 2005)

Co-author, Amicus Curiae Brief to California Appellate Court in *In re Rosemary Dyer*, a habeas corpus petition under Ca. Penal Code § 1473.5, arguing that evidence of special circumstances did not preclude a history of battering by the decedent; thus homicide should have resulted in at most a manslaughter conviction. (2004) Appellate court remanded case to trial court for evidentiary hearing.

Contributing Editor, *Violence Against Women* (part 2) edited by Joan Zorza, reprints of articles in Domestic Violence Report and Sexual Assault Report, Civic Research Institute, 2004.

Co-author, Amicus Curiae Brief to California Supreme Court in *People v. Cornell Brown*, regarding admissibility of domestic violence expert testimony in the prosecution of a batterer; published decision referred favorably to the brief and upheld the use of such testimony, 33 Cal.4<sup>th</sup> 892 (2004).

Expert Witness Affidavit regarding gender as basis for domestic violence in *In re Rodi Alvarado* case, submitted by Alvarado's attorneys, Center for Gender and Refugee Studies at Hastings College of Law; landmark case concerns asylum application by a Guatemalan immigrant battered woman and is on the U.S. Attorney General's desk. Affidavit has been used in dozens of other asylum cases. (2003)

*Child Custody and Domestic Violence: A Call for Safety and Accountability*, with Drs. Peter G. Jaffe and Samantha Poisson, Sage Publications (2003).

Contributing Editor, *Violence Against Women* (part 1), edited by Joan Zorza, reprints of articles in Domestic Violence Report and Sexual Assault Report, Civic Research Institute (2002).

Foreword to *Convicted Survivors: The Imprisonment of Battered Women Who Kill*, by Elizabeth Dermody Leonard, State University of New York Press (2002).

"Statutes Creating Rebuttable Presumptions Against Custody to Batterers: How Effective Are They?," 28(2)*William Mitchell L. Rev.* 601 (2001). (excerpted in Mahoney, Calmore, and Wildman, *Social Justice: Professionals, Communities, and Law*, West Group, 2003)

"Domestic Violence is a Public Health Issue," *Health Law News*, vol. 14, no. 3, page 7 (March 2001).

"Domestic Violence is a Medical Issue," *Journal of Gender Specific Medicine*, vol. 3, no. 5, pages 22-24, July/Aug 2000.

*Serving the Public: Domestic Violence Curriculum for Court Employees*, Ca. Center for Judicial Education and Research (2000).

"Custody and Visitation Trends in the US in Domestic Violence Cases," *Journal of Aggression, Maltreatment, and Trauma*, Haworth Press, vol. 3, no. 1, pages 329-343, ed. by Robert A. Geffner, Peter G. Jaffe, and Marlies Suderman (2000).

"Expert Witnesses in Domestic Violence Trials: Policy Pros and Cons for Prosecutors," with Rhonda Martinson and Carlos Monagas, for Battered Women's Justice Project (1999).

"The Legal System's Response to Children Exposed to Domestic Violence," *The Future of Children*, Packard Foundation, vol. 9, no. 3, pages 67-83, winter 1999.

"What Every Family Law Attorney Should Know About Domestic Violence," with Garrett C. Dailey, MCLE column in *Ca. Lawyer* magazine, 12/99.

*Domestic Violence: What Every Judge Should Know, A Judicial Education Curriculum*, Ca. Center for Judicial Education and Research (1998).

"Domestic Violence Primer," Mandatory Continuing Legal Education column in 3/98 *California Lawyer* magazine.

"Child Custody and Full Faith and Credit," in *Full Faith and Credit: A Passport to Safety*, edited by Johnson and Websdale, National Council of Juvenile and Family Court Judges (1997) (with Deborah Goelman, Billie Lee Dunford-Jackson, and Roberta Valente).

*Manual on Domestic Violence*, Ca. Women Lawyers Educational Foundation, 1997, 2001, and 2009 updates (original edition with Susana Martinez)(2009 edition published by Ca. Partnership to End Domestic Violence).

"*The Custody Trial of the Century*," research/editing for article about OJ Simpson case, published in *Today* magazine, Nat. Council of Juvenile and Family Court Judges (1997) (with Susana Martinez).

*The Impact of Domestic Violence on Your Legal Practice*, Chapter on Violence Against Women Act, American Bar Association (1996).

*Working Together to End Domestic Violence*, Mancorp Publishing Inc., with Peter Jaffe, David Wilson, and Jack Sandler (1996).

Consulted on appellate and amicus briefs in case where batterer used restraining order to obtain visitation of battered mother's child even though there was no relationship between batterer and child. *Barkaloff v. Woodward*, Appellate court reversed and remanded. 47 Cal.App.4<sup>th</sup> 393 (Ca. App. 1996).

Associate Editor, *Domestic Violence Report*, national bimonthly journal published by Civic Research Institute, Inc., New Jersey, 1995 through fall 2009.

*Manual on California Domestic Violence and Family Law for Victim Advocates in US Marine Corps* (1995).

*Domestic Violence and Children: Resolving Custody and Visitation Disputes*, a national judicial curriculum, Family Violence Prevention Fund (1995).

*Domestic Violence Law Reader*, annual editions 1988-1995, for courses at Boalt and Golden Gate Law Schools. Published in 1996 by Austin and Winfield Press (now part of University Press of America) as

*Domestic Violence Law: A Comprehensive Overview of Cases and Sources*; later published in 2001, 2005 and 2009 by West Group (see above).

Columns on recent cases involving domestic violence, *Synergy*, Nat. Council of Juvenile and Family Court Judges's newsletter, 1994 and 1995.

Amicus brief, *Ireland v. Smith* (Mich. case involving domestic violence custody issues), for Battered Women's Justice Project and other groups (1994).

Domestic Violence and Stalking: A Comment on the Model Anti-Stalking Code Proposed by the National Institute of Justice, Battered Women's Justice Project (1994).

"Domestic Violence Custody Issues: A Strategy Paper," Ca. Alliance Against Domestic Violence (1994).

"Digest: Criminal Cases Concerning Domestic Violence", *Juvenile and Family Law Digest*, Nat. Council of Juvenile and Family Court Judges, Vol. 25, No. 1A (1993).

"Wie in den USA mit 'privater Gewalt' gegen Frauen juristisch umgegangen wird," in "Sag mir, wo die Männer sind...", speech on US legislation about domestic violence, in proceedings from Berlin, Germany conference on violence against women, 9/93.

Issue Paper: "Arrest and Prosecution in Domestic Violence Cases," Family Violence Prevention Fund and Nat. Council of Juvenile and Family Court Judges (unpublished manuscript) (1992).

Chapter on Custody and Mediation Issues, *Domestic Violence in Civil Court Cases: A National Model for Judicial Education* (also edited 4 other chapters), Family Violence Prevention Fund (1992).

*Domestic Violence: The Law and Prosecution*, 1990 and 1991 editions, published by Family Violence Project. Curriculum for statewide training sponsored by Ca. DA's Assoc.

*Domestic Violence : The Crucial Role of the Judge in Criminal Court Cases: A National Model for Judicial Education*, with Janet Carter and Candace Heisler, published by Family Violence Prevention Fund (1991).

Updates to *Domestic Violence: A Training Curriculum for Law Enforcement* (2 vols), published by Family Violence Project (1990).

Book review of *Justifiable Homicide* by Cynthia Gillespie, *Berkeley Women's Law Journal* (1990).

"Joint Custody and Mandatory Mediation: The Danger for Victims of Domestic Violence" with Charlotte Germane and Margaret Johnson, 1(1) *Berkeley Women's Law Journal* 175 (1985).

"Joint Custody as a Statutory Presumption: California's New Civil Code Sections 4600 and 4600.5", 11(2) *Golden Gate University Law Review* 485 (1981).

*Domestic Violence Law Manual*, State Bar of Ca., 1981, 1988: research, drafting, editing.

#### **NON-FORENSIC CONSULTING:**

(1983 - 88) Judicial Council, Ca. Admin. Office of the Courts - drafted pleading forms for restraining orders, produced videos

(1992 - 93) Alameda Co. Commission, Gender Bias in the Courts - planned training for judges

(1993) Consulted with Berlin, Germany's Senator for Work and Women regarding US domestic violence laws, how to organize and run a restraining order clinic, etc.

(1994-present) Member, Advisory Committee for national Battered Women's Justice Project, Reading, PA

(1995- approx. 2003) Appointed to Alameda County Family Violence Council, past chair of legislative committee, past member of judicial training committee

(1995) Consulted with statewide Family Court Services directors in formulating protocol regarding domestic violence

(1996- present) Consultant to Ca. Center for Judicial Education and Research in developing comprehensive judicial and court employee curricula on domestic violence, including production of a videotape

(1996-97) Consultant to Family Court Services, Ca. Judicial Council, developing statewide guidelines for supervised visitation programs

(1996) Evaluator for Arizona statewide teleconference on implementing new procedures regarding domestic violence restraining orders

(1997) Assisted in planning and attended national meeting of Domestic Violence Law teachers hosted by ABA Commission on Domestic Violence, Washington, DC

(1998) Consulted with Women Lawyers Association and Centre Against Violence in Ulaanbaatar, Mongolia for two weeks on draft of new domestic violence law, training, public education, etc. Spoke at seminar, lobbied members of Parliament

(1998-present) Steering Committee, Ca. Coalition for Battered Women in Prison, now Free Battered Women, a project of Ca. Coalition for Women in Prison

(1998) Assisted in planning and spoke at West Coast regional conference on Teaching Domestic Violence in Law Schools, hosted by ABA Commission on Domestic Violence

(2000, 2001) Grant reviewer, Violence Against Women Office of US DOJ, Civil Legal Assistance Grants from sites around the US

(2001) Consulted with three Japanese judges regarding restraining order laws and practices in California

(2001 to 2005) Member, Board of Ca. Alliance Against Domestic Violence

(2001) Consulted with Superintendent of National Police Agency from Tokyo, Japan regarding domestic violence arrest policies, statistics, and statutes in California

(2001) Consulted with Asia Foundation-sponsored delegation of Korean women regarding domestic violence laws and practices in California

(2002) Consulted with Minister of Women's Affairs from Cambodia, visiting the US courtesy of Asia Foundation.

(2003) Consultant to Nevada Network Against Domestic Violence, creating a curriculum and handbook for domestic violence experts working with prosecutors, and for prosecutors working with experts. (See Speeches, Workshops, and Trainings, below)

(2004 -2005) Member of group formulating Alameda Co. Family Justice Center, Oakland, Ca.

(2005 – 2007) Member, Board of Ca. Partnership to End Domestic Violence

(2008- present) Member, Amicus and Governmental Affairs Committee, Ca. Partnership to End Domestic Violence

(2011-2012) Consulted with Chief Justice Earl Warren Institute on Law and Social Policy, Berkeley School of Law, UC Berkeley, on projects involving Violence Against Women in Ca. (domestic violence, sexual assault, and stalking), funded through Ca. DA's Assoc. -- surveying current services provided by Victim

Witness advocates and gaps in services, planning statewide summit meeting on crime victims' rights and services, creating curriculum for Victim Witness advocates

#### **EXPERT WITNESS WORK:**

(1993) Submitted expert declaration in battered woman's case against Oakland Housing Authority for wrongful eviction.

(1994) Testified as expert witness in custody case involving domestic violence. Judgment against battered woman reversed on appeal. Alameda County, Ca.

(1994) Interviewed convicted federal prisoner, wrote expert report concerning how domestic violence affected commission of crime.

(1995) Consulted with prosecutor in domestic violence case and prepared expert testimony, Mariposa County, Ca.

(1995) Testified as expert witness in felony prosecution of batterer. Convicted of several counts. Alameda County, Ca.

(1995) Trial consultant in prominent divorce case involving prenuptial agreement and spousal support. San Mateo County, Ca.

(1996) Testified as expert witness in case brought by Dept. of Soc. Services regarding batterer working at child care center. Alameda County, Ca.

(1996) Consulted on, prepared expert witness testimony in tort case against ex-boyfriend who stalked and harassed partner after breakup. Settled. Sacramento County, Ca.

(1997) Interviewed battered woman co- defendant, prepared expert report in felony case. Plea to minor offense accepted. San Francisco, Ca.

(1997) Consulted with prosecutor in preparation for testifying in felony domestic violence case where victim recanted. Settled. Alameda County, Ca.

(1997) Testified for prosecution as expert in three-strikes domestic violence case where victim recanted. Defendant convicted. Mariposa County, Ca.

(1997) Interviewed battered woman charged with abusing husband, wrote expert report. Charges dismissed. San Francisco, Ca.

(1997) Interviewed battered woman charged with abusing husband, wrote expert report. Plead to disturbing the peace. Santa Clara County, Ca.

(1997-8, 2001-2) Consulted with attorneys suing Sonoma County Sheriff in wrongful death of battered woman by her husband, testified at deposition. Settled for \$1 million just before I took the stand.

(1997) Testified for prosecution in case where felony domestic violence victim recanted in front of grand jury, later changed story. Convicted. Alameda County, Ca.

(1997) Testified for prosecution in case where misdemeanor domestic violence victim refused to testify. Convicted. Contra Costa County, Ca.

(1998) Consulted on, wrote expert report, deposed in tort case where batterer sued victim, then she counter-sued. Contra Costa County, Ca. Settled.



(1998) Testified for prosecution in case where misdemeanor domestic violence victim recanted. Hung jury. Mariposa County, Ca.

(1998) Testified for prosecution in multiple felony domestic violence/sexual assault case. Convicted. Solano County, Ca.

(1998) Reviewed documents, wrote expert declaration in case where battered woman pled guilty to drug sales with batterer, in support of habeas petition.

(1998) Consulted on, wrote expert report, testified in case where battered woman killed husband and pled self-defense. Convicted of second degree murder. Alameda County, Ca.

(1998) Testified for prosecution in felony case where battered teenager recanted and did not appear to testify. Convicted; mistrial; pled guilty before second trial. Alameda County, Ca.

(1998) Testified for prosecution in felony case where victim of domestic violence reunited with batterer but later cooperated with prosecution. Convicted of assault and rape. Upheld on appeal. Alameda County, Ca.

(1998) Testified for prosecution in case where defendant was charged with killing girlfriend. Convicted of second degree murder. Alameda County, Ca.

(1998) Testified for prosecution in case where victim of domestic violence recanted. Convicted of two counts of battery. Solano County, Ca.

(1998) Consulted on, wrote expert report in case where battered woman charged with assaulting live-in boyfriend. Plead to two misdemeanors, no jail time. Napa County, Ca.

(1998) Testified for prosecution in case where battered woman reunited with husband after criminal court issued no contact order. Convicted of spousal abuse and violating order. Alameda County, Ca.

(1999) Testified for prosecution in felony case where battered woman living with batterer at time of trial, refused to testify, and had used physical force in incident with him. Acquitted. Solano County, Ca.

(1999) Testified for prosecution in three-strikes case where battered woman changed story re previous incident. Convicted on 9 out of 10 counts. San Francisco, Ca. Upheld on appeal.

(1999) Consulted with prosecution on case where defendant charged with stalking and domestic violence. Pled guilty. Placer County, Ca.

(1999) Interviewed victim, wrote expert report in case where wife sued husband for domestic violence injuries. Settled. Alameda County, Ca.

(1999) Testified for prosecution in felony case where battered girlfriend recanted at trial. Convicted of cohabitant abuse. Solano County, Ca.

(1999) Interviewed victim, wrote expert report, deposed in case where girlfriend sued ex-boyfriend for domestic violence injuries. Settled. Santa Clara County, Ca.

(1999) Interviewed victim in preparation for expert report in divorce case where batterer sought spousal support. Settled. Alameda County, Ca.

(1999) Interviewed defendant charged with first degree murder of her stepmother, after being coerced by abusive boyfriend. Wrote report. Pled guilty to second degree murder. San Mateo County, Ca.

(1999) Interviewed defendant charged with first degree murder of husband, wrote report. She pled guilty to manslaughter. Merced County, Ca.

(1999) Interviewed defendant charged with assaulting husband, wrote report. She pled guilty to disturbing the peace. Santa Clara County, Ca.

(2000) Read materials in case where wife charged with assaulting husband, convinced prosecutor to dismiss charges, since wife was actually the victim. San Francisco, Ca.

(2000) Testified for prosecution in case where defendant charged with raping and beating former wife. Convicted on several felony counts. Alameda County, Ca.

(2000) Testified for prosecution in case where defendant charged with assaulting girlfriend, who recanted. Convicted. Marin County, Ca.

(2000) Testified twice for prosecution in case where girlfriend recanted at first, later testified against batterer. First time hung jury, second time convicted of felony domestic violence. Marin County, Ca.

(2000) Consulted and wrote memo for prosecution on use of expert testimony in federal case where defendant charged with bringing victim of abuse across state lines. Pled guilty. Oakland, Ca.

(2000) Consulted, wrote report in case where wife charged with throwing juice at husband. Convinced prosecutor to drop charges based on primary aggressor analysis. San Francisco, Ca.

(2000) Consulted, wrote report in case where wife charged with assaulting husband. Convinced prosecutor to drop charges based on primary aggressor analysis. San Francisco, Ca.

(2000) Consulted on restraining order case in which batterer's attorney wanted to know how to get client back into home. Contra Costa, Ca.

(2000) Testified for prosecution in stalking case where girlfriend continued to see defendant after they broke up. Acquitted. Oakland, Ca.

(2001) Interviewed defendant and wrote report in case where battered woman charged with assaulting partner. Charges dismissed. San Francisco, Ca.

(2001) Interviewed defendant, consulted with defense attorney, testified in case where battered woman charged with killing ex-boyfriend. Acquittal on first degree, hung jury on second. Testified again at 402 hearing and at second trial, for second degree murder. Prepared for third trial; defendant pled guilty to manslaughter in exchange for 6 years. San Francisco, Ca.

(2001) Testified for prosecution in felony case in which boyfriend charged with assaulting girlfriend, claiming self-defense. Convicted. Marin County, Ca.

(2001) Interviewed defendant, wrote report, testified in case where battered woman charged with assaulting partner. Acquitted on one count, hung jury on second. Charges dismissed. San Francisco, Ca.

(2001) Interviewed defendant and wrote report in case where battered woman charged with assaulting husband. Charges dismissed. San Francisco, Ca.

(2001) Interviewed defendant and wrote report in case where battered woman charged with assaulting husband. Charges dismissed. San Francisco, Ca.

(2001) Interviewed plaintiff, wrote report, deposed in case where battered woman sued husband for domestic violence. Settled. Contra Costa, Ca.

(2001) Testified for prosecution in case where man charged with assaulting female partner and she recanted. Convicted of multiple felony counts. San Francisco, Ca.

(2001) Interviewed defendant in case where wife charged with felony assault of husband, wrote report. Defendant pled guilty to misdemeanor. Solano County, Ca.

(2001) Interviewed plaintiff and wrote report in tort case in which battered woman sued ex-boyfriend. Settled favorably to plaintiff. Santa Clara County, Ca.

(2001) Interviewed defendant and wrote report in case in which battered teen charged with slapping ex-boyfriend. Charges dismissed. San Francisco, Ca.

(2001) Interviewed defendant and took notes in case where wife charged with misdemeanor domestic violence assault. Defendant diverted into counseling. Alameda County, Ca.

(2001) Interviewed defendant and wrote report in case where battered woman charged with assaulting boyfriend. Charges dismissed. San Francisco, Ca.

(2001) Interviewed defendant and wrote report in case where battered woman charged with hitting husband. Charges dismissed. San Francisco, Ca.

(2001) Interviewed defendant in case where battered woman charged with hitting husband. Prosecutor dismissed charges based on conversation with me. San Francisco, Ca.

(2001) Interviewed battered woman in address confidentiality program who was seeking restraining order against her husband. She decided not to pursue case. San Mateo, Ca.

(2002) Interviewed defendant in case where man charged with domestic violence against his male partner. Wrote report: even though not domestic violence case, charges should be dismissed; they were. San Francisco, Ca.

(2002) Interviewed defendant in case where battered woman charged with attempted murder of her husband. Testified in 402 hearing and at trial. Convicted. Upheld on appeal, though my testimony not at issue: 2004 WL 639850, unpublished. San Mateo County, Ca.

(2002) Read materials and consulted in case where battered woman charged with murder of her boyfriend. Charges reduced from first degree murder to manslaughter based on my testimony at preliminary examination. She pled to manslaughter, credit for time served, released. Stanislaus County, Ca.

(2002) Interviewed defendant and wrote report in case where battered woman charged with assaulting her husband. She pled to EPO violation. San Francisco, Ca.

(2002-2003) Interviewed defendant twice in case where battered woman charged with murder of her boyfriend. She pled guilty to voluntary manslaughter. San Francisco, Ca.

(2002) Interviewed woman charged with assaulting boyfriend, took notes. Recommended dismissal. Charges dismissed. San Francisco, Ca.

(2002) Read materials in case where man charged with assaulting girlfriend, wrote memo to his attorney. Mono County, Ca.

(2002) Read materials in case where mother charged with assisting husband in rape of daughter, consulted with defense attorney, wrote report, testified at preliminary exam, one of major charges dropped. Defendant later pled guilty to child endangerment in exchange for short time in prison. Stanislaus County, Ca.

(2002) Read materials in case where battered woman charged with attempted murder of boyfriend, interviewed defendant, wrote report. She pled to brandishing weapon, counseling, diversion. Released. San Francisco, Ca.

(2003) Read materials in TRO case, interviewed plaintiff battered woman, took extensive notes, in preparation for testifying; judge ruled testimony not necessary. Alameda County, Ca.

(2003) As part of Habeas Project, read materials and interviewed battered woman in Ca. prison since 1988 for homicide of her husband. Wrote report. She was released in 2004. San Joaquin County

(2003) As part of Habeas Project, read materials and interviewed battered woman in Ca. prison for homicide of her boyfriend. Wrote letter to Parole Board, who recommended release. After Governor vetoed this, wrote report for habeas corpus petition. Governor eventually allowed her to be paroled in 2007. Los Angeles County.

(2003) Interviewed battered woman charged with scratching husband. Wrote report. Prosecution deferred six months. Marin County, Ca.

(2003) Interviewed battered woman facing probation revocation for stabbing father of her child. Wrote report. Probation officer decided not to revoke her probation after all. San Francisco, Ca.

(2003 - 04) As part of Habeas Project, read materials and consulted with attorneys for battered woman in Ca. prison for homicide of her husband, his mother, and his sister. Fresno County.

(2003) Interviewed battered woman charged with attempting to murder father of her child, wrote report. She pled to misdemeanor assault and was released. San Francisco, Ca.

(2003-04) As part of Habeas Project, read materials and consulted with attorneys for battered woman in Ca. prison for homicide of her husband. Also co authored amicus brief; see publications. Los Angeles County

(2003) Testified for prosecution in three strikes domestic violence case where victim recanted. Guilty on all counts. Upheld on appeal: 2005 WL 100844 (unpublished). Marin County, Ca.

(2003-04) Worked with Center for Gender and Refugee Studies at Hastings College of Law, SF, to produce 14-page affidavit of my testimony regarding gender as basis for domestic violence in prominent asylum case pending before Dept. of Justice.

(2004) Interviewed battered woman charged with felony child abuse, consulted with defense attorney, wrote report. DA offered very favorable plea bargain, which defendant accepted. San Francisco, Ca.

(2004) Interviewed battered woman charged with breaking windows in batterer's door. Wrote report. She was given misdemeanor diversion. San Francisco, Ca.

(2004) Interviewed battered woman charged with assaulting husband, consulted with defense attorney. Hung jury resulted in judge dismissing charges. San Francisco, Ca.

(2004) Read materials in case where battered woman charged with attempted murder of husband, interviewed defendant, wrote report and consulted with the testifying expert; jury found client not guilty. Monterey County, Ca.

(2004) Read materials in case where battered woman charged with felony grand theft, interviewed defendant. Prosecutor dropped charges due to my involvement. San Francisco, Ca.

(2004) Consulted with defense attorney and another expert witness in case where same battered woman was charged with similar crimes in another county. Marin County, Ca.

(2004) Read materials and wrote declaration in case where abused mother requested attorney's fees from father after she lost custody to him. Court ordered father to pay part of fees. Napa, Ca.

(2004) Interviewed woman charged with slapping boyfriend after he grabbed her; wrote report. Client pled guilty to disturbing the peace, received a fine and 20 hours counseling. Santa Clara County, Ca.

(2005) Interviewed abused wife and testified on her behalf in restraining order case. Order denied due to lack of physical abuse/overt threats. Alameda County, Ca.

(2005) Interviewed woman charged with misdemeanor assault of her batterer. Prosecutor dismissed charges based in part on my assessment of the situation. San Francisco, Ca.

(2005) Interviewed woman charged with felony assault of her batterer, consulted with defense attorney. San Francisco, Ca.

(2005) Interviewed battered woman charged with shooting husband's computer, consulted with defense attorney. Prosecutor dismissed charges based in part on my assessment of the situation. San Francisco, Ca.

(2005) Co-counsel in case where battered wife sought three year restraining order against husband. Worked with expert witness. Order granted. San Jose, Ca.

(2005) Testified for prosecution in case where defendant charged with stabbing girlfriend in foot and she recanted at preliminary examination, failed to appear at trial. Convicted. Alameda County, Ca.

(2006) Interviewed battered woman in jail charged with multiple felonies against batterer, wrote report. Case dismissed due in part to DA hearing that I was writing report. Alameda County, Ca.

(2006) Interviewed battered woman seeking extension of 3 year restraining order against husband. Case settled. Alameda County, Ca.

(2006) Testified for prosecution in case where defendant charged with abusing girlfriend and shooting her brother. Convicted of several felonies. Alameda County, Ca.

(2006) Testified for prosecution in case where defendant charged with raping and beating girlfriend. Convicted of beating her and TRO violation. San Francisco, Ca.

(2006) Testified for prosecution in case where defendant charged with raping and beating girlfriend. Convicted. Alameda County, Ca.

(2006) Testified for prosecution in case where defendant charged with killing girlfriend. Convicted of second degree murder. Court discussed my testimony on appeal and upheld its appropriateness: 2009 WL 499183 (unpublished). Alameda County, Ca.

(2006) Interviewed battered woman charged with felony assault of her husband, consulted with her attorney. She pled to misdemeanor. San Francisco, Ca.

(2006) Testified for prosecution in case where defendant charged with assaulting girlfriend, TRO violation, criminal threats. Convicted on all three counts. Marin Co., Ca.

(2006) Interviewed battered woman charged with stealing jewelry, wrote letter for sentencing court. Defendant released with credit for time served, probation, based largely on my letter. Marin Co., Ca.

(2006) Consulted on case where battered woman charged with assaulting police officer who was arresting her abuser. San Francisco, Ca.

(2006) Consulted on case where female battered police officer terminated while male batterer officer was not. San Joaquin County, Ca.

(2007) Wrote affidavit in asylum case where Guatemalan battered woman not married to batterer. She obtained U visa so did not proceed with asylum petition. San Francisco, Ca.

(2007) Interviewed battered woman who pled to stabbing husband, wrote sentencing report. Report lowered her prison sentence by one year. Marin County, Ca.

(2007) Consulted in case where woman sought asylum based on domestic violence. Los Angeles, Ca.

(2007) Testified in first degree murder trial of battered woman charged with killing husband, wrote report. Convicted of manslaughter. Upheld on appeal: 2009 WL 499151 (unpublished). Alameda County, Ca.

(2007) Interviewed battered woman charged with fraudulent purchases of vehicles. Wrote report, attended sentencing. Sentenced to one year county jail, five years felony probation. Alameda County, Ca.

(2007) Interviewed battered woman charged with hitting her partner and wrote report, consulted with defense attorney. Charge was dismissed. Marin County, Ca.

(2007) Consulted in case where woman sought asylum based on domestic violence. Asylum was granted, based in part on offer of proof re what I would have testified to. San Francisco, Ca.

(2007) Testified for prosecution in case where wife recanted spousal rape, sodomy, and battery allegations. Convicted of battery, acquitted of spousal rape and sodomy. Marin County, Ca.

(2007) Interviewed battered woman and testified in support of her request for restraining order, which was granted. Marin County, Ca.

(2007) Interviewed battered immigrant woman charged with two felonies for assisting batterer in robbery, consulted with defense attorney, wrote memo, testified at first sentencing hearing. Defendant pled to misdemeanor theft. San Francisco, Ca.

(2007) Interviewed battered woman charged with assaulting partner, consulted with defense attorney. Acquitted of all counts. San Francisco, Ca.

(2007) Interviewed woman charged with assaulting partner; determined it was not a domestic violence case. Acquitted based on self-defense. Marin County, Ca.

(2007) Interviewed woman convicted of involvement in death of her brother-in-law, for habeas petition. Wrote report. Released on parole 12/09. Central Ca. Women's Facility, Chowchilla, Ca. (San Joaquin County)

(2007) Interviewed battered woman convicted of murdering man, for habeas petition, consulted with her attorney on many occasions. Central Ca. Women's Facility, Chowchilla, Ca. (San Francisco County)

(2007) Consulted in case where battered woman charged with killing another woman. San Francisco, Ca.

(2008) Interviewed battered woman charged with scratching husband, wrote report, discussed case with defense and prosecutor. Charges dismissed. Alameda County, Ca.

(2008) Interviewed battered woman charged with assisting in a bank robbery, edited report drafted by my assistant, consulted with defense attorney. She was released pre-trial and her case was severed from co-defendants, both based on my report. Pled guilty to aiding felon post-crime, put on probation. San Francisco, Ca.

(2008) Interviewed battered woman charged with embezzling funds from friend, edited report drafted by my assistant. She pled guilty in 2012 to permitting dependent adult to suffer: community service, probation, restitution, reduced to misdemeanor in 3 years. San Francisco, Ca.

(2008) Interviewed battered woman charged with stabbing cohabitant. Wrote memo re self-defense. Charges dismissed. San Francisco, Ca.

(2008) Interviewed battered woman charged with slapping cohabitant. Pled guilty to misdemeanor battery, other charges dismissed. Solano County, Ca.

(2008) Twice interviewed battered man charged with raping girlfriend, consulted with defense attorney. Testified at 402 hearing and at trial. Found guilty of stalking, but not rape. San Francisco, Ca.

(2008) Read affidavit in case where battered woman from Mexico sought asylum, wrote my own affidavit. (Seton Hall Law School, Newark, NJ)

(2008) Consulted in case where Mexican woman battered by father sought asylum.

(2008) Interviewed battered man in restraining order and dissolution case, consulted with his attorney. San Mateo County, Ca.

(2008) Interviewed battered woman charged with stabbing male partner, consulted with her attorney. San Francisco, Ca.

(2008) Read documents in case where man charged with murdering his girlfriend, consulted with his attorney. San Francisco, Ca.

(2008) Read documents in case where woman charged with assisting former boyfriend in assaulting new boyfriend, wrote declaration in support of severing her case from boyfriend's. San Francisco, Ca.

(2008) Wrote report in case where wife arrested for assaulting husband, charges dismissed, she sued city/police for false arrest. Court sustained motion for summary judgment. Vancouver, Wa.

(2008) Wrote declaration in case where woman from El Salvador petitioned for asylum based on domestic violence. Testified in 2010. San Francisco, Ca.

(2008) Wrote declaration in case where woman from Honduras petitioned for asylum based on domestic violence. Judge granted petition based in part on my declaration. San Francisco, Ca.

(2008) Wrote declaration in case where woman from Guatemala petitioned for asylum based on domestic violence. Asylum granted without my testimony. San Francisco, Ca.

(2008) Consulted, prepared testimony in case where woman from Guatemala petitioned for asylum based on domestic violence. Judge granted asylum for mother and three children, based in part on my report. Newark, NJ

(2008) Interviewed battered woman charged with felony assault of husband, requiring stitches. Charges dismissed after prosecutor heard outline of my planned testimony. San Francisco, Ca.

(2009) Interviewed battered woman charged with selling drugs, wrote report. San Francisco, Ca.

(2009) Interviewed battered woman charged with pushing husband, wrote report. Prosecutor dismissed charges based on my report. San Mateo, Ca.

(2009) Interviewed battered woman charged with felony assault of boyfriend through biting. Wrote report. Charges dismissed. San Francisco, Ca.

(2009) Wrote declaration in case where battered Kenyan woman applied for asylum based on domestic violence. It was granted. San Francisco, Ca.

(2009) Wrote declaration in case where woman from El Salvador applied for asylum based on domestic violence. It was granted. San Francisco, Ca.

(2009) Interviewed battered woman charged with homicide of boyfriend's daughter, wrote report, testified in 402 hearing. She accepted a plea. Kern County, Ca.

(2009) Interviewed abused woman in custody case, wrote report. Settled favorably to wife. Santa Clara County, Ca.

(2009) Testified in family law case where battered woman alleged to have scratched husband, based on report I wrote in criminal matter involving same incident where charges dismissed. Alameda County, Ca.

(2009) Interviewed immigrant battered woman for family law case under Hague Convention, wrote report and testified. Judge ruled no grave risk in ordering children back to home country. San Mateo County, Ca.

(2009) Testified in family law case where joint legal custody had proven to be problematic due to history of domestic violence. Alameda County, Ca.

(2009) Interviewed battered woman charged with possession of property stolen by boyfriend/abuser. Pled to minor offense. Santa Cruz County, Ca.

(2009) Interviewed battered woman denied welfare benefits, testified at administrative law hearing. Benefits granted. Alameda County, Ca.

(2009) Interviewed abused woman in custody case, wrote declaration, testified at trial. Judge declined to issue restraining order against mother, and changed father's sole custody to joint custody (mother's goal). Alameda County, Ca.

(2009) Read documents in asylum case where woman beaten by husband. Declined to testify as not gender-based. Washington state,

(2009) Wrote declaration in case where woman from Guatemala applied for asylum based on domestic violence. Judge granted petition in 2011. New York, NY.

(2009) Interviewed battered woman charged with stealing jeans after abusive boyfriend ordered her to do this, wrote report. Charge reduced to misdemeanor based on my report, she pled. Marin County, Ca.

(2009) Interviewed battered woman charged with assaulting ex-husband and trespassing on his property. Wrote report. Pled to trespass. Santa Cruz County, Ca.

(2009) Testified for prosecution in case where husband charged with assaulting wife. Convicted of stalking, corporal injury, and vandalism. Marin County, Ca.

(2009) Interviewed abused woman charged with DUI, wrote report, testified. Convicted. Marin County, Ca.

(2010) Testified for prosecution in case where man charged with sexual assault against girlfriend. Convicted of five felonies and violation of restraining order. Solano County, Ca.

(2010) Interviewed abused inmate convicted of killing husband for habeas petition, wrote report. Chowchilla, Ca.

(2010) Interviewed abused woman charged with shoplifting, wrote report. Based in part on report, prosecutor offered plea to lesser charge, she accepted. Marin County, Ca.

(2010) Interviewed abused inmate convicted of killing father, wrote report. Oregon Governor denied clemency petition.

(2010) Interviewed abused woman charged with felony assault on cohabitant. Case diverted, defendant ordered to counseling and community service. San Francisco, Ca.

(2010) Interviewed man charged with felony assault against male partner, wrote report. Pled in exchange for felony probation, no jail time. Alameda County, Ca.

(2010) Interviewed abused woman charged with felony assault of boyfriend. Charges dismissed based in part on my involvement. San Francisco, Ca.



(2010) Interviewed abused woman charged with assaulting boyfriend, wrote report. Pled to misdemeanor assault. Marin County, Ca.

(2010) Interviewed alleged batterer police officer and his wife to determine if her recantation testimony at Police Review Commission hearing was credible. Testified on his behalf; charges were held to be unfounded. San Francisco, Ca.

(2010) Interviewed woman charged with drug sales in concert with abusive husband, wrote report. San Francisco, Ca.

(2010) Reviewed documents in tort case in which boyfriend was sued by girlfriend for allegedly running over her foot with his car. Settled. Alameda County, Ca.

(2010) Interviewed abused woman charged with assaulting father of her child. Charges dismissed based on my opinion that she was the victim. San Francisco, Ca.

(2010) Interviewed abused woman whose husband had obtained TRO against her, wrote report. Judge dismissed TRO. Contra Costa County, Ca.

(2011) Interviewed abused wife who signed legal documents under duress from husband. Settled. San Mateo County, Ca.

(2011) Consulted with defense attorney in case where woman charged with first-degree murder of boyfriend. Convicted of manslaughter. Alameda County, Ca.

(2011) Reviewed materials, testified in case where man charged with murdering cohabitant/boyfriend. Hung jury, based on my testimony (2<sup>nd</sup> degree v. manslaughter). Testified again at next trial, manslaughter verdict, based on my testimony re heat of passion. San Francisco, Ca.

(2011) Interviewed battered woman charged with felony assault of husband, consulted with attorney. She pled guilty to lesser offense for shorter sentence. Santa Clara County, Ca.

(2011) Interviewed abused woman being sued by ex-partner in suit to partition property. Testified at arbitration hearing. San Francisco, Ca.

(2011) Interviewed battered woman charged with attempted murder of ex-boyfriend. She pled guilty to non-strike felony, one year county jail. San Francisco, Ca.

(2011) Wrote declaration for battered woman from Guatemala in deportation proceedings, prepared testimony. Chicago, Ill.

(2011) Wrote declaration for battered woman from El Salvador in deportation proceedings. Houston, TX

(2011) Testified for battered woman defendant charged with assaulting ex-boyfriend. Acquitted on two counts, found guilty on one. San Francisco, Ca.

(2011) Interviewed battered woman charged with murdering fiancé. Based on my report, prosecution offered plea to voluntary manslaughter, she accepted. San Joaquin County, Ca.

(2011) Interviewed battered woman charged with aiding and abetting pimp/boyfriend in prostituting other women, consulted with her attorney; she pled to one count of felony assault. San Joaquin County, Ca.

(2011) Interviewed battered woman charged with scratching husband and throwing tennis shoe at him, wrote report. Charges dismissed. Solano County, Ca.

(2011) Read materials and wrote report in case in which man arrested for domestic violence is suing police in federal court. Defendants' motions for summary judgment granted. San Mateo County, Ca.

(2011) Interviewed battered woman from Africa for VAWA self-petition based on abuse by two husbands, wrote report. San Francisco, Ca.

(2012) Interviewed abused woman in custody battle with ex-husband, wrote report. . Judge ruled my testimony inadmissible as no proper foundation had been laid. Contra Costa County, Ca.

(2012) Wrote declaration for battered woman from Guatemala in deportation proceedings. Eloy, AZ.

(2012) Read documents and consulted in case where wife of man charged with abusing her claimed she was not battered woman. San Francisco, Ca.

(2012) Testified in 402 hearing outside presence of jury in case where husband charged with assaulting wife, dissuading witness from testifying, and endangering child, who was present. After my testimony, he pled to false imprisonment, sentenced to 3 years probation, batterer's program, etc. San Francisco, Ca.

(2012) Read documents and wrote declaration for Guatemalan battered woman applying for asylum. San Francisco, Ca.

(2012) Read documents and wrote declaration for Mexican battered woman in removal proceedings, testified in immigration court via telephone. San Antonio, Tx.

(2012) Read documents and wrote declaration for Honduran battered woman applying for asylum. Connecticut.

(2012) Read documents, interviewed defendant, and consulted with defense attorney in case where battered woman charged with killing husband. Due to my input, prosecutor offered short sentence for manslaughter and defendant accepted. Alameda County, Ca.

### **LEGISLATIVE EXPERIENCE:**

- (1983 - 1996) Co-chair, California Alliance Against Domestic Violence Policy and Research Committee

- (1996 - present) Member, Ca. Partnership to End Domestic Violence, Public Policy and Research Committee

- Drafted, lobbied for, and/or testified for many bills, including the following (all of these were signed and enacted):

(1984) SB 1472 (Watson) - law enforcement response to domestic violence

(1985) Extension of Restraining Orders from 90 days to 1 year

(1986) Amendment to Ca. PC 273.5 to clarify definition of "corporal injury resulting in a traumatic condition"

(1985-90) Various custody bills, culminating in AB 2700 (Roybal-Allard), requiring judges to take domestic violence into account in custody cases

(1988) Established a right to separate mediation sessions in domestic violence cases

(1991-92) SB 804 (Boatwright), amending Uniform Child Custody Jurisdiction Act to deal explicitly with domestic violence cases

(1992) AB 2200 (Roybal-Allard) and (1993) AB 187 (Solis), redefined marital rape (PC 262) to virtually parallel definition of non-marital rape (PC 261)

(1993) AB 224 (Speier) extended duration of Emergency Protective Orders to 5 court days or 7 calendar days

(1993-94) SB 59 (McCorquodale) amended 19 Penal Code sections to include marital rape

(1994) AB 356 (Snyder) clarified judges' ability to limit visitation in domestic violence cases

(1995) SB 208 (Solis) clean-up bill on marital rape

(1996-99) AB 800, AB 200, and AB 840 (Kuehl) rebuttable presumption against custody to batterers. Signed by Governor 9/99, now Family Code 3044.

(2000) SB 1318 (Alpert) expand state-sponsored confidential address program to enable more victims of domestic violence and stalking to qualify

- Consulted by legislators in the formulation of many bills, including the following (representative sample); testified on many of these:

(1994) SB 52X (Watson) ongoing training on domestic violence mandated for law enforcement personnel (became SB 132 in 1995, signed by Gov.)

(1994) AB 167 (Friedman, Alpert, Solis) funding for shelters and vertical prosecution programs (signed into law 1994)

(1994) SB 3 (Hayden) ending domestic violence diversion program (became SB 169 in 1995, signed by Gov.)

(1996) SB 1444 (Solis) comprehensive domestic violence cleanup bill involving marital rape and other issues (signed by Gov.)

(1996) AB 2647 (Kuehl) juvenile court and Child Protective Services recognition of domestic violence's overlap with child abuse (signed by Gov.)

(1997) SB 564 (Solis) resolves problems from *Barkaloff v. Woodward* case regarding ability of battered women to get visitation orders (signed by Gov.)

(1997-98) AB 795 (Honda) funding for supervised visitation programs

(1999) AB 840 (Kuehl) rebuttable presumption against custody to batterers

(2001) SB 927 (Escutia) funding and training for interpreters in civil domestic violence cases

(2003) SB 265 (Kuehl) clarifying/strengthening rebuttable presumption against custody to batterers

(2006) SB 1402 (Kuehl) deleting requirement that victims of marital rape report within one year or otherwise corroborate it before rape can be prosecuted

- Testified at June 1993 hearing sponsored by Women's Caucus of Legislature, Sacramento, to present legislative ideas
- Testified at 1987 hearings sponsored by Senate Task Force on Family Equity, Los Angeles, to present legislative ideas
- Consulted for and testified at hearings held by Ca. Judicial Council Committee on Gender Bias in the Courts, regarding battered women, resulting in new legislation
- Presented at First Women's Legislative Summit regarding China Women's Conference and Domestic Violence, Sacramento, Ca. 1995, televised statewide

(2011) Testified before Assembly Select Committee on Domestic Violence regarding working as a domestic violence expert on habeas cases, special hearing on Incarcerated Victims of Domestic Violence

## **MEDIA EXPERIENCE:**

### Television

1992: Panelist on "Sonya Live," a talk show on CNN - marital rape

1995: Interviewed at Women's First Legislative Summit, Sacramento, for evening news

1997: Half-hour interview for Burlingame Cable TV program on AB 200 (rebuttable presumption against custody to batterer)

1997: Panelist on Burlingame Cable TV program on domestic violence and custody issues

### Radio

KPFA, KQED (Michael Krasny show), Voice of America (broadcast to East Asia), KPCC, & other stations, several occasions

### Press Conferences

1992 - present: Appeared with various legislators in Sacramento, Conferences resulting in many articles and television news coverage

1993: Berlin, Germany, Appeared with Berlin's Senator for Work and Women during conference on Violence Against Women

### Print Media

Quoted in numerous articles appearing in *Oakland Tribune*, *San Francisco Chronicle*, *Daily Journal*, *The Recorder*, *Neues Deutschland*, *Emma*, *San Diego Union Tribune*, *East Bay Express*, *San Jose Mercury News*, *Daily Cal*, *Fresno Bee*, *Contra Costa Times*, *California Lawyer Magazine*, *Prelaw Magazine*, *Entertainment Weekly*, *SF Weekly*, and others

### Videos

1988: Consulted on and appeared in two training videos produced by Ca. Judicial Council, "Domestic Violence: The Crime That Tears Families Apart" and "Mediation: The Crucial Factor"

1997-98: Consultant on Ca. Judicial Council training video on domestic violence dynamics for new judges

1999: consulted on and interviewed in "A Paradigm Shift: From Control to Respect," about history of domestic violence movement, produced by Humboldt State University faculty and students

2007: interviewed in "Crime After Crime," documentary by Yoav Potash about Debbie Peagler, battered woman seeking habeas relief after serving over 20 years in prison

2008: Interviewed in Vita Lusty documentary regarding battered women in prison, "Til Death Do Us Part" (Pathfinder Pictures)

## **OTHER ACTIVITIES:**

1980 - present Re-Evaluation Counseling Teacher, Support Group Leader, Workshop Organizer & Leader - RC teaches people listening and counseling skills which they can use with each other to better understand each other and themselves, and build relationships across such barriers as gender, race, age, or class.

## **SPEECHES GIVEN, WORKSHOPS & TRAININGS LED:**

- (1986) National Coalition Against Domestic Violence, St. Louis - Custody issues
- (1988) Ca. Judges Education & Research Commission training for family law judges, Monterey - Restraining orders
- (1989) Member, Family Court Services statewide training committee - Planned content of trainings for mediators
- (1990) Keynote panelist, statewide Family Court Services conference, San Diego - Mediation in domestic violence cases
- (1991) Ca. District Attorney's Association, Millbrae - Recent legislation
- (1991) Alameda Co. Municipal Court Judges - Domestic violence criminal issues
- (1992) Nat. Council of Juvenile & Family Court Judges, invitational meeting, Palm Springs, Ca. - Arrest and prosecution issues
- (1992, 93, 96) Ca. State Office of Criminal Justice Planning, many sessions throughout Ca. for staff and administrators of domestic violence programs - Domestic violence legal issues
- (1992) Alameda County Mayor's Conference on Domestic Violence, Oakland - Recent legislation
- (1992) UC Berkeley, Women's Conference - Recent legislation
- (1992) Ca. Alliance Against Domestic Violence, statewide conference, San Francisco - Custody issues
- (1992-95) John F. Kennedy Law School, Walnut Creek - guest speaker in family law attorneys class on domestic violence issues
- (1993) Courts and Communities: national conference on domestic violence sponsored by Nat. Council of Juvenile and Family Court Judges and Family Violence Prevention Fund, San Francisco - new legislative developments
- (1993) German National Conference on Preventing Violence Against Women, Berlin - US legislation (published in Germany, 1998)
- (1994) Requested by Gov. Wilson to be part of State Crime Victims' Summit hearings in Los Angeles
- (1994) Invited to participate in first peer discussion meeting of US domestic violence law teachers, Washington, DC
- (1994) Ca. Alliance Against Domestic Violence, Ventura & Riverside - Trainings for domestic violence advocates on custody legislation
- (1994) Family Violence and the Courts, statewide conference sponsored by Ca. Judicial Council, LA - planning committee, panel on custody issues
- (1994) Marin Co. domestic violence training for attorneys - custody issues
- (1994 & 1995) Alameda Co. Adult Probation Officers Domestic Violence Task Force: recent legislation, coordinated community response to domestic violence
- (1994) Ca. Alliance Against Domestic Violence statewide conference, Los Angeles - custody and other family law issues

- (1994) Bay Area Business and Professional Women's conference, Oakland - recent and pending domestic violence legislation
- (1995) Ca. State Bar Women Lawyers conference, Monterey - domestic violence issues
- (1995) San Francisco Women Lawyers Alliance - pending domestic violence state legislation
- (1995) Panelist on National Teleconference for judges and attorneys sponsored by Nat. Council of Juvenile and Family Court Judges regarding domestic violence issues in custody cases
- (1995) San Diego Domestic Violence Council - domestic violence in family court
- (1996) Alameda County Family Law Bench and Bar - recent legislation concerning domestic violence
- (1996) Domestic Relations Judicial Conference, Supreme Court of Arizona - UCCJA issues, Use of mental health professionals in domestic violence custody cases
- (1996) Conference on Family Violence co-sponsored by AMA and ABA, Palm Springs, CA. - domestic violence in professional education
- (1996) Boalt Hall School of Law - Homeless Outreach Project - domestic violence laws and local resources
- (1996) Santa Cruz County Criminal Justice Council - defense issues involving battered women charged with crimes
- (1996) UCSF Fresno - keynote speaker, domestic violence training for medical and legal professionals
- (1996) Boalt Hall School of Law - Family Law Society - domestic violence laws
- (1996) Chico, Ca. - Violence Prevention conference - domestic violence laws
- (1996) Alameda Co. Judges Training - definitions of domestic violence, recent case law
- (1996) Santa Clara Domestic Violence conference - marital rape laws
- (1997) Ca. Judicial Council, Reunion Conference, Oakland - keynote speech: update on domestic violence cases and statutes from 1996
- (1997) Ca. Family Law Judges Institute, Los Angeles - domestic violence and visitation issues
- (1997) County-wide training for attorneys and domestic violence advocates, Ukiah, Mendocino County - domestic violence laws and legislation
- (1997) County-wide Domestic Violence conference, Hanford, Kings County - keynote speech
- (1997) Junior League, San Francisco - domestic violence legislation
- (1997) Assoc. of Certified Family Law Specialists, Napa, Ca. - domestic violence, custody, and visitation
- (1997) Statewide domestic violence conference for advocates - how the legislative process works; support groups for domestic violence workers; domestic violence laws and legislation - Sacramento
- (1997) Stanford Law School - domestic violence laws, pending legislation
- (1997) County-wide domestic violence conference, Santa Cruz - keynote speaker

(1997) County-wide training for domestic violence advocates, Santa Cruz - domestic violence laws and legislation

(1997) International conference on children who witness domestic violence, London, Ontario, Canada - domestic violence and custody in US; (proceedings to be published 1998)

(1997) Basic family law training for new judges, CJSP, Dana Point, Ca. - domestic violence and custody/visitation issues

(1997) Domestic violence legal training for several dozen domestic violence advocates, North Lake Tahoe, Ca.

(1997) Yolo County Domestic Violence Conference - Legislative Update, Woodland, Ca.

(1997) National College of District Attorneys - Recent Ca. Cases and Legislation, Los Angeles, Ca.

(1997) Domestic Violence Conference - Legislative Update, San Diego, Ca.

(1997) Northern California Family Court Services Directors - panel on use/abuse of power: domestic violence and mediation, Burlingame, Ca.

(1997) Los Angeles Probation Dept. - domestic violence issues and laws.

(1997) Statewide Office of Family Court Services staff - training for custody evaluators on domestic violence laws, Monterey, Ca.

(1997-98) Alameda County Office of Family Court Services staff - training for custody evaluators on domestic violence laws, Oakland, Ca.

(1998) American Association of Law Schools - domestic violence courses and issues in law schools, San Francisco, Ca.

(1998) Contra Costa County Office of Family Court Services - training for custody evaluators, special masters, and attorneys on domestic violence laws, San Ramon, Ca.

(1998) Ca. Center for Judicial Education and Research (CJER) - training for family law judges on Domestic Violence Prevention Act issues, new legislation, cases, San Diego, Ca.

(1998) National Women and the Law Conference - teaching domestic violence law, San Francisco, Ca.

(1998) Santa Clara County training for custody evaluators on domestic violence laws, Santa Clara, Ca.

(1998) Ca. School of Professional Psychology training for custody evaluators on domestic violence laws, Alameda, Ca.

(1998) Nat Assoc of Social Workers conference, Ca. chapter - Domestic Violence Laws, Manhattan Beach, Ca.

(1998) Contra Costa County Child Protective Services staff - California domestic violence laws, Walnut Creek, Ca.

(1998) Contra Costa judges - California domestic violence laws, Martinez, Ca.

(1998) Minor's Counsel training - overview of domestic violence dynamics, San Diego, Ca.

(1998) County-wide domestic violence conference - Call to Action speech, Shasta County, Ca.

(1999) Domestic Violence laws - Queen's Bench, San Francisco, Ca.

- (1999) Using Experts in Prosecuting Batterers - San Francisco District Attorney's Office, Ca.
- (1999) Overview of domestic violence laws for volunteers at A Safe Place Shelter, Oakland, Ca.
- (1999) Recent appellate cases, Ca. District Attorney's Association, Domestic Violence Prosecution Seminar, San Francisco, Ca.
- (1999) Recent appellate cases, Judicial Council of Ca. Domestic Violence Task Forces Reunion Conference, Oakland, Ca.
- (1999) The Use of Experts in Domestic Violence Cases, Women's Worlds 99 Conference in Tromso, Norway
- (1999) New Domestic Violence Cases and Laws, Statewide Ca. Coalition for Battered Women, Los Angeles, Ca.
- (1999) State and federal legal update, Regional Community Policing Institute conference, Sacramento, Ca.
- (1999) Domestic Violence Custody Laws in the US, International Conference on Children Exposed to Domestic Violence, Vancouver, British Columbia
- (2000) Team-taught pilot-test of domestic violence curriculum I wrote for court employees, published by Ca. Center for Judicial Education and Research. Costa Mesa, Ca.
- (2000) Civil statutory and case law update, Seventh Annual Family Violence and the Courts conference, Los Angeles, Ca.
- (2000) Panel on Family Code 3044 Issues (Rebuttable Presumption Against Custody to Batterers), Regional Family Court Services training conference, Emeryville, Ca.
- (2/01) Debated with Cathy Young, conservative columnist and writer, on current trends in domestic violence policies, Federalist Society, Boalt Hall School of Law, Berkeley, Ca.
- (4/01) Two Steps Forward, One Step Back, panel sponsored by Boalt Hall Women's Association. Spoke about future of domestic violence laws and policies in next four years. Boalt Hall School of Law, Berkeley, Ca.
- (5/01) What Every Judge Should Know, half-day training for new judges about domestic violence at Judicial Institute, sponsored by CJER, Los Angeles, Ca.
- (5/01) Panel on Family Code 3044 issues, statewide conference on Family Violence and the Courts, Judicial Council of Ca., Los Angeles, Ca.
- (5/01) Led workshop on preventing burnout through using Re-Evaluation Counseling, same conference.
- (5/01) Serving the Public, one-day domestic violence training for Los Angeles court employees using curriculum I authored via CJER (see Publications).
- (5/01-6/01) Co-led one-day policy and legislative trainings for domestic violence advocates in several sites around Ca., sponsored by Ca. Alliance Against Domestic Violence.
- (6/01) Presented Custody and Visitation Statutes and Cases in the US at International Conference on Children Exposed to Domestic Violence, London, Ontario, Canada.



(6/01) Discussant for presentation by Durham Domestic Violence Project (Durham, Ontario, Canada) at above conference.

(6/01) Serving the Public, two one-day trainings on domestic violence for court employees from Sacramento, Placer, and San Joaquin counties, using curriculum I authored (see Publications).

(9/01) Recent Domestic Violence Developments in Family and Juvenile Law, training for appellate judges from various states, National Council of Juvenile and Family Court Judges, Reno, Nevada.

(11/01) "Access to Justice: Can Domestic Violence Courts Better Address the Needs of Non-English Speaking Victims of Domestic Violence?", think tank presentation at Pace University Law School, White Plains, New York.

(2/02-7/02) Guiding Survivors Through the Legal Process, fifteen trainings around California for domestic violence advocates, through Ca. Institute on Human Services, Sonoma State University.

(2/02) "Statutes Creating Rebuttable Presumptions Against Custody To Batterers: How Effective Are They?," Hastings Women's Law Journal Symposium, Hastings College of Law, San Francisco, Ca.

(3/02) State Laws Relating to Custody and Visitation in Domestic Violence Cases, 2002 Family Court Services Statewide Educational Institute, Long Beach, Ca.

(4/02) Serving the Public, domestic violence training for all court employees in Mendocino County, Ca. using curriculum I wrote for Ca. Center for Judicial Education and Research.

(9/02) Identifying the Dominant Aggressor in Domestic Violence Cases, training for SF District Attorney's Office deputies, Victim Witness staff, interns; with Alana Bowman, co-trainer.

(10/02) Evidentiary Issues in Domestic Violence Cases, talk at Boalt Hall School of Law.

(1/03) Dynamics of Domestic Violence and Role of Expert Witness in Cases Where Battered Women Have Killed Their Batterers, training by Ca Coalition for Battered Women in Prison, San Francisco, Ca.

(2/03 - 3/03) Legislative Update Trainings, Ca. Alliance Against Domestic Violence, Oakland and Sacramento, Ca., with Alana Bowman, co-trainer.

(6/03 & 4/04 & 6/05) Prosecuting Domestic Violence Cases: The Use of Expert Witnesses in Domestic Violence Prosecutions in Nevada, two and a half day training, with Nevada Network Against DV & Nevada Advisory Council for Prosecuting Attorneys, Reno & Las Vegas, Nv. (see Non Forensic Consulting, above).

(9/03) Family Law Statutes Related to Domestic Violence, Family Law 2003: A Training for Advocates of Low-Income Clients, Admin. Office of the Courts, San Francisco, Ca.

(10/03) Panelist, Connecting the Dots: Creating a Multi-cultural, Multi-disciplinary Approach to Domestic Violence, first annual conference of Alameda County Domestic Violence Collaborative, San Leandro, Ca.

(10/03) Panelist: Bar Topics involving Domestic Violence, lunchtime presentation organized by STOP DV, Boalt Hall student group, as part of Domestic Violence Awareness Week, UC Berkeley, Ca.

(9/04) Panelist: Recent Research on Custody, Visitation, and Mediation in Cases Involving Domestic Violence, Family Violence and the Courts Conference, San Francisco, Ca.

(4/07) Trainer, Use of Experts in Domestic Violence Cases, and Comments on South Africa's Domestic Violence Act, Cape Town, South Africa

(8/07) Panelist: Working Effectively with Expert Witnesses on Intimate Partner Battering and Its Effects, Ca. Habeas Project Legal Team Training, San Francisco, Ca.

(9/07) Panelist: Use of Expert Witnesses in Domestic Violence Prosecutions, conference by Canadian Assoc. of Provincial Judges, American Judges Assoc., and British Columbia Assoc. of Provincial Court Judges, Vancouver, B.C.

(2/08) Keynote Speaker: Challenges and Victories for Battered Immigrant Women, Family Violence Conference, Merced, Ca.

(4/08) Keynote Speaker, Child Custody Cases Involving Domestic Violence: Rebuttable Presumption Statutes, Nevada Network Against Domestic Violence training and regional meeting, Las Vegas, Nevada

(10/08) Keynote Speaker, "Never Give Up: Jessica Gonzales v. US," Annual Domestic Violence Awareness Month Luncheon, Las Vegas, Nevada

(3/09) Rihanna and Chris Brown: A Domestic Violence Expert's Perspective, Berkeley Law School, UCB, Berkeley, Ca.

(4/09) Custody Statutes and Effects of Domestic Violence on Children, Court Appointed Special Advocates training, Carson City, Nevada

(6/09) Panelist, Family Court Crisis: A Closer Look at Problems and Solutions, Center for Judicial Excellence, Oakland, Ca.

(6/09) Panelist, International teleconference put on by Jewish Women International and Nat. Assoc. of Social Workers, Men's Groups Lawsuits Against Battered Women's Shelters

(7/09) Training for Staff and Students on Working with Domestic Violence Survivors as Clients, East Bay Community Law Center, Berkeley, Ca.

(10/09) Rape of Intimate Partners and Prosecutorial Responses, Ca. District Attorney's Assoc. and Chapman University School of Law, Orange, Ca.

(10/09) Protecting Domestic Violence Survivors and Their Children, Practicing Law Institute and Ca. State Bar, statewide webinar to train pro bono attorneys in restraining order hearings, San Francisco, Ca.

(11/09) Custody Statutes and Effects of Domestic Violence on Children, training for Court Appointed Special Advocates, Guardians ad Litem, domestic violence advocates, and others, Elko, Nevada

(5/10) Problems with How Family Courts Handle Cases with Domestic Violence Allegations and Some Suggested Solutions, Panelist at Day-Long Conference, Oakland, Ca.

(6/10) Nuts and Bolts of Domestic Violence Law, webinar, Public Interest Clearinghouse, Ca.

(7/10) History and Analysis of *Abbott v Abbott* (US Supreme Court, 2010), regarding international child abduction and domestic violence, to Boalt faculty.

(10/10) Gave power point talk and led workshop on wording and implementation of Indonesia's domestic violence statute to advocates and attorneys, Surabaya (Java Timur), Indonesia.

(11/10) Panelist, Domestic Violence Family Law Issues, Family Law Section of the Alameda County Bar Association, Oakland, Ca.

(3/11) Panelist, Symposium on African American Girls and Young Women in the Juvenile Justice System, Berkeley School of Law, UC Berkeley, Ca.

(9/11) Workshop Co-leader: Introduction Domestic Violence Advocates Serving as Domestic Violence Expert Witnesses, Ca. Partnership to End Domestic Violence, Sacramento, Ca.

(9/11) Keynote speaker: The Jessica Lenahan (Gonzales) Story – Domestic Violence as a Violation of International Human Rights (with Ms. Lenahan), Ca. Partnership to End Domestic Violence, Sacramento, Ca.

(10/11) Panelist: Reproductive Justice and Domestic Violence, Berkeley School of Law, UC Berkeley, Ca.

(10/11) Guest speaker: Legal Response to Domestic Violence (power point slides), large public health course, UC Berkeley, Ca.

(10/11) Panelist: Working as a Domestic Violence Expert on Habeas Cases, Berkeley School of Law, UC Berkeley, Ca.

(11/11) Panelist: Current Issues in Domestic Violence Practice, MCLE training for Family Law Section of Alameda County Bar Assoc., Oakland, Ca.

(April and May 2012) Panelist in two New Laws webinars, Jessica Lenahan (Gonzales) v. US: Implementation, Litigation, and Mobilization, produced by Ca. Partnership to End Domestic Violence.

# **EXHIBIT 64**

## **MATERIALS REVIEWED**

### **Email Correspondence:**

- Emails from Ross Mirkarimi to Christina Flores and vice versa in 2007, 2008, and 2009
- Emails from Eliana Lopez to Ivory Madison and vice versa over many years
- Emails from Ivory Madison to and from undisclosed others from her email address at Red Room Omnimedia Corporation from 12/31/11 through 1/7/12
- Emails from Eliana Lopez to and from Callie Williams 1/4/12 and 1/5/12

### **Text Messages:**

- Ross Mirkarimi and Linnette Peralta, 1/4/12-1/12/12
- Ross Mirkarimi and Callie Williams, 1/8/12-4/16/12
- Ross Mirkarimi and Eliana Lopez, 12/28/11-1/13/12

### **Documents from San Francisco Police Department, Sheriff's Department, District Attorney:**

- Chronological Report of San Francisco Police Department Investigation starting 1/4/12
- Statement of Ivory Madison to SFPD 1/4/12
- Statement of Abraham Mertens to SFPD 1/11/12
- SFDA interview with Ivory Madison 1/11/12
- Warrant of Arrest Issued 1/13/12 by Judge Richard A Kramer
- DA Warrant Issued 1/13/12
- Field Arrest Card 1/13/12
- FAX cover sheet from SFPD Domestic Violence Unit to La Casa 1/13/12
- Incident report by Captain K Gorwood 1/17/12
- Property Transfer Receipts from SFSD to SFPD, each dated 1/20/12
- Statement of Christina Flores to SFPD 1/22/12

### **Court Orders, Transcripts of Court Hearings:**

- 1/13/12 - Emergency Protective Order
- 1/19/12 - Court Order to Undersheriff to Transfer Firearms to Custody of SFPD
- 1/19/12 – Arraignment of Ross Mirkarimi, issuance of stay away order over objection of Ross Mirkarimi and Eliana Lopez
- 1/26/12 – Ross Mirkarimi's motion to remove or modify stay away order
- 2/24/12 – Ross Mirkarimi's motion to remove judge based on prejudice
- 2/27/12 – DA's motions to admit 1/1/12 videotape of Eliana Lopez, allow testimony from Christina Flores
- 2/29/12 – Eliana Lopez's motions to exclude 1/1/12 videotape, dismiss District Attorney's office, quash subpoena duces tecum for records of Ivory Madison's work emails
- 3/2/12 and 3/5/12 - Testimony of Christina Flores at 402 hearing

- 3/6/12 – Reference to motion regarding change of venue
- 3/7/12 – Records produced in response to above subpoena duces tecum
- 3/9/12 – Testimony of Nancy K. D. Lemon at 402 hearing
- 3/12/12 – Court releasing jury as case resolved
- 3/12/12 – Ross Mirkarimi pled guilty
- 3/19/12 – Ross Mirkarimi sentenced

### **Documents Filed With SF Ethics Commission:**

- Written Charges of Official Misconduct filed 3/21/12
- Sheriff Ross Mirkarimi's Opening Brief signed 5/7/12
- Declaration by Callie Williams
- Declaration by Mayor Ed Lee
- Declaration by Adult Probation Director Wendy Still
- Declaration by Interim Sheriff Vicky Hennessy
- Declaration by SFPD Inspector Richard Daniele
- Declaration by Paul Henderson and Exhibits
- Declaration by Emin Tekin
- Declaration by Linnette Peralta Haynes
- Declaration by Lenilyn de Leon
- Declaration by Ross Mirkarimi
- Declaration by Ivory Madison
- Declaration by Abraham Mertens

### **Video Recordings:**

- Eliana Lopez, recorded by Ivory Madison 1/1/12
- Ross Mirkarimi giving speech at swearing-in ceremony 1/8/12
- Ross Mirkarimi speaking to media prior to being booked 1/13/12
- Ross Mirkarimi speaking to media after being sentenced 3/19/12
- Ross Mirkarimi speaking to media after talking to Mayor Lee 3/20/12
- Ross Mirkarimi speaking to Milk Club 4/17/12
- Ross Mirkarimi interview with KGO TV aired 5/23/12
- Eliana Lopez interview with KGO TV aired 5/22/12 (parts 1 and 2)
- Ross Mirkarimi speaking to District 5 Democratic Club 6/6/12
- Ross Mirkarimi on street on a Sunday (date unknown, post-ethics commission hearing)

### **Written News Articles and Transcripts of Interviews with Media:**

- Statements made by Ross Mirkarimi to reporters: 1/9/12 (SF Gate), 1/13/12 (KQED Blog), 1/25/12 (SF Gate), 1/27/12 (SF Gate), 2/8/12 (SF Gate), 2/23/12 (SF Gate), 3/14/12 (SF Gate)
- Sheriff Mirkarimi Sworn In Under Awkward Cloud, 1/9/12, by Rachel Gordon, SF Chronicle

- KQED News 1/13/12, DA to Charge Mirkarimi with 3 Misdemeanor Counts: Domestic Violence, Child Endangerment, Dissuading a Witness
- SF Chronicle 1/25/12 by John Cote, Mirkarimi Meets with Lee, Says He Won't Step Down
- SF Chronicle 1/27/12 by Jaxon Van Derbeken, Judge Refuses to Lift Mirkarimi Stay-Away Order
- Judge Allows Sheriff Ross Mirkarimi To See Son, 2/8/12, SFGate.com blog
- Mirkarimi Lawyer Seeks to Bar Wife's Video, 2/23/12, SF Chronicle
- Mirkarimi's Next Challenge: Paying the Lawyers, 3/14/12, SF Chronicle, by Philip Matier and Andrew Ross
- SF Bay Citizen April 12, 2012, "Mirkarimi Speaks Out," by Matt Smith
- Transcript of Interview of Ross Mirkarimi on KQED Radio – 4/18/12
- Transcript of Talk by Ross Mirkarimi to Bernal Heights Democratic Club 4/19/12
- SF Bay Guardian 4/19/12: "This was such a wipeout psychologically": Mirkarimi tells the story Lee didn't want to hear, by Steven T. Jones and Tim Redmond
- Transcript of Interview of Ross Mirkarimi with Christine Craft on KGO Radio 4/29/12
- Mirkarimi on Alleged Abuse Video: "Those who advocated its release should be ashamed," 5/31/12, Bay City News
- Ross Mirkarimi on his Family's Destruction, 6/15/12, SF Chronicle, Reprinted as "A family's destruction in the name of justice?" – "A Father's Day Reflection," SF Chronicle, 6/17/12

# **EXHIBIT 65**



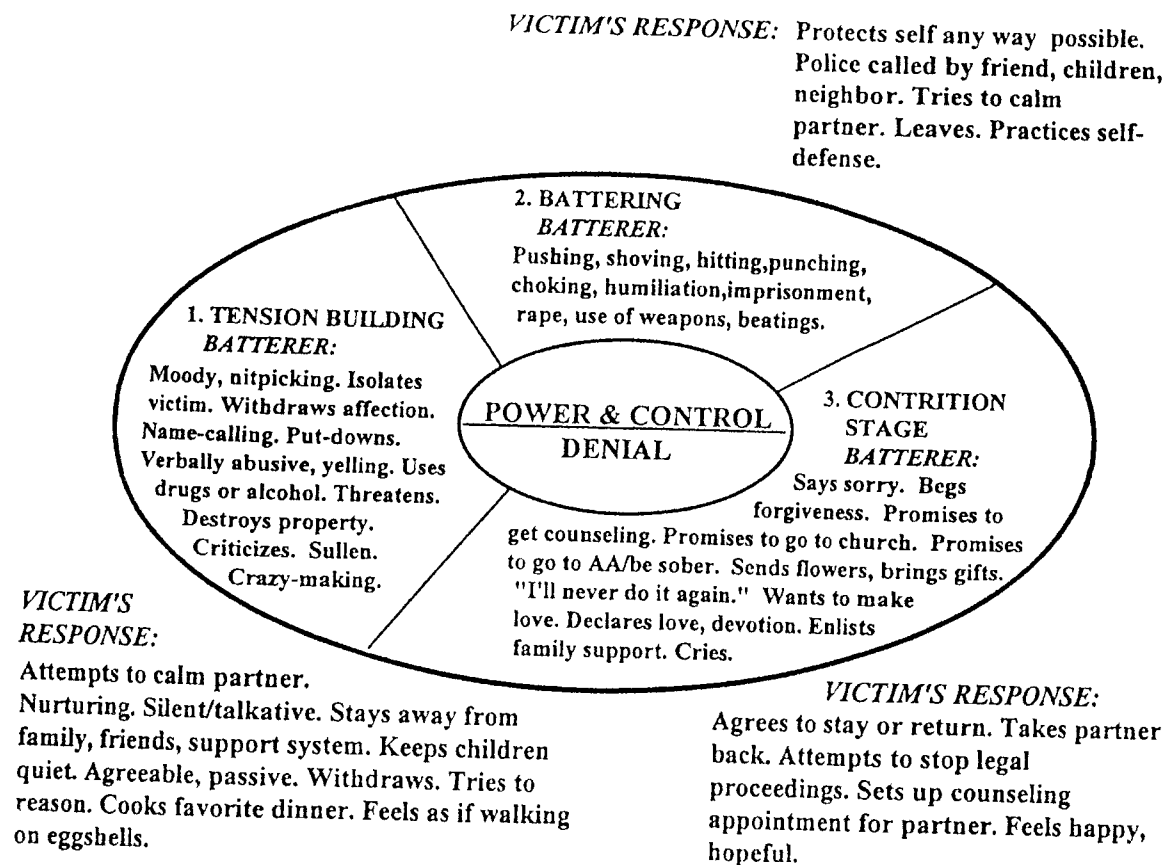


FIGURE 4.2. Cycle of violence.

Dutton, D. G. (1998) *The Abusive Personality*.  
New York: Guilford Press.

# **EXHIBIT 66**

# **DOMESTIC VIOLENCE LAW**

## **Third Edition**

■ ■ ■

By  
**Nancy K. D. Lemon**

*Lecturer  
Berkeley Law School (Boalt Hall)  
University of California, Berkeley*

**AMERICAN CASEBOOK SERIES®**

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# **EXHIBIT 67**

## B. HOW BATTERED WOMEN RESPOND TO DOMESTIC VIOLENCE

### LENORE E. WALKER, THE PSYCHOSOCIAL THEORY OF LEARNED HELPLESSNESS

The Battered Woman 44-54 (Harper & Row, 1979).

#### RESPONSE-OUTCOME

Most plants and animals have little voluntary control over what happens to them in their environment. Much of the time they merely react to events that happen. For example, if you place a plant on a windowsill, its leaves and stem will grow toward the light. The way in which it grows has nothing to do with whether or not the plant can change the direction from which the light comes; thus its movements do not change the relationship between the response and the outcome. Growing toward the light is not a voluntary response; the plant will grow that way regardless. Such behavior cannot be changed or modified. However, since human beings are not plants, we make many voluntary responses which can be changed or modified, depending upon the outcome. If a voluntary response makes a difference in what happens, or operates on the environment in a successful way, we will tend to repeat that voluntary response. This is the principle of reinforcement. If we expect that a response we make is going to produce a certain outcome, and our expectations are met when we make that response, we then feel that we have had control over that situation. To check whether or not we have actually had some control over a particular situation, we choose to make the same response the next time, and if that outcome happens again, we verify our ability to control it. We can then choose not to make the response and the outcome does not happen. Human beings thus can decide whether or not to make that voluntary response again, depending upon whether or not they want their expectations met. This gives us a certain amount of power or control over our lives. If, on the other hand, we expect certain things to occur when we make a certain response, and they do not, we will often look for explanations as to *why* such expectations did not take place. If we cannot find any logical explanations, after a time we assume we have no control over the outcome. In this way, we learn what kinds of things in our environment we can control and what kinds of things are beyond our control.

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percent [of women imprisoned for killing a partner] were abused by the person they killed"). See also Maguigan, *supra* note 7, at 397 n.67 (reporting that "[m]ost female homicide defendants had been battered by the men whom they killed"); Victoria Nourse, *The New Normativity: The Abuse Excuse and the Resurgence of Judgment in the Criminal Law*, 50 *Stan. L. Rev.* 1435, 1454 n.123 (1998).

*Loss of Voluntary Control*

Laboratory experiments have shown that if an organism experiences situations which cannot be controlled, then the motivation to try to respond to such events when they are repeated will be impaired. Even if later on the organism is able to make appropriate responses which do control events, the organism will have trouble believing that the responses are under its control and that they really do work. Furthermore, the organism will have difficulty in learning how to repeat those responses. This results in an apparent disturbance in the organism's emotional and physical well-being. Both depression and anxiety seem to be the characteristics of such an organism's behavior.

*Learned Helplessness*

The area of research concerned with early-response reinforcement and subsequent passive behavior is called learned helplessness. Experimental psychologist Martin Seligman hypothesized that dogs subjected to noncontingent negative reinforcement could learn that their voluntary behavior had no effect on controlling what happened to them. If such an aversive stimulus was repeated, the dog's motivation to respond would be lessened.

Seligman and his researchers placed dogs in cages and administered electrical shocks at random and varied intervals. These dogs quickly learned that no matter what response they made, they could not control the shock. At first, the dogs attempted to escape through various voluntary movements. When nothing they did stopped the shocks, the dogs ceased any further voluntary activity and became compliant, passive, and submissive. When the researchers attempted to change this procedure and teach the dogs that they could escape by crossing to the other side of the cage, the dogs still would not respond. In fact, even when the door was left open and the dogs were shown the way out, they remained passive, refused to leave, and did not avoid the shock. It took repeated dragging of the dogs to the exit to teach them how to respond voluntarily again. The earlier in life that the dogs received such treatment, the longer it took to overcome the effects of this so-called learned helplessness. However, once they did learn that they could make the voluntary response, their helplessness disappeared.

Similar experiments have been performed on other species, including cats, fish, rodents, birds, and primates and humans, with the same kind of results. Some animals learned to be helpless at a faster rate and became more helpless across a greater number of situations. For some, the learning was discriminate and occurred in only one situation. For others, the sense of powerlessness generalized to all behavior.

An experiment demonstrating the generalization of learned helplessness phenomenon occurred in rats. Newborn rats were held in the experimenter's hand until all voluntary escape movements ceased. They were then released. This procedure was repeated several more times. The

rats were then placed in a vat of water. Within thirty minutes, the rats subjected to the learned helplessness treatment drowned. Many did not even attempt to swim, and sank to the bottom of the vat immediately. Untreated rats could swim up to sixty hours before drowning. The sense of powerlessness was generalized from squirming in order to escape handholding to swimming in order to escape death. Since the rats were all physically capable of learning to swim to stay alive, it was the psychological effect of learned helplessness which was theorized to explain the rats' behavior.

The learned helplessness theory has three basic components: information about what will happen; thinking or cognitive representation about what will happen (learning, expectation, belief, perception); and behavior toward what does happen. It is the second or cognitive representation component where the faulty expectation that response and outcome are independent occurs. This is the point at which cognitive, motivational, and emotional disturbances originate. It is important to realize that the expectation may or may not be accurate. Thus, if the person does have control over response-outcome variables but believes she/he doesn't, the person responds with the learned helplessness phenomenon. If such a person believes that she/he does have control over a response-outcome contingency, even if she/he doesn't, the behavior is not affected. Therefore, the actual nature of controllability is not as important as the belief, expectation, or cognitive set. Some people will persevere longer than others in attempting to exert control; however, they will give up when they really believe the situation is hopeless. Witness the patient who loses the "will to live" and dies when she/he could have lived. The patient believes that nothing can save her/him, whether or not a cure is in reality feasible.

Once we believe we cannot control what happens to us, it is difficult to believe we can ever influence it, even if later we experience a favorable outcome. This concept is important for understanding why battered women do not attempt to free themselves from a battering relationship. Once the women are operating from a belief of helplessness, the perception becomes reality and they become passive, submissive, "helpless." They allow things that appear to them to be out of their control actually to get out of their control. When one listens to descriptions of battering incidents from battered women, it often seems as if these women were not actually as helpless as they perceived themselves to be. However, their behavior was determined by their negative cognitive set, or their perceptions of what they could or could not do, not by what actually existed. The battered women's behavior appears similar to Seligman's dogs, rats, and people.

In addition to the way they perceive or think about what happens, people also differ in how they explain normal occurrences. Different people have different predispositions to believing in the causations of events. For example, some people believe that most of the events that occur in their life are caused by factors outside themselves. We call these people "exter-

nalizers." Deeply religious people fall into this category, as do people who believe in strictly following rigid rules and regulations. People who believe that they have a lot of influence over what happens in their life are called "internalizers." It has been found that externalizers tend to become victims of learned helplessness more easily than internalizers. Research remains to be done to discover whether battered women can be classified as externalizers.

As in the experiment with rats, feelings of helplessness among humans tend to spread from one specific aversive situation to another. A battered woman therefore does not have to learn that she cannot escape one man's battering, but rather that she cannot escape men's overall coercion.

Helplessness also has a debilitating effect on human problem solving. Experiments with college students show that while the damage is not irreversible, it does alter one's motivation to initiate problem-solving actions. Thus, learning ability is hampered and the repertoire of responses from which people can choose is narrowed. In this way, battered women become blind to their options. People who feel helpless really believe that they have no influence over the success or failure of events that concern them. Women who have learned to expect battering as a way of life have learned that they cannot influence its occurrence.

The time sequence experienced by battering victims seems to be parallel to the time sequence experienced by victims of a major traumatic disaster. It has been shown that many people who experience a disaster immediately volunteer their time and energy in order to attempt to combat their feelings of helplessness. Some become Red Cross helpers over a large area; others become volunteers in the immediate vicinity. The feeling of being able to do something generally helps the volunteer as much as it helps the victim. This phenomenon is also seen in self-help groups such as Alcoholics Anonymous and Reach for Recovery. The general reaction to major traumas such as hurricanes, earthquakes, airplane crashes, or catastrophic fires is a feeling of powerlessness. However, unless such trauma is repeated, these feelings will usually dissipate over time. On the other hand, if there are repeated traumas within a short period of time, then people become immune, passive, and convinced that they cannot do anything to help themselves. Witness the results in concentration camps. A chronic feeling of powerlessness takes over which does not dissipate. The response of victims of repeated disasters is similar to battered women's perception of powerlessness. It is also probable that helplessness is learned on a relative continuum. There may be different levels of learned helplessness that a woman learns from an interaction of traditional female-role standards and individual personality development. The male-female dyadic relationship may be a specific area affected by this interactive developmental process. Battered women seem to be most afflicted with feelings of helplessness in their relationships with men. Women with responsible jobs and careers resort to traditional female-role

stereotyped behavior with their men, even though such behavior is not present in other areas of their lives.

Thus, in applying the learned helplessness concept to battered women, the process of how the battered woman becomes victimized grows clearer. Repeated batterings, like electrical shocks, diminish the woman's motivation to respond. She becomes passive. Secondly, her cognitive ability to perceive success is changed. She does not believe her response will result in a favorable outcome, whether or not it might. Next, having generalized her helplessness, the battered woman does not believe anything she does will alter any outcome, not just the specific situation that has occurred. She says, "No matter what I do, I have no influence." She cannot think of alternatives. She says, "I am incapable and too stupid to learn how to change things." Finally, her sense of emotional well-being becomes precarious. She is more prone to depression and anxiety.

Are battered women "clinically" depressed? Many of the new cognitive theories in psychology define clinical depression as a state in which a person holds an exaggerated belief that whatever he or she does, it will not be good enough. Such people also believe that their inadequacies preclude them from controlling their lives effectively. A person who believes that she is helpless to control a situation also may believe that she is not capable enough to do so. The small number of women I have interviewed do not provide the basis for any scientific conclusions about depression; however, it does appear that much of their behavior is designed to ward off depression. For example, many of them attempted to exert a degree of control over their batterings. Although they accepted the batterings as inevitable, they tried to control the time and place. This small measure of control seemed to be an effort not to feel totally helpless. For example, when a woman begins to nag at a man after she knows he has had a hard day at work, she can justify her belief that she really deserved the battering she anticipated all along because she started it. Although she appears to be masochistically setting up her own victimization, such behavior may well be a desperate attempt to exercise some control over her life.

Another point we observed relative to depression concerned anxiety levels of battered women. When these women discussed living under the threat and fear of battering, there was less anxiety than we expected. In fact, in many cases it seemed that living with the batterer produced less anxiety than living apart from him. Why? She often feels that she has the hope of some control if she is with him. Another explanation is that a fear response motivates a search for alternate ways of responding that will avoid or control the threat. Anxiety is, in essence, a call to danger. Physiologically the autonomic nervous system sends out hormones that are designed to cope with the immediate stress. Once this stress is under control, anxiety returns to a normal level. Or higher levels of hormones are constantly emitted in order to live under such pervasive stress. This reaction will also occur when certain threats are considered uncontrolla-

ble. What also happens in this situation is that anxiety does not return to a normal level; rather, it decreases and depression takes over.

### *How Battered Women Become Victimized*

There seems to be little doubt that feelings of powerlessness by both men and women contribute to the cause and maintenance of violent behavior. However, although many men do indeed feel powerless in relation to their control over their lives, it is my contention that the very fact of being a woman, more specifically a married woman, automatically creates a situation of powerlessness. This is one of the detrimental effects of sex-role stereotyping.

Women are systematically taught that their personal worth, survival, and autonomy do not depend on effective and creative responses to life situations, but rather on their physical beauty and appeal to men. They learn that they have no direct control over the circumstances of their lives. Early in their lives, little girls learn from their parents and society that they are to be more passive than boys. Having systematically trained to be second best, women begin marriage with a psychological disadvantage. Marriage in our patriarchal society does not offer equal power to men and women. The notion that marriage laws protect women is questionable when statistics reveal the mental health problems and criminal behavior married women suffer from. On the contrary, the law seems to perpetuate the historical notion of male supremacy. In most states a husband cannot be found guilty of raping his wife. The husband still has the legal right to decide where the family will live, restricting the woman's freedom of movement. Power in marriage also is related to economic and social status. Since men more often than women hold higher-paying jobs with more status, their occupational prestige gives them decision-making powers they can use to engage in physical and psychological one-upmanship. Finally, most men are also superior in physical strength, another source of masculine power and confidence.

Cultural conditions, marriage laws, economic realities, physical inferiority—all these teach women that they have no direct control over the circumstances of their lives. Although they are not subjected to electrical shocks as the dogs in the experiments were, they are subjected to both parental and institutional conditioning that restricts their alternatives and shelters them from the consequences of any disapproved alternatives. Perhaps battered women, like the dogs who learn that their behavior is unrelated to their subsequent welfare, have lost their ability to respond effectively.

### *Consequences of Learned Helplessness*

One result of learned helplessness can be depression, as discussed previously. Another result seems to be a change in the battered woman's perception of the consequences of violence. Living constantly with fear seems to produce an imperviousness to the seriousness of violence.



There is an unusually high incidence of guns, knives, and other weaponry reported in the battering attacks. I am constantly amazed that more people are not accidentally killed during these incidents. The women interviewed declared that they did not fear death, although they also did not really believe they would die, either. Those women interviewed who murdered their husbands all stated they had no idea they had killed them until the police informed them. One woman fought furiously with police when they took her to the homicide precinct for booking. She felt her husband would recover from the severe bullet wounds that had been inflicted. Several men reported surprise that their rage had inflicted any pain or injuries to the women. Both the men and the women involved in this violence repeatedly reassured other people that they wouldn't really hurt each other. As we begin to see more battered women, we also realize the high probability that as the violence escalates, they will eventually be killed by or kill their men.

#### *Stopping Learned Helplessness*

If battering behavior is maintained by perceptions of helplessness, can this syndrome be stopped? Turning back to the animal studies, we see that the dogs could only be taught to overcome their passivity by being dragged repeatedly out of the punishing situation and shown how to avoid the shock. Just as the dogs have helped us understand why battered women do not leave their violent situations voluntarily, perhaps they can also suggest ways the women can reverse being battered. A first step would seem to be to persuade the battered woman to leave the battering relationship or persuade the batterer to leave. This "dragging" may require help from outside, such as the dogs received from the researchers. The safe houses for battered women are very effective here. Secondly, battered women need to be taught to change their failure expectancy to reverse a negative cognitive set. They need to understand what success is, to raise their motivation and aspiration levels, to be able to initiate new and more effective responses, so they can learn to control their own lives. Self-esteem and feelings of competence are extremely important in protecting against feelings of helplessness and depression. Women must be able to believe that their behavior will affect what happens to them. Counseling or psychotherapy can teach women to control their own lives and to be able to erase that kind of victim potential.

Battering behavior must cease. We cannot afford the toll it takes in our society. A thorough study of some of the particulars occurring in battering relationships may lead us to effective methods to reverse this tragic process. By examining in this book some of the techniques the batterers use, how they victimize women and cause further psychological destruction, I hope to improve the understanding of battering.

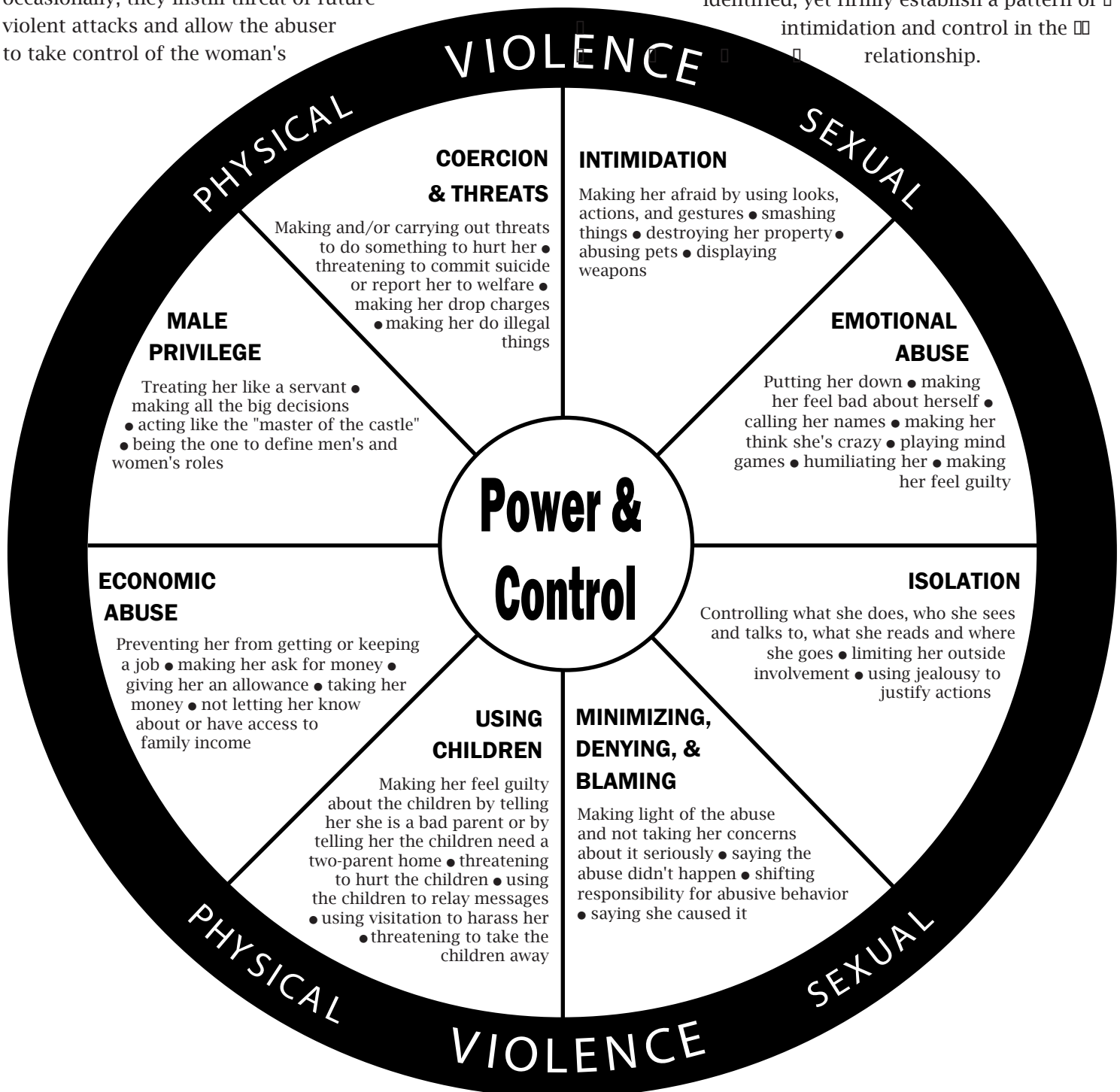
# **EXHIBIT 68**

# Or, is your relationship based on power and control?

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the woman's

life and circumstances.

The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.



# **EXHIBIT 69**

Lundy Bancroft  
Jay G. Silverman

# The Batterer as Parent

*Addressing the Impact of Domestic  
Violence on Family Dynamics*

**SAW**

*Sage Series on Violence Against Women*



**SAGE Publications**

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# 1

## The Battering Problem

Over the past 10 years, the traumatic effects on children of exposure to batterers have increasingly entered the public and professional eye. In the United States, more than 10% of women in relationships experience violence each year (Straus & Gelles, 1990), and a high percentage of these assaults are witnessed by one or more children, leading to an estimated 3 million or more children being exposed to acts of domestic violence per year (review in Fantuzzo & Mohr, 1999; Carlson, 1984). Children of battered women have been found to be at increased risk for a broad range of emotional and behavioral difficulties, including suicidality, substance abuse, depression, developmental delays, educational and attention problems, and involvement in violence (review in Kolbo, Blakely, & Engleman, 1996; Gleason, 1995; review in Jaffe, Wolfe, & Wilson, 1990). Furthermore, children exposed to batterers are themselves at high risk to become direct targets of physical abuse (Straus, 1990; Suh & Abel, 1990; Bowker, Arbitell, & McFerron, 1988) and of sexual abuse (McCloskey, Figueredo, & Koss, 1995; Sirles & Franke, 1989; Paveza, 1988). The danger even extends to homicide: One multiyear study found that in approximately one fifth of domestic violence homicides and attempted homicides, a child of the battered woman is also killed in the process (Langford, Isaac, & Kabat, 1999; see also Websdale, 1999). Children exposed to domestic violence are also at risk for other kinds of child fatality (Monemi, Peña, & Ellsberg, cited in Heise, Ellsberg, & Gottemoeller, 1999; Pecora, Whittaker, Maluccio, Barth, & Plotnick, cited in Edleson, 1998), and this risk has tended to be underestimated

(Websdale, Town, & Johnson, 1999). Finally, the violence is a known to be a recurring cycle: Studies consistently have found that boys who grow up exposed to domestic violence have an increased likelihood to batter their own partners as adults (e.g., Silverman & Williamson, 1997; review in Hotaling & Sugarman, 1986).

The sources of emotional and behavioral difficulty for children of battered women are many, with the actual seeing or hearing of acts of violence being only the beginning. The presence in the home of a batterer, usually in the role of parent or stepparent, has a wide range of implications for family functioning. Batterers tend to be authoritarian yet neglectful parents, with far higher rates than nonbatterers of physically and sexually abusing children (see Chapter 2). Battering changes the nature of children's crucial relationships with their mother, through mechanisms that include undermining her authority and interfering with her ability to provide care. Batterers often engage in efforts to create divisions within the family and can be highly manipulative (Jacobson & Gottman, 1998; Adams, 1989). They are more likely than are nonbattering men to seek custody of their children in cases of divorce or separation (American Psychological Association [APA] Presidential Task Force on Violence and the Family, 1996; McMahon & Pence, 1995; Liss & Stahly, 1993) and can have several advantages over battered women in custody litigation (see Chapter 5). We believe therefore that the psychological distress observed in children exposed to domestic violence results not only from their witnessing of periodic acts of violence but also from exposure to a batterer, and to his parenting style, in everyday life; in fact, we believe that the phrase "children exposed to batterers" is often more accurate than the current phrase "children exposed to domestic violence," for reasons that will become clear in the pages ahead. For closely related reasons, we find that a batterer's parenting cannot be assessed separately from his entire pattern of abusive behaviors, all of which have implications for his children.

The mounting awareness that large numbers of children run the risk of being traumatized along with their mothers by domestic violence has led to a recognition of the need for improved interventions in the families of battered women and to specialized services for children. Skilled and sensitive responses are sought from child protective services, battered women's programs, family courts, therapists, and the range of other institutions that serve families affected by domestic violence. In this book, we hope to contribute to the further development of these interventions by offering an extended analysis of the batterer in the family setting. Clinical experience and research on domestic

violence over the past 20 year provide a coherent and consistent profile of the attitudes and behaviors that define batterers and that in turn shape the experiences and functioning of their family members. This deepening grasp among domestic violence professionals of the psychology and tactics of batterers creates an opportunity to develop systemic responses to families that take into account the full breadth and complexity of the injuries and challenges caused by batterers.

### DEFINING BATTERERS

Given the many interpretations that exist of the term *batterer*, we begin by providing and elucidating our working definition:

*A batterer is a person who exercises a pattern of coercive control in a partner relationship, punctuated by one or more acts of intimidating physical violence, sexual assault, or credible threat of physical violence. This pattern of control and intimidation may be predominantly psychological, economic, or sexual in nature or may rely primarily on the use of physical violence.*

Two points need to be made about this definition. First, the definition we are using takes into account the presence of considerable variation in abusive style among batterers. This flexibility is important because, as we will see, the impact on children of living with a batterer varies depending on his level of violence, the extent of his cruelty and manipulateness, his level of respect for sexual boundaries, his treatment of the children's mother, and various other aspects of his behavior.

Second, our definition does not require the presence of beatings, but it does require that there at least be actions clearly intended as threats, such as raising fists, cutting phone lines, or deliberately dangerous driving. Although psychological abuse by itself can cause emotional harm to children (Berlin & Vondra, 1999; Kashani & Allan, 1998), the presence of fear may dramatically intensify those effects; a pattern of name-calling, for example, can have more debilitating emotional sequelae if it is punctuated by, and therefore emotionally interwoven with, periodic physical assault (see, e.g., Adamson & Thompson, 1998). By contrast, violence that is primarily annoying (as opposed to intimidating) and that is not accompanied by a pattern of coercion will not be considered here. Of course, we are not condoning violence of any kind; however, to carry out a meaningful examination of the parenting implications of domestic violence perpetration, we

find it necessary to make distinctions, such as between a batterer's aggressive violence and a battered woman's acts of self-defense. Also, definitions similar to ours are currently used and endorsed by many professional organizations, thereby creating a common terminology that facilitates the practical application of our discussion of battering.

The reader already will have noticed that although it is not part of our definition, throughout this book we refer to the batterer as "he" and to the battered partner as "she." We find this gender ascription to be accurate for most cases in which a professional is required to evaluate a batterer's parenting, and it is reflected both in our clinical experience and in most published research. Sexual assault by intimate partners occurs 25 times as often to women as to men, stalking by intimate partners occurs 8 times as often to women as to men, and injuries from physical or sexual assaults by intimates requiring medical attention occur more than 7 times as often to women as to men (Tjaden & Thoennes, 2000). Female homicides of male partners are far less common than the reverse (see Bureau of Justice Statistics, 1996), and those that do occur tend to be carried out by victims of domestic violence rather than by perpetrators (Langford et al., 1999; Websdale, 1999). The disparity between male and female homicides of intimate partners grows even larger postseparation (Langford, Isaac, & Kabat, 1998; Daly & Wilson, 1988). The incidence of parents killing children or other nonpartners during a domestic violence assault is similarly rare with a female perpetrator (Langford et al., 1999; Websdale, 1999; Daly & Wilson, 1988). Finally, we have not encountered persuasive evidence in our cases of mutual abuse, and researchers have concluded similarly that mutual abuse is rare (Berk, Fernstermaker Berk, Loseke, & Rauma, 1983).

Of course, our gendered language does not apply to lesbian and gay male relationships, but recent literature addressing the prevalence, causes, and dynamics of same-sex domestic violence suggests considerable parallel to heterosexual battering (Turrell, 2000; Leventhal & Lundy, 1999; Renzetti, 1997; Waldner-Haugrud, Gratch, & Magruder, 1997). Despite popular stereotypes, same-sex violence may have a significant impact upon children. Lesbians are increasingly choosing to have children and to raise them together. Although joint parenting by gay male couples is less common in our experience, it does exist, and gay men also may have weekend care or primary custodial care of children from earlier heterosexual relationships. The behavioral profile of lesbian and gay male batterers appears to correspond closely to that of heterosexual abusers (Leventhal & Lundy, 1999; Renzetti, 1997), including, for example, the batterer's common

mistreatment of children and/or pets and the rarity of mutual abuse (Renzetti, 1997). Clinical experience in this area leads to similar conclusions (Cayouette, 1999). Our book therefore may be useful in addressing the parenting of lesbian or gay male batterers, but professionals should be aware of their need for further education about the particular dynamics of domestic violence in these communities, including the particular tactics used by same-sex batterers and the additional obstacles faced by same-sex victims (Leventhal & Lundy, 1999).

### CHARACTERISTICS OF BATTERERS

We believe that the parenting style that batterers exhibit is grounded both in their attitudes and perceptual systems and in their patterns of behavior. In this section, after introducing the overarching concepts of control and entitlement, we go on to discuss other attitudinal and perceptual characteristics, and then other behavioral patterns, that are typical of batterers. (We recognize, at the same time, that attitudinal and behavioral qualities are not entirely separable, as our descriptions will make clear.) Although our descriptions of these characteristics are intended as an aid in assessment, it is important to keep in mind that a batterer may be careful not to exhibit any of these traits to professionals, and so assessment should not be based exclusively on psychological testing of, or interviews with, the alleged batterer but should incorporate collateral sources of information as well.

#### Control

The overarching *behavioral* characteristic of the batterer is the imposition of a pattern of control over his partner (Lloyd & Emery, 2000; Pence & Paymar, 1993; Adams, 1989). The batterer's control is carried out through a mixture of criticism, verbal abuse, economic control, isolation, cruelty, and an array of other tactics (Herman, 1992). Indeed, a majority of battered women report that the psychological abuse that they suffer has a *more* severe impact on them than the physical violence (Follingstad, Rutledge, Berg, Hause, & Polek, 1990), a finding supported by studies from other countries (review in Heise et al., 1999). Psychological abuse is a strong predictor of continued difficulties for a battered woman even if the violence is suspended (Edleson & Tolman, 1992).

We observe that the batterer's imposition of control typically emerges gradually and intensifies during the early years of the relation-

ship. In some cases, there is a distinct period of a few months (or even days) when the coercive pattern presents itself. Common points for the onset of this pattern include when the couple first begins living together, when the couple gets married, when the first pregnancy begins, and when the first child is born. Subsequently, the woman's efforts to resist these forms of control generally meet with an escalation by the abuser, and thus the pattern of control becomes increasingly coercive over time. A batterer usually perceives his controlling behavior as justified (Pence & Paymar, 1993) and therefore sees his partner's reluctance to be controlled as evidence of her mental instability, volatility, or desire to control *him*. The batterer's control often takes the form of undermining his partner's efforts at independence (Adams, 1989), thus increasing his power and control in the relationship (Dutton, 1995).

Although the relationship aspects that batterers may attempt to dominate are too numerous to list, we can identify the predominant spheres: arguments and decision making, household responsibilities, emotional caretaking and attention, sexual relations, finances, child rearing, and outside social contacts (see also Lloyd & Emery, 2000). The typical batterer will focus more on some areas than others, with his cultural training being an important influence over which aspects of the relationship he feels most entitled to determine.

The controlling nature of batterers has important implications for child rearing. Initially, the batterer may coerce decisions about when and whether to have children. After children are born, a range of decisions about how they are to be treated, fed, trained, and educated may fall increasingly under the batterer's control, even though he is typically contributing only a small portion of the labor of child rearing. Harsh and frequent criticism of the mother's parenting, often audible to the children, can undermine her authority and incite children's disrespect of her. Institutions such as child protective services often hold the mother primarily responsible for the children's well-being, unaware of the extent to which conditions may be beyond her control (Magen, 1999; Whitney & Davis, 1999; Edleson, 1998). A study of restraining order affidavits found that one of the most common reasons that mothers gave for why they needed the order was the batterer's "punishment, coercion, and retaliation against the women's actions concerning children" (Ptacek, 1997, p. 112), including specific references to the batterer's anger at the woman's questioning of his authority over the children.

Finally, batterers tend to be controlling and coercive in their direct interactions with children, often replicating much of the interactional

style that they use with the mother (see also Ayoub, Grace, Paradise, & Newberger, 1991). Their coercive parenting has multiple consequences for families, which we will examine in more detail below. In particular, the batterer's tendency to be retaliatory has important implications for children who disclose abuse to outsiders or who call for police assistance during an assault. Professionals intervening in families affected by domestic violence need to remain aware at all times of the high potential for punishment or intimidation of the children by the batterer for discussing events in the home.

### Entitlement

The overarching *attitudinal* characteristic of batterers is entitlement. Entitlement may be the single most critical concept in understanding the battering mentality, and so we will discuss it in some detail here (see also Silverman & Williamson, 1997; Edleson & Tolman, 1992; Adams, 1991). Entitlement is the belief that one has special rights and privileges without accompanying reciprocal responsibilities. Batterers tend to have this orientation in specific relationship to their partners and children and do not necessarily carry it over into other contexts. The batterer's entitlement leads him to feel justified in taking steps to protect his special status, including the use of physical intimidation when he considers it necessary (Ayoub et al., 1991). The belief that violence toward a partner can be justified is a strong predictor of which men will batter (Margolin, John, & Foo, 1998; Silverman & Williamson, 1997) and helps to distinguish which boys exposed to domestic violence will grow up to abuse their own partners (O'Keefe, 1998).

A primary manifestation of entitlement is that batterers expect family life to center on the meeting of their needs, often to the point of treating their partners like servants (Pence & Paymar, 1993). If a batterer's partner attempts to assert her own needs, the batterer often characterizes her as selfish or uncaring. Batterers thus are distinguished partly by their high and unreasonable expectations, including forceful and urgent demands for catering (Dobash & Dobash, 1983). They may believe that they are owed services and deference without regard to their own level of contribution or sacrifice.

Batterers' expectations of service may include physical, emotional, or sexual caretaking. The demands for physical labor can involve expecting meals prepared for them in the precise way that they like, shopping and housecleaning done, the children looked after and kept quiet, school meetings attended, the social calendar arranged, and a



continuing list of family and household responsibilities. Batterers may retaliate if this work is not done to their satisfaction.

Equally central are a batterer's typical demands for emotional caretaking. The batterers we have seen as clients in batterer intervention programs tend to expect to be the center of their partners' attention. They consider it their partners' responsibility to soothe them when they are upset, to praise and compliment them, and to defer to them in conflicts. Partners are expected to lay their own needs aside and to cater to the batterer even in times of family crisis; for example, one of our clients complained angrily to his wife that she was ignoring him during a 2-day period when her teenage son was missing. In our experience, batterers' demands for emotional caretaking are as likely to lead to verbal abuse or to physical violence as are their demands for physical labor.

Finally, our clients often define themselves as being wronged by their partners if the latter do not cater fully to their sexual needs. Even if his partner does engage in sexual relations, a batterer may feel mistreated if she fails to exhibit adequate pleasure or, contradictorily, if she initiates sexual contact with him at a time when he does not desire it. He may particularly pressure his partner for sex following an incident in which he has been verbally or physically abusive. Sex following soon after a physical assault should probably be defined as rape (Bergen, 1996).

We have observed that the higher a batterer's level of entitlement, the greater his apparent perceptual tendency to reverse abuse and self-defense. The typical batterer defines his abusive behaviors as efforts to protect his own rights and defines his partner's attempts to protect herself as abuse of him (Jacobson & Gottman, 1998). For example, he tends to interpret occasions when his partner refuses to have sex with him as her efforts to control or manipulate him (Mahoney & Williams, 1998). Batterers therefore often claim to be the victim of the woman's abuse or violence (Pence & Paymar, 1993; Adams, 1991). Entitlement can lead a batterer to have double standards, such as the belief that he can have outside sexual relationships but that it is not acceptable for his partner to do so (Ptacek, 1997; Dobash & Dobash, 1983).

A batterer's level of controlling behavior and his level of demand for service can be independent factors. Some of our clients are extremely vigilant regarding their partners' movements or social contacts but contribute substantially to domestic responsibility. Others permit their partners considerable freedom but demand high levels of catering (see also Jacobson & Gottman, 1998). A third category includes batterers who are both highly controlling and severely demanding of service.

Batterers' sense of entitlement influences their parenting, beginning commonly with the expectation that their partners should handle the most unpleasant or demanding tasks of child rearing, such as changing diapers, rising in the middle of the night, or helping children resolve their conflicts. At the same time, they often consider themselves to be authorities on child care, and for this reason they may feel entitled to custody after separation. In some cases, batterers attend only to those aspects of parenting that they find enjoyable or that gain notice from friends, school personnel, or other community members, thus allowing them to develop reputations as excellent fathers.

High entitlement can also lead to role reversal, where batterers expect their children to be responsible for attending to their needs. We commonly observe that our clients maintain poor emotional boundaries as parents, expressing to their children their distresses, insecurities, and worries (including how wounded they feel by the children's mother). Batterers are more likely than other men to use their children to meet their own needs for physical affection or sexual contact, leading to an elevated rate of incest perpetration (see review in Chapter 4).

### Selfishness and Self-Centeredness

Largely as a result of their sense of entitlement, our clients perceive their needs as being of paramount importance in the family. They provide less emotional support and listen less well to their partners than do nonbattering men (Adams, 1991). They expect to be the center of attention, to have their needs be anticipated even when not expressed, and to have the needs of other family members postponed or abandoned (see also Ayoub et al., 1991). At the same time, they often expect family members to respond to them as the generous, kind, responsible people that they believe themselves to be, and they may react with a sense of woundedness or injustice when they see themselves perceived as selfish. If a batterer's partner pulls back when he makes a sudden movement, for example, he may become angrily indignant, perhaps saying, "How can you be afraid of me? You know I would never hurt you!"

Batterers are often preoccupied with their own needs and thus not available to their children (Johnston & Campbell, 1993b) yet may expect their children to be always available to *them* in ways that can interfere with a child's freedom and development (Roy, 1988). Some batterers show tremendous emotion when speaking to others about their children, yet quickly lose interest or become enraged when their children's needs or independent personalities inconvenience them.

or fail to give them the ego gratification that they seek. Children of a batterer are sometimes swayed by his grandiose belief in his own generosity and importance, enhancing their blame of themselves and of their mothers for the violence.

The self-referential tendency of batterers, characterized by grandiosity and an unrealistic self-image, can be mistaken for narcissistic personality disorder. However, we observe that the batterer's self-centeredness is primarily the product of his entitlement, whereas the narcissistic personality appears to result from a severe assault on the self during childhood (see Lowen, 1985). There are two crucial points of differentiation: (a) The batterer's self-centeredness occurs in specific relation to his partner or his children; in other contexts, he shows less grandiosity in his presentation of self, less need to receive awed deference, and a normal ability to take another person's perspective. (b) Apart from his denial of the battering, the batterer tends to have a reasonably realistic view of himself. Moreover, the narcissist does not have a particular tendency to violence by virtue of the disorder alone. At the same time, a battering problem is quite compatible with a narcissistic personality disorder, and the two conditions can coexist; in our clinical experience, roughly one batterer in eight shows significant signs of a clinical level of self-centeredness, and these clients are highly resistant to change.

### Superiority

Batterers believe themselves to be superior to their victims (Russell & Frohberg, 1995; Adams, 1991). Our clients tend to see their partners as inferior to them in intelligence, competence, logical reasoning, and even sensitivity and therefore treat their partners' opinions with disrespect and impatience. In conflicts and at other times, a batterer may talk to his partner as if she were a willful and ignorant child whom he needs to educate and to improve. Tones of disgust, condescension, or infantilization are commonplace when a batter addresses his partner, as are harsh criticism, humiliation, and parentlike imposition of punishments.

A recurring element in the tone of most batterers' discussions of their partners is contempt. Our clients have difficulty describing serious conflicts with their partners without expressing ridicule of the women's opinions or behaviors, using such approaches as mimicking their partners' voices or making sarcastic exaggerations of arguments that the latter have made. It is valuable for professionals to note that level of *contempt* and level of *anger* are distinct issues: Both batterers

and battered women may exhibit high degrees of anger when describing the histories of their relationships, but the extent of disrespect and ridicule that we hear from our clients does not usually appear in our conversations with their partners, even in cases of severe abuse.

Superiority can sometimes include elements of depersonalization or objectification (Pence & Paymar, 1993). According to Bandura (1978), "Maltreatment of individuals who are regarded as subhuman or debased is less apt to arouse self-reproof than if they are seen as human beings with dignifying qualities" (p. 25). Our clients sometimes are uncomfortable referring to their partners by name rather than as "my girl," "the wife," or similar terms, and they often have limited knowledge about their partners as people, being largely unable to answer questions about the women's interests, personal strengths, or family relationships. A batterer in this category may view his partner as a depersonalized vehicle for sexual gratification and thus be prone to sexually assaulting her (see also Campbell, 1995b). In many batterers, these attitudes of superiority generalize into hostility toward women in general (Pence & Paymar, 1993), although this outlook may take time to detect (Edleson & Tolman, 1992).

The superiority, contempt, or depersonalization that children may observe in a batterer's day-to-day treatment of their mother can shape their views of both parents. Children tend to absorb the batterer's view of their mother over time; we observe in custody evaluations, for example, that children of battered women sometimes describe her in terms similar to ones that the batterer would use, saying that she "nags," that she "doesn't know what she's doing," or that "what she needs is a slap in the face." For similar reasons, children can come to see the batterer as the parent who is most knowledgeable, competent, and in charge.

### Possessiveness

One useful way to encapsulate the nature of the batterer's problem is that he perceives his partner as an owned object (Lloyd & Emery, 2000; Adams, 1991). A number of studies have shown, for example, that men who use violence against partners are more likely than other men to believe that a female partner should not resist the man's sexual advances (e.g., Silverman & Williamson, 1997) and to become angry if she does so (Adams, 1991). In discussing an arrest, a batterer may express confusion, saying, "I told the police that she was my wife, but they arrested me anyhow." Referring to times when their partners refused to have sex with them, many clients of ours have

made reference to the woman's signing of the marriage certificate as conferring an obligation upon her to consent. In dealing with infidelity, the batterer may assault the other man rather than his own partner because "nobody touches my girl." Sexual jealousy can be an important indicator of possessiveness (Adams, 1989; Dobash & Dobash, 1983) and is present at elevated rates in batterers (Raj, Silverman, Wingood, & DiClemente, 1999), but possessiveness can also take other forms and thus should not be assessed on the basis of sexual jealousy alone.

A batterer's possessiveness sometimes exhibits itself starkly when a relationship terminates, commonly leading to violence against the woman for her attempts to leave (Dobash & Dobash, 1983). Nearly 90% of intimate partner homicides by men have been shown to involve a documented history of domestic violence, and a majority of these killings take place during or following separation (Websdale, 1999). Batterers cite various reasons why their partners "owe" them another chance, including the marriage vows, the good of their children, and their own efforts to change. One illustration of this value system is a client of ours who admitted that he had committed a near-lethal beating of his partner (which led to her hospitalization) yet continued to insist that she had a responsibility to reunite with him because he had stopped drinking and could "help her get her life together," pointing to the other people with whom she was spending time as "bad influences."

In attempting to understand the propensity of batterers to kill or to seriously assault partners who attempt to leave them, some theorists have concluded that batterers have an inordinate "fear of abandonment" or are unusually "despondent" after separation. However, we find no evidence that females are less prone than males to fears of abandonment or to postseparation depression, yet their rates of postseparation homicide are far lower (Websdale, 1999). Nonbattering men rarely commit postseparation homicides (Websdale, 1999), despite sometimes suffering serious emotional crises when relationships end. Our clinical experience reveals no connection between a batterer's level of dependence and his level of violence; rather, our clients who have become the most terrorizing of their partners after separation stand out primarily for their high levels of possessiveness. Those batterers who go beyond the terrorizing behavior to actually commit a homicide do appear to have elevated rates of mental illness *combined with* high possessiveness, although mental illness is much less consistently present than possessiveness (Websdale, 1999).

The extent to which a batterer carries his possessive orientation over to his children has important implications for his parenting. Large numbers of our clients over the years have made comments regarding physical abuse of their children such as "No one is going to tell me how I can discipline *my* children" and "Whether I hit my children or not is nobody's business." At the same time, they commonly express disapproval or outrage at adults who hit children who are not their own (such as stepchildren or grandchildren). For these batterers, the connection between possession and the license to abuse children is stated explicitly. We find our clients especially vulnerable to the existing social tendency to view children as owned objects (see also Liss & Stahly, 1993), with its unfortunate tendency to create a context for child abuse (Ayoub et al., 1991).

Possessiveness plays an important though less-recognized role in fostering child sexual abuse and boundary violations. Sexual abusers are notorious for the attitudes of ownership that they exhibit toward children (e.g., Salter, 1995), and incest perpetrators sometimes perceive sexual access as a parental privilege (Leberg, 1997; Groth, 1982). We have found that an incest perpetrator is sometimes sexually possessive toward a teenage daughter, for example, accusing her of having sex with boys or even assaulting boys who attempt to date her. This style of abuser treats his daughter more like a partner than like a child and can behave like a rejected lover when she begins a serious dating relationship for the first time.

The batterer's mentality of ownership also can shape his post-separation parenting. For example, some batterers are nonthreatening for a period after a relationship ends but revert rapidly to the use of intimidation when their former partners develop a serious new relationship. In session, these batterers make statements such as "No other man is going to be around my kids" and "If she lets them call another man Daddy, she'll be sorry." In some cases, these statements mark the beginning of a pattern of threats to the mother, psychological pressure on the children, and litigation in pursuit of custody.

### Confusion of Love and Abuse

Batterers often explain their relationship violence by describing it as a product of the depth or intensity of loving feelings that they have for their partners. Many of our clients see their abusiveness as actually proving their love, stating, for example, "I wouldn't get like that if I didn't care for her so much." We have found that friends and relatives of batterers can adopt similar analyses, as do many mental health

providers, court personnel, custody evaluators, and other professionals. The batterer thus may experience strong social reinforcement for this construction.

It is true that a link can exist between love and *anger*, in that intimacy creates vulnerability to hurt feelings and therefore can lead to anger as a response. The error, however, is to connect anger to *abuse*. Anger, including rage, occurs both in abusive and in nonabusive people and thus is not in itself a cause of abuse or aggression; indeed, it need not even necessarily be present (Bandura, 1978) or may appear only after the intimidating acts fail to have their desired effect (Hart, 1986). In any case, anger tends to be overestimated as a cause of battering behavior (Healey, Smith, & O'Sullivan, 1998).

The confounding of love and abuse can contribute to the confusion of children of battered women. For example, they may hear the batterer, with anger mounting in his voice, listing off the generous or loving things that he has done for his partner as he escalates toward finally assaulting her. An hour after a beating, they may hear him crying and saying that he loves her. He may tell the children directly how much he cares for their mother, perhaps in the same conversation in which he also says that she is an incompetent parent or a drunk. Through receiving these contradictory messages, children can form convoluted understandings of how kindness and cruelty interrelate, which may contribute to difficulties in their present or future relationships. One example of this dynamic, commented on frequently by clinicians specializing in working with children exposed to domestic violence, is that some young children struggle with the belief that a person who doesn't abuse them must not really love them.

Moving from emotional to physical impacts on children, our professional experience indicates that adults who believe that abuse is evidence of love are at increased risk to abuse children. Batterers appear to be particularly prone to using culturally supported arguments of this kind in defending their abusive parenting, making comments in session such as "Spare the rod and spoil the child" or "You want me to be like those other parents who don't care what happens to their children." Furthermore, this value system can lend itself to child sexual abuse. Incest perpetrators, when their actions are uncovered, sometimes describe the violations that they have committed as having been acts of tenderness or caring, using such rationalizations as "I wanted to help her learn about sexual relationships in a safe way" or "She was really starved for affection, because her mother doesn't give her any, and it just got a little out of hand" (see also Salter, 1995; Herman, 1981).

### Manipulativeness

We observe that few of our clients rely entirely on verbal or physical attack to attain control. Rather, batterers employ a wide range of behavioral tactics, foremost among which is often a pattern of manipulativeness. Immediately following abusive incidents, a batterer may strive to manipulate his partner's perceptions of his actions or to create confusion about the causes or meaning of the incidents, which has been described as a form of mind control (Jacobson & Gottman, 1998). Over the longer term, his manipulativeness may take a different form: Periods of abuse are usually interspersed with times of relative calm, during which the batterer may be loving or friendly, with shows of generosity or flexibility, in an attempt to regain his partner's trust and to create the hope that he has changed. Given the traumatic effects on her of his history of abusing her, the respite and sense of hopefulness engendered by his good periods can cause serious confusion in her. He thus may be able to reengage her over and over again in a way that can be baffling to outsiders who do not understand the deep combined effects of trauma, intimidation, and manipulation, which can form strong "trauma bonds" (Dutton, 1995; Dutton & Painter, 1993; Herman, 1992).

Batterers' manipulativeness often extends to the public arena as well. The great majority of batterers project a public image that is in sharp contrast to the private reality of their behavior and attitudes (Jacobson & Gottman, 1998; Ayoub et al., 1991; Adams, 1989). They may impress others as friendly, calm, and reasonable people, often with a capacity to be funny and entertaining. The public reputation that a batterer can build may cause people to be reluctant to believe allegations of his battering, thus making it more difficult for his partner and children to obtain emotional support or assistance. Our clients shape the public image of their partners as well, describing them to others as controlling, demanding, and verbally abusive at the same time as they paint themselves as caring and supportive partners who are earnestly trying to make things at home go well. The cumulative effect of these behaviors on those outside the family is to build sympathy and support for the batterer and to isolate the battered woman by damaging her credibility.

A batterer's family members and his surrounding community generally find manipulation harder to identify than more overt tactics of abuse. For example, many of our clients use arguing styles at home that rely more on twisting their partners' words, distorting past events, and other tactics of confusion than on loud yelling or name-calling. The



partner of this style of batterer may suffer from increased confusion and self-blame, and in some cases may become emotionally unstable; the batterer may then use her deteriorating emotional condition to discredit further her disclosures of abuse.

The manipulateness of batterers can create ambivalence and disorientation for their children. For example, children sometimes say to us that they don't understand why their mother gets so angry during arguments in which their father seems calm, because they do not grasp the significance of his words or his underlying tone. Following incidents of overt abuse or violence, he may be charming and attentive to the children while the trauma of victimization causes the children's mother to be short-tempered, withdrawn, or fragile. The batterer thus can shape the children's perceptions of the incident that has just occurred, leading them to form the impression that their mother is aggressive and that the batterer is the "nice" parent. Children also appear to sometimes be confused or influenced by the positive public reputations of their battering fathers.

Manipulation is in itself a psychological risk to children. For example, experts in treating schizophrenia have found that severely contradictory messages from parents appear to play a greater role than overt abuse in engendering children's psychosis (Karon & Vandenbos, 1981). When these tactics are combined with the dynamics of domestic violence, the risks to children's mental health increase further.

Batterers are also adept at manipulating those attempting to intervene. Our clients are commonly able to lie persuasively, sounding sincere and providing an impressive level of detail while sometimes weaving together multiple fabrications. We find that it may be impossible to uncover accurate information except by reviewing police reports and child protective records, speaking with probation officers and therapists, and interviewing the battered partner and other witnesses. In a number of our cases, evaluators working for courts or child protective services have made errors due to their failure to adequately test the batterer's credibility.

### Contradictory Statements and Behaviors

Assessment of batterers and their impact on families is further complicated by the contradictions typically present in a batterer's thinking and presentation. Many of our clients, for example, state that they oppose any use of violence toward women, that men should treat their partners with respect, that decision making should be "50-50," and that the needs of the children should be the priority. Some clients

make forceful, articulate, and appropriate confrontations of other men in their abuser groups while themselves continuing to be abusive and violent at home. Evaluating professionals should be cautious not to assess an alleged batterer simply by asking his beliefs, as he will generally be able to tailor his statements to the response that he believes is desired. The more educated batterer is sometimes especially adept at concealing his underlying thinking.

### Externalization of Responsibility

Our clients are consistent in holding beliefs that relieve them of responsibility for their abusiveness, and they exhibit patterns of justifying their actions and making excuses (see also Dutton, 1995; Edleson & Tolman, 1992). They shift blame to their partners' conduct (e.g., "She really knows how to push my buttons") and to other supposed causes such as stress, substance abuse, issues from childhood, and intolerable emotional states. This belief system leads our clients to make contradictory statements such as "I know you should never hit a woman, but there's only so much a man can take" or "I know I'm responsible for my own actions, but she pushed me too far."

The batterer tends similarly to shift responsibility for the *effects* of his actions. For example, if his partner flinches during an argument because she thinks he is about to strike out, he may ridicule her as hypersensitive or theatrical. If she becomes depressed (which is a common symptom of abuse), he may call her lazy or say, "You just want to live off my hard work." He then may use the effects of his actions as an excuse for further mistreatment of her. Our clients take the same attitude toward the effects on their children of exposure to domestic violence, attributing their difficulties to the mother's poor parenting or to inherently weak character in the children. We find that the behavioral and emotional problems of our clients' children often increase over time and that therefore a batterer's criticism of his children (and of his partner as a parent) can mount in frequency and harshness.

A critical family dynamic that we observe is that batterers tend to have some success in persuading their family members to take on responsibility for the abuse. Children may blame their mothers for the abuse, mothers may blame children, siblings tend to blame each other, and all family members tend periodically to blame themselves. Family members may accuse each other of having made the batterer angry by challenging him, failing to cater to him adequately, making too much noise, or other actions that displeased him. When a woman attempts to end a relationship to escape abuse, the batterer may tell her that she

is the one causing harm to the children because she is breaking up the family (Pence & Paymar, 1993). If his abusive behavior drives his children away from him emotionally, he is likely to accuse the mother of "alienating" the children from him (see Chapters 5 and 6).

In a substantial proportion of batterers, their externalization of responsibility extends to their interactions with their children. This tendency is a risk factor for children, as "abusive parents often project responsibility for their abusive behavior onto external factors, including the child" (Milner & Chilamkurti, 1991, p. 352). We often observe our clients using excuses for their mistreatment of the children that are similar to those that they use in justifying their abuse of the mother.

### Denial, Minimization, and Victim Blaming

Batterers rarely disclose their violence fully, even in the face of considerable evidence (Heckert & Gondolf, 2000; Healey et al., 1998). Our clients also deny the effects of their battering on their partners. This denial can sometimes hold firm through months of participation in a batterer program, though the existence of independent evidence such as police reports with which to confront the client can assist in breaking down denial.

Even those men who admit to some portions of their violence typically minimize their history of abuse (Lloyd & Emery, 2000; Healey et al., 1998; Dutton, 1995), reporting significantly less violence than their female partners attribute to them and particularly minimizing their threatening behaviors (Edleson & Brygger, 1986). They may characterize aggressive violence as self-defense or may lie about violent events (Adams, 1989).

In assessment of an alleged or established batterer, minimization can be more effectively misleading than denial. By expressing remorse while simultaneously portraying his victim as provocative and dishonest, a batterer is sometimes able to persuade a professional that he has been wrongly accused or that his efforts to change have not been recognized. The batterer who uses this approach often states that his partner is falsely alleging domestic violence because she found out that he was involved with another woman, he refused a reunion that she desired, she was pushed into the accusations by an overzealous advocate, or she is using her claims as a weapon in custody litigation. We have had clients say roughly the following, for example: "I did shove her a couple of times, and one time I hauled off and slapped her when she called my mother a whore, and I really regret it. But now

she's saying I grabbed her by the throat and threatened to kill her, which I would never do and she knows it."

Our clients often characterize their actions as defensive in nature or as being necessary to prevent more serious harm (see also Lloyd & Emery, 2000; Healey et al., 1998; Pence & Paymar, 1993). The most common explanations that clients of ours provide include such claims as that his partner was assaulting him and he injured her when he was warding off her blows; that he was enraged by her frequent assaults against him and "finally decided to show her what it's like"; that she was assaulting one of the children and he stepped in to protect the child; and that she was attempting to drive while drunk or to act self-destructively in some other way. Further inquiry typically reveals distortions in these accounts.

Child-abusing batterers exhibit similar patterns of denial, minimizing, and victim blaming regarding their parenting. Information that we receive from child protective services often contrasts sharply with our clients' minimization of their violence, threats, or boundary violations toward children. Many of our clients distort or exaggerate their children's behavior, tending to cast them as highly troubled or destructive. Furthermore, the descriptions that we receive from partners of our clients suggest that the behavioral and emotional problems that the children do have may be largely a product of exposure to battering behavior.

### Serial Battering

Batterers tend to abuse more than one woman over the course of their adult relationships (Dutton, 1995; Woffordt, Mihalic, & Menard, 1994; Kalmuss & Seltzer, 1986). Child protective services and family and juvenile courts should avoid operating on the mistaken belief that a batterer's likelihood to assault a female partner can be reduced through the ending of his current relationship. The high degree of conflict in his current relationship is probably the result of his abusiveness rather than its cause, and if he replicates these dynamics in his future relationships, his children may be at risk.

### MISCONCEPTIONS ABOUT BATTERERS

Important myths about batterers are widespread, and some of these have taken hold among professionals in ways that can lead to errors in assessment or in intervention. The most common misconceptions are examined here.

### Substance Abuse

We believe that the available research on batterers and substance abuse indicates that the overlap between the two is not as great as many people have assumed. Most incidents of domestic violence take place without the use of alcohol by the batterer, and roughly 80% of alcohol-abusing men do not beat their partners (Kaufman Kantor & Straus, 1990). Alcohol and most drugs do not have physiological effects that cause violence, and indeed alcohol is most likely to contribute to violence in those who *believe* that it will do so (Gelles, 1993). A large proportion of our clients, including some who are highly physically violent, show no signs of substance abuse (see also Zubretsky & Digirolamo, 1996), and those clients who do have addiction problems commit serious acts of abuse even when sober. In cases where a battered partner reports that the man is violent only when drinking, further questioning usually reveals that lower-level violence such as pushing and threatening has happened at other times. Moreover, any increases in violence associated with substance abuse should still be understood as a matter of choice: Our clients admit to us that they give themselves more permission to be violent when intoxicated (see also Edleson & Tolman, 1992) and reveal similar attitudes and decision-making processes regarding their violence whether or not they are intoxicated. Similar observations have been made regarding lesbian batterers (Renzetti, 1997). Thus, the particular constellation of attitudes and behaviors that typically accompanies battering cannot reasonably be attributed to an alcohol problem (for similar conclusions, see Zubretsky & Digirolamo, 1996).

The impact on battering behavior of recovery from addiction is mixed. A fairly small but significant number of our clients become *more* dangerous and dictatorial when they stop abusing the substance, apparently because of their increased ability to closely monitor their partners' behavior and their increased irritability. We have observed another group of abusers who exhibit a period of substantial reduction in violence during roughly their first 4 to 12 months of sobriety, but as the batterer reaches a point of feeling more secure in his recovery and therefore less consumed by it, his abusive behavior tends to reemerge. Indeed, certain concepts that batterers learn in 12-step programs sometimes become new weapons integrated into their systems of verbal abuse, such as accusing a partner of "being in denial" about her own problems or labeling her "codependent." Clients in a final group, again, fairly small, do appear to make lasting changes in battering behavior following recovery from addiction. However, it is important to note

that these are men who have been participating simultaneously in a specialized batterer program with a minimum duration of 11 months. Reports of long-term improvements in overall abusiveness coming from addiction recovery *alone* are rare (Bennett, 1995), and professionals should avoid suggesting to the family members of a batterer or to the batterer himself that his recovery will increase physical or psychological safety in the home.

Although substance abuse is not causal in domestic violence, it can contribute to a batterer's frequency and severity of violence (Bennett, 1995), and the most dangerous batterers have elevated rates of heavy substance abuse (Websdale, 1999; Campbell, 1995a). Substance abuse history is thus one important factor in risk assessment.

### Mental Health Problems

Most of our clients have no detectable mental health problems. The available studies suggest that aside from those who are extremely physically violent, batterers do not appear to have substantially higher rates of psychopathology than do nonbattering men (Gondolf, 1999; O'Leary, 1993; review in Tolman & Bennett, 1990). Clinicians have difficulty in reliably assigning batterers to types within a psychological typology (Langhinrichsen-Rohlins, Huss, & Ramsey, 2000), and there is no particular personality disorder or mental illness that batterers show consistently (Langhinrichsen-Rohlins et al., 2000; Sonkin, 1987). According to Gelles and Straus (1988), "90 percent [of abusive incidents] are not amenable to a psychological explanation" (p. 43). There is especially strong evidence of a characteristic absence of psychopathology in those batterers who are not violent outside of the home (Holtzworth-Munroe & Stuart, 1994).

We have had infrequent cases where a client's violence did appear to be produced primarily by a mental illness, with the following distinguishing characteristics: (a) The men's partners reported that they did not exhibit chronic patterns of controlling behavior or entitled attitudes. (b) The men showed unusually low levels of investment in justifying or rationalizing their violence, even under confrontation. (c) They had higher levels of empathy and lower levels of negative characterization with respect to their victims than did other clients. (d) They had histories of explosive behaviors with nonpartners about which they expressed remorse and embarrassment. We estimate that such men have been 1% or fewer of our clients.

A second and much larger group of men with whom we have worked have serious indications of mental illness or have already been

diagnosed but also exhibit the central characteristics that make up the batterer profile. In such cases, the mental health problem should not be seen as the cause of the battering but rather as an important aggravating factor and as an obstacle to efforts at rehabilitation, analogous to the substance abuse of other batterers (see also Edleson & Tolman, 1992).

A number of subtler emotional problems are widely assumed to be causes of battering, including low self-esteem, insecurity, childhood victimization, poor impulse control, and feelings of inadequacy. Our clinical experience, however, does not support the belief that such problems are consistently present in batterers. Similarly, a number of studies have examined the role of life stress in causing battering and have found little evidence of any connection (review in Tolman & Bennett, 1990).

In an attempt to address the fact that battering behavior rarely extends outside of the family, one formulation has portrayed batterers as having profound emotional issues regarding intimacy (e.g., Dutton, 1995). However, this theory does not offer an explanation of why so many men (and women) with severe intimacy problems do not batter, nor can it account for the multiple aspects of battering behavior that have little or nothing to do with intimacy, such as a batterer's tendency to become intimidating when his authority is challenged. It also does not account for batterers' tendency to have peers who are also abusive to women (Silverman & Williamson, 1997). Cross-cultural studies of domestic violence indicate that battering occurs in a range of different structures of intimacy between partners (e.g., Mitchell, 1992; Levinson, 1989).

Psychotherapy appears to have low rates of effectiveness with batterers (Jacobson & Gottman, 1998), which we observe to result from their high entitlement and from their tendency to manipulate the therapeutic process. We have received only rare reports from partners of our clients of behavioral improvements in the abuser through participation in psychotherapy or through the use of psychotropic medication, and none of those improvements have been maintained over the long term. Furthermore, we find our battering clients to be highly resistant to using psychotropic medication regularly and responsibly.

A similar misconception about batterers involves their purported deficiencies in conflict resolution, communication, assertiveness, and anger management skills. In fact, Dutton (1995) observed that the batterer's lack of assertiveness was present only in partner relationships and not in other contexts. Another study found that skill differences between batterers and nonbatterers were small (Morrison,

Van Hasselt, & Bellack, 1987). These findings strengthen our clinical observation that batterers are generally not unable to use nonabusive skills but rather are unwilling to do so because of their attitudes. In our experience, batterer intervention specialists are in wide agreement that the teaching of conflict resolution or anger management skills to batterers is only useful if the clients' underlying attitudes are also confronted.

A particularly prevalent misconception about batterers is that they have poor impulse control. However, it is unusual to find an abuser who has a history of lost jobs due to impulsive behavior at work or other indications of low impulse control. Moreover, a complete history of a man's abusive and controlling behaviors toward his partner generally reveals some actions that require forethought or even planning. Exploration of an abuser's nonpartner relationships, his handling of his own finances, and other spheres of life generally reveals no severe history of impulsivity.

One mental health diagnosis that should be treated as a special case is antisocial personality disorder, also known as the psychopathic or sociopathic personality. This is a condition in which the person lacks a social conscience, leading to manipulative and exploitative behavior, a tendency toward violence and intimidation, and chronic law breaking. The male sociopath typically has superficial, dishonest, and abusive relationships with women, including chronic infidelity (American Psychiatric Association, 1994). Although the sociopath and the batterer are similar in their exploitativeness (Jacobson & Gottman, 1998), there are two key differences between the two personalities: (a) The sociopath exhibits his antisocial tendencies with many different people (typically including employers) and not just with intimate partners. (b) The sociopath's behavior pattern begins no later than mid-adolescence, but the batterer's problem emerges more commonly in his late teens or twenties. Antisocial personality disorder is dangerous and highly resistant to treatment, so a man who has both this diagnosis and a history of battering may be a serious risk to his partner, former partners, or children.

### Generalized Violence and Criminality

The great majority of our clients, including some of the most severely or dangerously violent ones, have not had any chronic problems with violence outside of partner relationships. Studies have similarly concluded that although batterers do have a higher rate of generalized violence than do nonbatterers, the great majority of



batterers restrict their violence to intimate relationships (Jacobson & Gottman, 1998; Hotaling, Straus, & Lincoln, 1990). They are not generally perceived as violent in nature by people who interact with them in other contexts; the exception to this is in certain situations where they are confronted about their battering behavior or when they perceive others as interfering with their control over their partners or children. In other situations, batterers are known for their self-control: For example, their ability to calm themselves abruptly when police arrive at the home and to behave reasonably and amicably in the presence of the officers is a standard subject of police training on domestic violence.

Class assumptions have played a role in the construction of the societal image of the batterer as a generally violent man who is poor or blue-collar, often allowing batterers who are well educated, successful, and self-assured to escape detection. Similarly, the public imagination has exaggerated the contribution to battering of the "macho," tough-guy personality style, with its stereotypic class and racial associations.

Those batterers who do exhibit generalized violence have been shown to be an increased risk to their partners and children (Campbell, Soeken, McFarlane, & Parker, 1998). Men in this category can exhibit less concern for the consequences to themselves of their actions, are less restricted by their own guilt, and can be familiar with particularly destructive methods of violence (including weapons use). The presence of a pattern of generalized violence therefore does need to be taken into account as one factor in assessing a batterer's dangerousness.

### Race, Cultural, and Class Stereotypes

Battering has been established to be a serious problem in the great majority of racial and cultural groups that have been studied in the modernized world (Heise et al., 1999; Levinson, 1989). Within the United States, rates of battering are high among all racial groups (Tjaden & Thoennes, 2000) and do not appear to differ dramatically between different races and cultural groups when class is controlled for (Silvern, Karyl, & Landis, 1995; review in Hampton, Carrillo, & Kim, 1998, and in Koss et al., 1994); for example, Latino couples are no more male dominated or approving of violence than are Anglo couples (review in West, 1998). There is, however, a general dearth of research on batterers of color (Kanuha, 1996), forcing us to rely primarily on clinical experience in discussing the relevance of race and culture.

In our experience, professionals handling domestic violence cases—perhaps especially child protective service providers but also judges, therapists, custody evaluators, and others—have been prone to make errors based on cultural and class assumptions. These assumptions often come to our attention through the professional's statement that the family in a particular case "comes from a culture where domestic violence is considered acceptable." Such a view confuses and obscures the fact that modern cultures are made up of complex cross-currents, with values constantly being debated and undergoing shifts. To summarize a culture's view of domestic violence in one phrase is culturally insensitive; moreover, values among men in any given culture can be in sharp conflict with those among women. In addition, even in cultures where men's right to control females is largely accepted among both men and women, abusers still have higher than average levels for their society of beliefs in their right to exert power (review in Heise et al., 1999). Visible individuals and groups working in opposition to domestic violence exist throughout the world; at least 53 countries now have laws against domestic violence and 41 have criminalized marital rape (Heise et al., 1999). In short, we are unaware of evidence indicating that any culture has a broad consensus explicitly condoning domestic violence.

In more sensitively discussing the influence of racial, cultural, and class factors on battering behavior, we must begin by stressing the high level of implicit support for domestic violence in *mainstream* culture in the United States, including among the white, educated, and economically privileged sectors of society. For example, college students given a scenario involving domestic violence by a man tend to blame the woman and to relieve the man of responsibility; this tendency increases the more the scenario portrays a high degree of intimacy in the relationship, with few research subjects believing that the man is responsible for his actions (Summers & Feldman, 1984). Another study found that over 25% of college males studying undergraduate psychology believe that it is appropriate for a man to beat a woman whom he believes to be sexually unfaithful and that over 10% believe it is appropriate to beat a female partner who repeatedly refuses to have sex (Silverman & Williamson, 1997). In addition, batterers can read cultural messages in the failure of some police departments or courts to take domestic violence offenses seriously or to hold batterers accountable for their actions; for example, sentences for crimes related to domestic violence are generally lower than those for comparable violent crimes among strangers (Gender Bias Study Committee, 1989). Batterers may take similar lessons from the reluctance of police to take action regarding spousal rape (Bergen, 1996).

Moreover, international studies are helpful in considering further the importance of race and ethnicity in patterns of battering. Overall, the level of domestic violence in the United States is comparable to that of other societies (Straus & Gelles, 1990), appearing to be among neither the highest nor the lowest; for example, domestic violence rates in Puerto Rico have been found to be higher than the U.S. average but those in Cuba much lower (Kaufman Kantor, Jasinski, & Aldarondo, cited in West, 1998; see also Levinson, 1989). The best predictors of level of battering in a society have been found to be economic and social factors, including the level of economic inequality between men and women and the level of restriction on women's economic rights (such as the right to inherit land or money); the extent of husband dominance in family decision making; the level of access by women to divorce; and the overall level of violence in the society (Heise et al., 1999; Mitchell, 1992; Levinson, 1989). Rates of partner abuse appear to be lower in societies where women have more power and authority outside of the family as well as inside (Heise et al., 1999). Thus, a global perspective reinforces our view that battering cannot be explained in terms of racial or ethnic factors in themselves.

Battering is also not the province of a particular socioeconomic class. Although most studies suggest that poorer families have a higher incidence of domestic violence (e.g., Bachman, 2000; Straus, Gelles, & Steinmetz, 1980), there are also findings that rates are elevated in the wealthiest families (review in Stark & Flitcraft, 1988), that men of higher occupational status have higher rates of chronic offending (Woffordt et al., 1994), and that women at both the highest and lowest economic strata find it the most difficult to get away from abusive partners (Woffordt et al., 1994). A higher level of education does not appear to make a man less likely to batter (review in Hotaling & Sugarman, 1986), and a batterer's level of education does not significantly affect his likelihood to physically abuse children (Suh & Abel, 1990).

The above points are not meant to suggest that cultural literacy and class sensitivity are irrelevant to professionals addressing domestic violence. Batterers' styles do vary by culture, so that the particular spheres of greatest control, the most likely excuses for abuse, and even the forms of violence used follow some cultural generalizations (Levinson, 1989). Cultural literacy is important in understanding how a particular man may construct the rationalizations for his actions and what some of the moments or situations of greatest danger may be for his partner and children (Haj-Yahia, 1996) and therefore also in designing effective services for batterers (Carrillo & Tello, 1998).

Similarly, the challenges faced by a battered woman are culturally specific, including what kind of support (if any) she can expect to receive from relatives, police, clergy, and other key institutions, and how her own cultural and religious beliefs shape her perceptions of her options (Bonilla-Santiago, 1996; Haj-Yahia, 1996). There is evidence, for example, that religious participation increases the ability of African American women to avoid abusive relationships (Raj et al., 1999). An immigrant woman may face language barriers when she attempts to get assistance, or her legal status may present her with the additional fear that the batterer will have her deported. Considering class issues, the higher rates of domestic violence found among low-income families may reflect the additional obstacles that poor women face to leaving rather than a greater propensity of poor men to batter.

In our clinical experience, although we do observe some racial, ethnic, and class variations in the tactics and justifications used by batterers, we find the commonalities stronger than the differences. Our clinical experience with batterers involves primarily white, African American, Caribbean, and Central American men, as well as some Portuguese and Cape Verdean individuals. The class makeup of our clients has been fairly representative of the United States, with higher incomes among our self-referred clients and those mandated by courts in wealthier areas.

Lack of cultural awareness can lead to underreactions and overreactions by professionals. The belief that domestic violence is the norm in certain cultures can cause child protective workers to overlook potentially dangerous situations, just as the belief that men from certain groups are likely to be batterers may lead to a prejudicial court response or cause child protective services to remove children from a home prematurely. Class assumptions can have similar effects; we observe, for example, that both courts and child protective services sometimes underreact to the well-educated, economically comfortable batterer (see also Adams, 1989).

We do see indications that some better-educated batterers may rely less on physical violence and draw more on sophisticated techniques of psychological abuse that they have at their disposal. These observations are consistent with findings that, at lower levels of violence, more privileged men are just as likely to batter as are low-income men (Hotaling & Sugarman, cited in Moore, 1997). However, this style of abuser may be at less risk of arrest, because his incidents of physical battering tend to be lower in frequency and severity. Overgeneralization should be avoided, however, as we have also worked with upper- and middle-class clients who were violent to the

point of terror and with working-class clients who used low levels of violence and high levels of psychological abuse.

As with culture, the obstacles faced by a battered mother are specific to her class position. A poorer woman may have few job options, her friends may be unable to take her and her children into their already crowded houses, and her relatives may not have money to lend. A wealthier woman may find the contrast between her life-style and the conditions in a battered women's shelter overwhelming and may find her children resentful toward her if she takes them out of their comfortable surroundings.

Two final points need to be made regarding race, culture, and class. First, we observe clinically that cultural mores play a role in shaping the strengths and weaknesses of a batterer's parenting (as they do anyone's) and interact with his battering problem in complex ways. (Research on the parenting of batterers that examines cultural variations is virtually nonexistent at this point.) Second, class and cultural expectations affect how able children feel to disclose the abuse to outsiders and to process their emotional reactions to it. For example, wealthier children may be socialized more strongly to avoid harming the family's reputation and may also assume that they would be disbelieved if they disclosed the abuse. Immigrant children may be afraid to disclose any personal information to those perceived as authorities.

### SUMMARY

Domestic violence perpetration involves a definable and identifiable pattern of attitudes and behaviors. Batterers share key characteristics, each of which has important implications for the experience of children in the home. The battering problem has unique etiology and dynamics and cannot be reduced to any other cause such as substance abuse, mental illness, or violent personality type. Effective assessment and intervention with families affected by domestic violence requires a grasp of the central elements of the battering pattern and of the dynamics that it may set in motion in a particular family. Cultural and class awareness are also indispensable, for the social context in which the parents live shapes their behaviors and their real and perceived options, which in turn shape the children's experience.

# **EXHIBIT 70**

# CHILD CUSTODY & DOMESTIC VIOLENCE

*A Call for Safety  
and Accountability*

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*The Centre for Children & Families in the Justice System*

Nancy K. D. Lemon

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### Violence in New Relationships

Violent fathers may move on to new partners and continue to inflict abuse if there has been no meaningful intervention or accountability. One research study found that 58% of male offenders perpetrated violence against their new partners after the dissolution of a previously abusive relationship (Woffordt, Mihalic, & Menard, 1994). This high likelihood of continued violence results in ongoing exposure to abuse for children of divorce. Ironically, some judges and mental health professionals tend to view reinvolvement on the part of the male as an indicator of stability or maturation in these new relationships. In our clinical experience with child-custody cases involving domestic violence, the key witness for the father is usually a new wife or female partner who testifies to the kind and gentle manner of the batterer in this new relationship. The message to the judge is that the problem is one of interaction or the difficult mother rather than any accountability or acknowledgment for past violence.

### Perpetual Litigation

The family court can be exploited by batterers as a means of continuing their abusive behavior. Through extensive litigation, which drains the emotional and financial resources of the abused woman, the batterer may draw the judge and his own counsel into his desire to maintain control of the relationship. Some authors have suggested that batterers are twice as likely as nonbatterers to apply for custody of the children and are equally likely to be successful in this pursuit (Bowermaster & Johnson, 1998; Zorza, 1995). In one study involving 52 abused women, many of them faced years of litigation in which they felt little intervention by courts to protect them from ongoing legal harassment (Sinclair, 2000).

### Extreme Outcomes

At the extreme of the continuum of domestic violence cases are ones in which credible threats of abduction and homicide take place. Missing children's organizations are a monument to what desperate parents do to each other and their children. Tremendous fear and distrust is engendered just by the possibility of such action by mothers or

# **EXHIBIT 71**

in general provides insight into understanding the circumstances of the battered African-American female. The following discussion on slavery's legacy provides that context.

\* \* \*

## D. LATINAS

### MICHELLE DECASAS, PROTECTING HISPANIC WOMEN: THE INADEQUACY OF DOMESTIC VIOLENCE POLICY

24 Chicano-Latino L. Rev. 56 (2003).

#### INTRODUCTION

Over the past three decades the women's movement has made great strides in providing women with added protection and access to the legal system. One of the most important areas of progress has been in anti-domestic violence policy. The movement has successfully made domestic violence a crime and a growing concern for society. This progress, however, has not reached all the intended beneficiaries. Women of color, in particular Hispanic women, face domestic violence with a different set of problems. Hispanic women are at an increased risk of death at the hands of their intimate partners. Because Hispanic women are more exposed than Black or White women to the key risk factor of intimate homicide, which is domestic violence, they are more at risk of being killed by an intimate partner. Given this heightened risk of death among women, domestic violence policy must reflect the special circumstances of Hispanic women whose needs have been habitually neglected.

\* \* \*

#### I. INTIMATE HOMICIDE OVERVIEW

\* \* \* Intimate homicide is a betrayal of human nature that falls disproportionately onto women. An analysis of trends in intimate murder from 1976 to 1996 has shown that the number of victims of intimate homicide has declined over the past twenty years. The number of intimates killed has dropped from nearly 3,000 per year and 13.6 percent of all homicides in 1976 to fewer than 2,000 and 8.8 percent of all homicides in 1996. This represents a 36 percent decrease over twenty years. \* \* \*

At first glance this decrease seems optimistic. However, after taking an in-depth look at the gender breakdown, the decline is less positive for women. As can be anticipated, female murder victims are substantially more likely than male murder victims to have been killed by an intimate. The significant decline in intimate homicide is likely attributable to a marked decrease in male victims over the past twenty years. In contrast, the number of female victims has remained relatively constant with only a minimal decrease over the same period of time. In 1976 there were 1,600 female victims of intimate murder and 1,357 male victim documented

cases. In 1996, females accounted for 1,326 victims while only 516 victims were male.

\* \* \*

Intimate homicide is a serious problem that has prompted many scholars to research associated risk factors. The result of such research has produced two risk factors that strongly correlate with an increased risk of intimate homicide victimization: prior domestic violence victimization and the presence of one or more guns in the home. \* \* \*

## II. HISPANIC WOMEN'S EXPOSURE TO RISK FACTORS

Although the general issue of domestic violence has been widely studied, the literature on domestic violence has given little attention to the specific issue of violence against Hispanic women. This issue deserves particular attention given the different elements Hispanic women are exposed to that shape their experiences with domestic violence. According to the 1996 Statistical Handbook of Violence in America, Hispanic women in intimate relationships suffered the highest rate of domestic violence. Hispanic women were domestic violence victims at a rate of 181 per 1,000 couples. In comparison, White women had a domestic violence rate of 117 per 1,000, and Black women had a rate of 166 per 1,000.

\* \* \*

Domestic violence research has documented a series of risk factors that have been associated with victimization. Women at greatest risk for injury from domestic violence include those with male partners who abuse alcohol, are unemployed, have less than a high-school education, and have a low socio-economic status. Hispanic women are more exposed to these factors as a whole than are Black and White women. Without an understanding of the economic, social and political factors that impact Hispanic women's lives, an analysis of domestic violence against women is incomplete. The data suggest that the comparatively poor economic and political position of Hispanics place them at a distinct disadvantage, thus causing Hispanics to experience and respond to domestic violence differently than White women.

Alcohol abuse by an intimate male is one factor that increases a woman's chances of being a victim of domestic violence. Heavier drinkers are at increased risk for being perpetrators of intimate partner violence. Based on research conducted by the Substance Abuse and Mental Health Services Administration (SAMHSA), the rate of binge use and/or heavy use of alcohol was higher among Hispanics than Whites or Blacks. According to the 2000-2001 National Household Survey on Drug Abuse, Hispanics represent 24.6 percent of binge drinkers compared to 22.2 percent for Whites and 19.7 percent for Blacks.

In addition, the Survey indicates that males are more than twice as likely to be binge drinkers than are females. From this data we can infer that Hispanic males are more likely than Black or White males to be binge

and/or heavy drinkers. Therefore, Hispanic women are more exposed to the risk factor of alcohol abuse by their male partners than are Black or White women.

Unemployment is another key risk factor associated with domestic violence victimization. Men who are unemployed or have recently become unemployed represent a significant percentage of perpetrators of domestic violence. The rate of unemployment for Hispanics is 7.2 percent. This percentage represents the proportion of Hispanics who are unemployed as a percent of those in the labor force. This, however, does not take into consideration Hispanics who are not in the labor force, which is a serious limitation for two reasons. First, given that there is a large Hispanic immigrant population, some of whom may be undocumented, these numbers may not truly represent the current unemployment rate. Illegal immigrants are unlikely to be included in the quantification of the current unemployment situation if the process entails reporting by the employees or employers, for fear of the legal consequences. Second, Hispanic men who fall outside the definition of unemployed and into the definition of those not in the labor force may be considered equivalent, for purposes of this analysis. Both categories of men may equally contribute to the risk of domestic violence victimization of Hispanic women. This second limitation equally applies to Black and White women who, in comparison to Hispanic women, have unemployment rates of 9.7 and 4.8 percent respectively. Keeping in mind the apparent limitations of the statistical data available, Hispanics are exposed to the risk factor of unemployment second only to Black women and more than White women.

Having less than a high school education is yet another factor that is correlated with an increased risk of domestic violence victimization. Over the past four decades, Hispanic males have remained the leading group of high school dropouts.

Accordingly, in 2000 Hispanic males represented 31.8 percent of all dropouts between the ages of 16 and 24. Comparatively, Black men represented 15.3 percent and White men represented only 7.0 percent of dropouts. These statistics are under-inclusive for quantifying less than a high school education because they fail to consider those who attained less than eight years of education. The data on educational attainment only serves to further develop the argument that Hispanics are more likely than Whites or Blacks to attain less than a high school education. Among the total Hispanic population above the age of eighteen, an unfortunate 24.5 percent attain less than an eighth grade education. In comparison, only 3.8 percent of Whites and 5.8 percent of Blacks attain less than an eighth grade education. It is clear that Hispanic women are more likely to have a male partner with less than a high school education than are White or Black women.

The final factor considered to increase the risk of domestic violence victimization is low socio-economic status (SES). Research has shown that women living in households with lower annual household incomes experi-

ence intimate partner violence at significantly higher rates than women in households with higher annual incomes.

According to the U.S. Census Bureau, 6.7 percent of Hispanic households have an annual income of less than \$7,500. This is lower than the percentage of Black men (11.7 percent) and higher than the percentage of White men (4.9 percent). These statistics are problematic because they likely do not include immigrant workers. As asserted previously, immigrant workers are unlikely to participate in a population survey that calculates income distribution. Despite this inadequacy, however, we will assume that based on the data available for analysis Hispanic women are less exposed to low socio-economic men than Black women, but are more exposed than White women.

\* \* \*

Now that we have established that Hispanic women are more likely to be the victims of domestic violence we can reasonably say that they are at greater risk of intimate homicide. As noted prior, when we include the additional risk of gun possession Hispanic women are placed at even greater risk of being killed by an intimate partner. The already heightened risk to Hispanic women becomes even more significant. In view of the heightened risk to Hispanic women we now address the lack of consideration that is given to the needs of women of color when developing anti-domestic violence policy.

### III. POLICY CONSIDERATIONS

The last several years has seen an explosion of domestic violence law reform. Much of this recent law reform has focused on a number of far-reaching changes in criminal law. This focus has not been without influence. Advocates for battered women have urged a stronger criminal response in light of the inadequacy of past criminal justice response to domestic violence cases. The women's movement has made significant progress on many issues regarding domestic violence. However, not all the intended beneficiaries of the anti-domestic violence movement's efforts have realized those gains. It is best stated by Kimberly Crenshaw:

Where systems of race, gender, and class domination converge, as they do in the experiences of battered women of color, intervention strategies based solely on the experiences of women who do not share the same class or race backgrounds will be of limited help to women who because of race and class face different obstacles.

#### A. *Barriers Facing Women of Color*

Women of color, and particularly immigrant women, face domestic violence with problems that do not burden "White" women. The barriers facing Hispanic women include such factors as language and cultural differences, and immigrant status.



### 1. *Language Barriers*

Language may create a large barrier for Hispanic victims of domestic violence because most of the literature and services are intended for the English-speaking population. The inability to read or speak English fluently means that many Hispanic women, particularly immigrant women, may not know that domestic violence is a crime or that anti-domestic violence services exist. Non-English speaking Hispanic women have limited access to shelters. When non-English speaking women do seek assistance, shelter workers often deny their request because of the shelter's general preference to offer their limited number of slots to English-speaking women who can theoretically make better use of shelter services. "Shelters without bilingual and bicultural personnel claim that they would do a disservice to Latinas by accepting them, because the language barrier would prevent personnel from providing Latinas with adequate services." The supporters of this policy rationalize it by arguing that the best interest of all women is better served by ensuring that only those women who can benefit from the services are residents. These policies effectively serve to further subordinate and marginalize Hispanic women.

\* \* \*

### 2. *Cultural Differences*

A society and laws that promote individualism influences modern American women. Many Hispanic communities emphasize the family and restrict women into subordinate roles. The identities of Hispanic women are dictated by their roles as wives and mothers, and they are therefore dependent on the family unit. They are treasured as self-sacrificing women who always put the needs of their family above their own. This identity is further supported by the influence of Catholicism which dictates that women are supposed to be devout and traditional in their beliefs. The individual identity held by mainstream women is unfamiliar to many Hispanic cultures. This classification brings about a perception of female inferiority that is a precursor to the cultural acceptance of domestic violence.

Cultural acceptance of violence against women is often present in Hispanic communities because they view it as a private family issue. Women who openly confront their husbands' abusive behavior run the risk of being publicly chastised by their community. To discuss abuse overtly brings shame and embarrassment to the whole family. Families place substantial pressure on women not to disrespect the family unit. This pressure creates a strong disincentive for women to seek assistance outside of the family.

This cultural acceptance is further enhanced by the lack of anti-domestic violence laws in Hispanic countries. To illustrate this point we look at Mexico to get an idea of the situation that Hispanic women are likely to encounter. According to the U.S. State Department Country Report, Mexico, domestic violence is a serious and widespread problem within the borders of Mexico. In response to this vast problem, Mexico has

just recently begun to "build legal and social systems with which to control domestic violence . . . and therefore, does not provide sufficient protection and services to battered women." In addition, the country does not have the criminal justice system's participation to effectively meet the needs of domestic violence victims. Police are reluctant to interfere in what is thought to be a domestic matter. Domestic violence is essentially a culturally accepted norm.

The apparent lack of anti-domestic violence laws abroad becomes a significant problem within the United States when women emigrate. Women who arrive in the United States from countries with cultures that tolerate domestic violence and justice systems that have not effectively criminalized domestic violence, cannot be expected to know that the abuse they are experiencing is unacceptable and unlawful. With this lack of knowledge they may never become aware of the legal and social resources that are available to them. In addition, cultural values are passed on from generation to generation perpetuating a vicious cycle of domestic abuse.

Lastly, assuming a Hispanic woman has access to information on the condemnation of domestic violence, cultural distrust of law enforcement authority and the criminal justice system in general tends to hinder any consideration of seeking assistance. This negative depiction of police stems from several sources. First, the police failure to adequately respond to complaints of domestic violence creates a feeling of helplessness that influences Hispanic women not to bother. Law enforcement officers do not pay as much attention to the calls for assistance from Hispanic women because they believe these complaints to be more hazardous or less rewarding.

Second, Hispanics are reluctant to seek police assistance because of the history of violence they have experienced at the hands of police officers. The tension is further intensified by the denial of law enforcement agencies that they have behaved inappropriately within the scope of their duties. This situation affects the success of any attempt to curb domestic violence from a law enforcement stance. Hispanics will continue to distrust the police based on what they perceive their relationship with law enforcement to be.

Finally, the lack of similarity between law enforcement agencies and Hispanic communities is critical. Women seeking assistance are likely to be confronted by officers who are not bilingual or bicultural and therefore are unable to effectively address their needs. This is highly problematic given the position women are in when seeking assistance for domestic violence. Women are essentially forced to take care of themselves in order to compensate for the lack of personnel. These language barriers create insecurity in Hispanic women causing them to question whether the police are acting to protect their interests.

All these factors—gender roles, cultural acceptance of domestic violence, and distrust of law enforcement—combine to culturally distance Hispanic women from the mainstream feminist perspective.

### 3. *Immigrant Status*

There exists a large foreign-born population of Hispanics in the United States. In addition to, and somewhat related to, the barriers already discussed, immigrant women face distinctive barriers attributable to their immigration status. Many women emigrate from their native countries dependent on their spouse for financial support, legal status, and/or both. This makes immigrant woman particularly vulnerable to domestic violence. Immigrant women refrain from reporting domestic violence for fear that the undocumented spouse on whom they are dependent will be deported. These women commonly come to the United States with no independent financial resources. They are therefore wholly dependent on their husband for financial support. This creates a rationale for remaining in the abusive relationship.

Women fearful of their own deportation are also reluctant to report domestic violence. Immigrant women are often dependent on their U.S. citizen or lawful permanent resident spouse for their legal status. These women desist from reporting their abusive spouse for fear that they will be deported. Abusive husbands can use this reliance to condition sponsorship on staying in the relationship despite the abuse. Even if legal status is no longer dependent on the husband's sponsorship, due to the lack of access to information, women continue to be intimidated by such threats.

In addition to the threat of deportation, immigrant women who are undocumented are not eligible for public assistance. This further deters immigrant women from seeking assistance given that it is limited to church or private groups devoted to providing services to undocumented families.

#### *B. Current Policy Analysis*

Hispanic women are exposed to a range of barriers that Black or White women are not faced with when dealing with domestic violence. Consequently, in order for policy makers to effectively serve all women affected by domestic violence the unique needs of Hispanic women must be considered. This consideration has for the most part been lacking or inadequate in developing anti-domestic violence legislation thus far. Conducting an analysis of state and federal legislation will serve to illustrate this state of affairs.

##### *1. State Domestic Violence Policy: Mandatory Arrest*

States have implemented an array of policies geared towards responding to the epidemic of domestic violence. These policies range from stricter criminal penalties to allocation of funds for more social services. One of the most controversial criminal justice reforms in domestic violence is mandatory arrest policy. Given the premise under which these policies exist, domestic violence reporting, these laws fail to protect Hispanic women.

\* \* \*

## 2. *Federal Domestic Violence Policy: VAWA*

The Violence Against Women Act (VAWA), passed in 1994, is an attempt by Congress to fill the void remaining in the previous legislation with regards to immigrant women. Under VAWA, battered immigrant women can petition for lawful residency without the sponsorship of their abuser. In addition, VAWA provides an immigration remedy in the form of an exception to removal if deportation would be an extreme hardship. While these progressive reforms appear to shed a positive light on the direction of anti-domestic violence legislation, the application of the provisions is unlikely to effectuate their intended purposes.

### *a. Self-Petitioning Process*

In order to successfully make a VAWA self-petition, a woman must meet four basic requirements: \* \* \* These requirements pose a terrific challenge that is likely to dissuade many battered immigrant women from seeking relief and lead to the denial of relief for others. Beginning with the abuse requirement, the "strongly encouraged" evidence required is listed as "court documents, medical reports, and other official documents."

Given the particular circumstances affecting immigrant women, it is highly improbable that they will have access to such documentation. Considering the previous discussion on the unlikelihood of reporting among Hispanic women, obtaining official documentation is not feasible since it is likely there is none. This requirement effectively bars many of the women most in need of the legislation from being protected.

\* \* \*

Having analyzed both state and federal policy, it is apparent that the needs of Hispanic women have failed to significantly impact the content of those policies. Feminist discourse continues to address the needs of "mainstream" women when pushing for legislative reform. So long as this is the practice, Hispanic women will continue to lack the essential protection and support that is available to mainstream women.

### *Conclusion*

As long as Hispanic women are dying at the hands of their intimate partners, law makers must pay greater heed to their particular needs in creating policy to protect them. The progress that has been made by the domestic violence movement has not been completely in vain, however, "women" is not a homogeneous term. Given the particular needs of women of color, and Hispanic women in particular, efforts must be expanded. The most effective way of accomplishing this is to change the focus of the mainstream movement to include the minority perspective.

# **EXHIBIT 72**

# *EVALUATION REVIEW*

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A JOURNAL OF APPLIED SOCIAL RESEARCH

# EVALUATION REVIEW

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A JOURNAL OF APPLIED SOCIAL RESEARCH

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**Special Issue:** Intimate Partner Violence and Firearms

**Editor:** Susan B. Sorenson

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**Note From Special Issue Editor**

**Dedication**

In memory of Linda Saltzman and Susan Schechter.

**Acknowledgment**

I would like to express my appreciation to the reviewers for this special issue: Sarah Buel, Philip J. Cook, Jeffrey Fagan, Victoria Holt, Arthur Kellermann, Judith McFarlane, Carol Runyan, and Franklin Zimring. Thanks also goes to the Joyce Foundation, whose support allowed for the compilation of the papers and the dissemination of the journal to policy makers, state attorneys general, district and city attorneys, law enforcement officers, chief probation officers, judges, prevention advocates, and researchers.



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# FIREARM USE IN INTIMATE PARTNER VIOLENCE

## A Brief Overview

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*Readers of this volume are likely to have specific interests in domestic violence or in firearms policy. It is not assumed, however, that the typical reader will know about the interface of the two fields. Thus, the volume begins with a synopsis of the epidemiology of weapon use in intimate partner violence. The purpose of this article is to help readers better understand the nature of the problem, obtain knowledge that will provide a context for the policy, and understand practice implications of the articles that follow.*

**Keywords:** *firearms; intimate partner violence; violence prevention; policy; norms*

When people speak of murder, they usually think of men—men as victims, men as perpetrators. Although men's risk of homicide is higher than that of women, few realize that homicide ranks similarly as a cause of death for men and women. As shown in Table 1, homicide is the second leading cause of death for adolescents and young adults in the United States—for both men and women. Firearms are the most commonly used weapon in the homicide of men and women.

There are important differences, however, in the homicides of men and women. Two primary differences are the place of the homicide and the nature of the victim-suspect relationship. Men are most likely to be killed in the street or other public place; women are most likely to be murdered at home. Acquaintances pose the greatest risk to men; current or former

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**AUTHOR'S NOTE:** *For a more detailed review, the interested reader is referred to Sorenson (2006). This special issue is dedicated to the memory of Linda Saltzman and Susan Schechter. I would like to express my appreciation to the reviewers for this special issue: Sarah Buel, Philip J. Cook, Jeffrey Fagan, Victoria Holt, Arthur Kellermann, Judith McFarlane, Carol Runyan, and Franklin Zimring. Thanks also goes to the Joyce Foundation, whose support allowed for the compilation of the papers and the dissemination of the journal to policy makers, state attorneys general, district and city attorneys, law enforcement officers, chief probation officers, judges, prevention advocates, and researchers.*

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**TABLE 1: Rank of Homicide as Cause of Death, by Age and Sex, United States, 2000**

Rank	Age (years)					
	1-4	5-9	10-14	15-19	20-24	25-34
1						
2				M	M, F	
3	M, F			F		M
4		M, F	M, F			
5						F
6						
7						
8						
9						
10						M

SOURCE: National Vital Statistics data, <http://www.cdc.gov/ncipc/wisqars/> (accessed September 24, 2005).

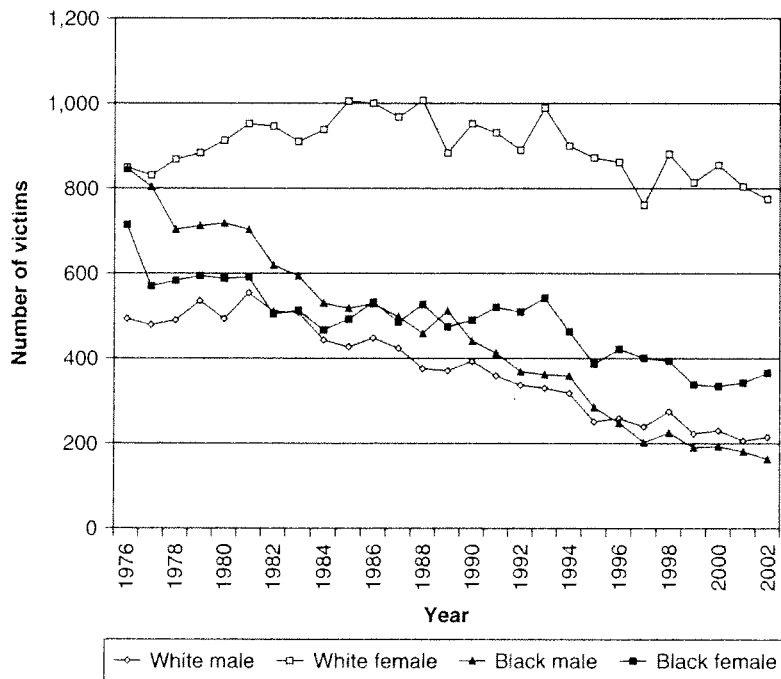
NOTE: Age categories for persons 45 years and older are not shown because homicide is not one of the leading causes of death in those age groups. M = male; F = female.

intimate partners present the greatest risk to women. In recent years, intimate partner homicides composed only 4% of the murders of men but about one third of the murders of women (Rennison 2003).

## TRENDS

Tallies of intimate partner homicide initially were limited to those involving current legal or common-law spouses. The definition was expanded over time in recognition that such violence is not limited to current relationships, legally recognized relationships, or heterosexual relationships. A framework of intimate partners, rather than spouses, is important to capture the phenomenon most fully. For example, among 25- to 44-year-olds, it appears that girlfriends, rather than wives, are at highest risk of being killed by an intimate (Fox and Zawitz n.d.). National homicide data include former spouses but continue to exclude former boyfriends and girlfriends in the definition of an intimate partner.<sup>1</sup>

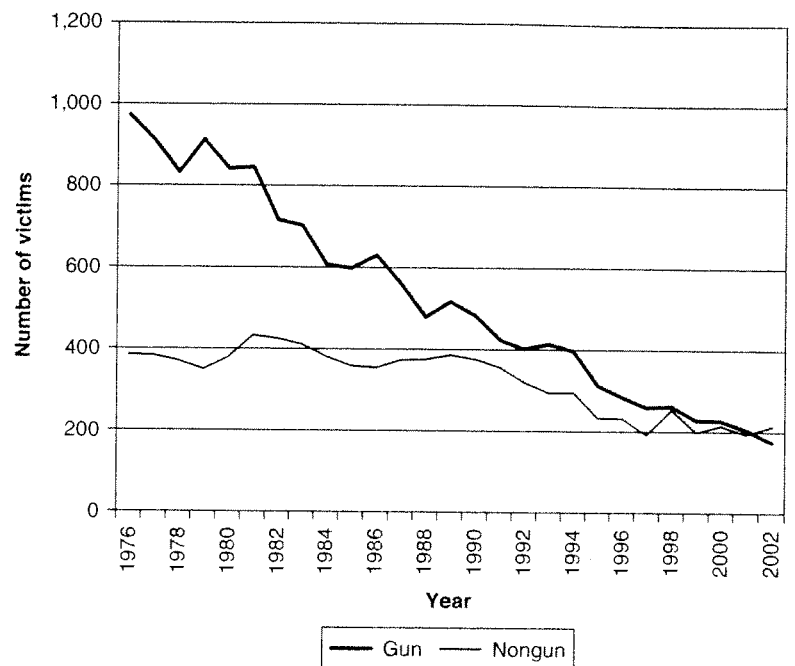
Despite the burgeoning number of emergency shelters for battered women and the recent development of long-term shelters, large numbers of women continue to be killed by their intimate partners. (See Dugan, Nagin, and Rosenfeld [1999] for an analysis of the relationship between resource



**Figure 1: Intimate Partner Homicide Victims by Sex and Race, United States, 1976-2002**

SOURCE: U.S. Department of Justice, Bureau of Justice Statistics (1980-2002), <http://www.ojp.usdoj.gov/bjs/homicide/intimates> (accessed April 4, 2005).

allocation and intimate partner homicide.) As shown in Figure 1, fewer and fewer men were killed by their intimate partners during the past several decades, but the number of women, particularly White women, killed changed relatively little. Because rates of intimate partner homicide declined faster for men than for women, the ratio of female-to-male intimate partner homicide victimization was higher in 2002 than it was in 1976. In 1976, there were 1.17 female victims for every male victim of intimate partner homicide; in 2002, there were 3.02 female victims for every male victim. An increasing female-to-male ratio of intimate partner homicide is observed for both Blacks (0.84 in 1976 to 2.25 in 1999) and Whites (1.72 in 1976 to 3.60 in 1999). Thus, in the past generation, the phenomenon of intimate partner homicide has changed to be largely the homicide of women.



**Figure 2: Male Victims of Intimate Partner Homicide by Type of Weapon, United States, 1976-2002**

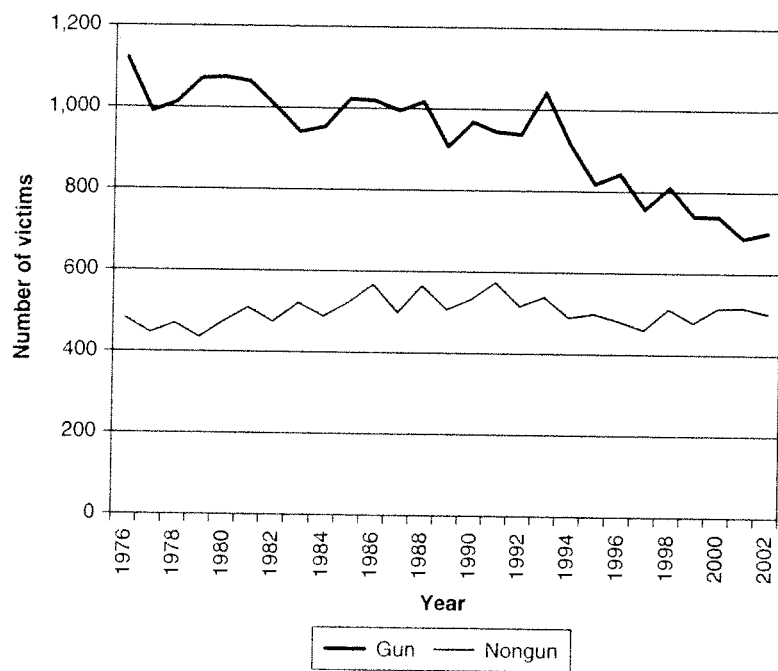
SOURCE: U.S. Department of Justice, Bureau of Justice Statistics (1980-2002), <http://www.ojp.usdoj.gov/bjs/homicide/intimates> (accessed April 4, 2005).

## FIREARMS

### FATALITIES

Although the sheer number of homicides has dropped, firearms continue to figure prominently in intimate partner homicide. As seen in Figures 2 and 3, if a firearm is used in an intimate partner homicide, it is likely to be used to kill a woman. A history of physical abuse of the woman by the man is observed in a great majority of intimate partner homicides, irrespective of which person is killed.

Despite a general emphasis on danger posed by strangers, intimate partners with guns present the greatest fatal risk to women. Women are more than twice as likely to be shot by their male intimates as they are to be shot, stabbed, strangled, bludgeoned, or killed in any other way by a stranger (Kellermann and



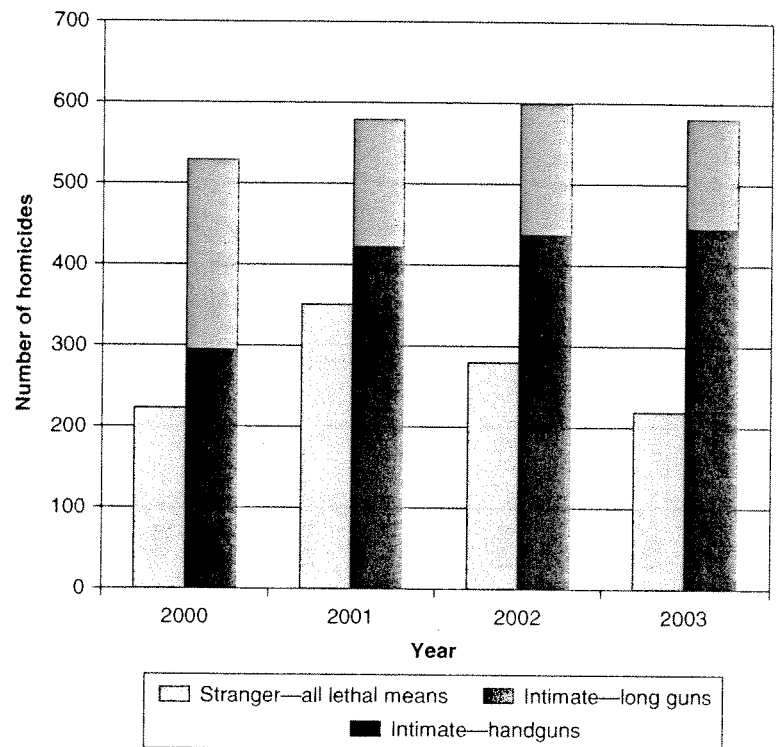
**Figure 3: Female Victims of Intimate Partner Homicide by Type of Weapon, United States, 1976-2002**

SOURCE: U.S. Department of Justice, Bureau of Justice Statistics (1980-2002), <http://www.ojp.usdoj.gov/bjs/homicide/intimates> (accessed April 4, 2005).

Mercy 1992). A handgun is the weapon of choice. In addition, as shown in Figure 4, the most recent data available indicate that as homicides of women by strangers have decreased, the number of homicides by intimates with handguns has increased.

#### NONFATALS

Fatalities are not the only way in which firearms and other weapons are used in intimate partner violence. This observation is important because most intimate partner violence is ongoing, nonfatal abuse. Fewer than one quarter of 1% of intimate partner assaults are fatal. Nonetheless, when there has been a history of violence against the woman by her male intimate, regardless of other demographic characteristics of the victim or the



**Figure 4: Homicides of Women by Male Intimates With Firearms Versus Strangers Regardless of Weapon, United States, 2000-2003**

SOURCE: Analysis performed by the author using computer files for 2000 to 2003 data from the U.S. Department of Justice, Federal Bureau of Investigation (Uniform Crime Reporting Program Data [United States]: Supplementary Homicide Reports. ICPSR ed. Ann Arbor, MI: Inter-university Consortium for Political and Social Research).

assailant, characteristics of their relationship, forms of prior abuse, and a host of other variables, his access to a gun is a potent predictor of a fatal assault (Campbell et al. 2003).

Recent research indicates that the gender discrepancy in firearm use among intimates holds for nonfatal as well as fatal violence. National hospital discharge data document that men are 8 times more likely than are

women to be treated for a gunshot wound (Gotsch et al. 2001) but that women are 3.6 times more likely than are men to be shot by a current or former spouse than by a stranger (Wiebe 2003). In a national survey of the general population, women were more likely than were men to have a gun used against them by an intimate partner: threatened with a gun (3.5% for women vs. 0.4% for men) and gun used against them (0.7% for women vs. 0.1% for men; Tjaden and Thoennes 2000). Whereas the base rates are low, these percentages translate to unsettling numbers: 16 in every 1,000 U.S. women have been threatened with a gun, and 7 in 1,000 have had a gun used against them by an intimate partner.

Firearms are used in ways that do not result in firearm-related injuries. A gun can be used to coerce behaviors such as sex, as a means to inflict terror, and so on. Firearms, particularly handguns, may be more common in homes where battering has occurred than in the general population. In a statewide survey of residents of battered women's shelters, more than one third (36.7%) of the sheltered women reported that there was a firearm in the home (Sorenson and Wiebe 2004). Only about one sixth (16.7%) of women in the general California population report that there is a firearm in the home (Center for Health Policy and Research 2001). In two thirds of the battered women's households that contained a firearm, the intimate partner used the gun(s) against the woman, usually threatening to shoot/kill her (71.4%) or to shoot at her (5.1%). In other words, when there was a gun in the home where battering had occurred, it commonly was used against the woman.

## CONCLUSIONS

Firearms and intimate partners present a particular risk to women's health and safety. Policies designed to prevent the homicide of women that focus on male intimates and firearms are supported by the available data.

## NOTE

1. Practical implications of the definition of intimate partner can be illustrated using homicide data from one state. From 1990 to 1999, 1,192 California homicides were classified as spousal, that is, legal and common-law spouses. If a broader category of intimate partners is used that includes ex-spouses and current and former girlfriends and boyfriends, the number of homicides nearly doubles to 2,313. (Analyses were performed by the author using homicide data from the California Department of Justice.)



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# **EXHIBIT 73**

Pence, E. (2001). Advocacy on behalf of battered women. In C. M. Renzetti, J. L. Edleson, & R. K. Bergen (Eds.), *Sourcebook on violence against women* (pp. 329-343). Thousand Oaks, CA: Sage.

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## **E. BATTERERS IN BLUE**

### **DISCUSSION PAPER ON IACP'S POLICY ON DOMESTIC VIOLENCE BY POLICE OFFICERS**

A Product of the IACP Police Responses to Violence Against Women Project.  
International Association of Chiefs of Police, July 2003.

\* \* \*

#### **C. Incident Response Protocols**

A department's response to 911 calls where officers are involved immediately sets the tone for how a situation will be handled throughout the remainder of the continuum. A range of trained personnel is critical to the effective management of an incident.

1. **Department-Wide Response.** When handling a report of domestic violence involving a police officer, all actions must be documented and forwarded to the chief through the chain of command.

2. **Communications Officer / Dispatcher Documentation.** When a call or report of domestic violence involves a police officer, the dispatcher should have a standing directive to document the call and immediately notify both the supervisor on duty and the dispatch supervisor. This directive ensures that command personnel receive the information and prevents the call from being handled informally.

3. **Patrol Response.** In a domestic violence situation involving an officer, the dynamics between the responding patrol officer and the accused officer (i.e., collegiality, rank differential) have the potential for making the on-scene decisions additionally difficult. Therefore, the responding patrol officer shall immediately request that a supervisor on-duty who is of higher rank than the involved officer report to the scene, regardless of the involved officer's jurisdiction.

4. **On-Scene Supervisor Response.** The on-scene supervisor must respond to the call and assume responsibility for all on-scene decision making to include:

- Securing the scene and collecting evidence
- Ensuring an arrest is made where probable cause exists
- Attempting to locate the alleged offender if he/she has fled

- Removing firearms
- Addressing issues of victim safety
- Notifying the chief in the accused officer's jurisdiction

a. *Crime Scene Documentation.* Understanding the dynamics of domestic violence, as well as the high incidence of threats and intimidation by offenders, recanting or reluctant victims/witnesses are not uncommon. Police on the scene of a domestic violence incident must record excited utterances and threats by the perpetrator, interview witnesses and use cameras and/or videotapes to document all evidence including injuries, damaged property and the crime scene. Thorough documentation is essential for the successful prosecution of the case whether or not the victim participates in court proceedings.

b. *Arrest Decisions.* Policies on arrest for domestic violence incidents vary among state, county, and local jurisdictions. In all cases, responding officers should base arrest decisions on probable cause. The responding officers and/or on-scene supervisor is responsible for determining whether probable cause exists, ensuring an arrest is made if probable cause does exist, or submitting written documentation to explain why an arrest was not made. When the dominant aggressor is not arrested, the victim feels that the police will not help, and the abuser understands that police involvement can be used as an additional tool to hurt and control the victim. Officers must make every effort to determine which party is the dominant aggressor in order to avoid the arrest of victims.

c. *Weapon Removal.* When an arrest is made, the on-scene supervisor shall relieve the accused officer of all service weapons. Where multiple firearms are present (officers may own recreational firearms that they keep at home), removing only the service weapons may leave the victim vulnerable to further violence. While federal, state, and local laws vary on how and when firearms can be removed, police have broad powers to remove them in certain circumstances, particularly if an arrest is being made. The on-scene supervisor may suggest that the accused officer voluntarily relinquish all firearms. The supervisor can also ask the victim about the removal of firearms from the home for safekeeping by the department. In situations where an arrest is not made, the on-scene supervisor may consider removing the accused officer's firearm(s) as a safety consideration and to reduce department liability.

After firearms are removed, decisions need to be made about how long they will be or can be held. Where court orders of protection are in place, these orders may affect decisions on the return or seizure of firearms. Federal law prohibits any person subject to a qualifying order of protection from possessing firearms and ammunition (18 U.S.C. 922(g)(8)). (For determination of qualifying orders of protection, see this document, page 1, Section B. Definitions.) Under ATF's interpretation of the Gun Control Act's Official Use Exception, this provision does not apply to persons "performing official duties on behalf of a Federal, State, or local law enforcement agency." This exception applies "as long as the officer is

authorized or required to receive or possess that firearm in his/her official duties." ATF has clarified that "the authorization must be by statute, regulation, or official department policy" and applies to both department-issued firearms and those purchased by the officer if authorized or required by the department. A department may want to limit the scope of the exception to apply only to the primary service weapon instead of the full range of firearms with which the officer has qualified in order to further minimize liability. A department may choose to be more restrictive than federal law by prohibiting officers from possessing service weapons when subject to protective orders or under criminal and/or administrative investigations.

A 1996 federal law prohibits any person convicted of a qualifying misdemeanor crime of domestic violence from possessing firearms and ammunition (18 U.S.C. 922(g)(9)); no exceptions are allowed under this law, and it is retroactive to convictions prior to 1996. (For determination of qualifying MCDV, see this document, page 1, section B. Definitions.)

5. Additional Critical Considerations. Although a domestic violence incident involving an officer from another jurisdiction could present a department with compounding complications, a policy that addresses such circumstances can minimize confusion and liability. Of equal importance is the need for department policy to address employees involved in domestic violence who live outside the department's jurisdiction. It is recommended that neighboring jurisdictions prepare written Memoranda of Understanding so that departments can be assured that they will receive mutually agreed upon, timely notification of an incident's occurrence.

It is important that the department's policy addresses the possibility that the accused officer is the chief/director/supervisor of the department in order to affirm the department's commitment to zero-tolerance. In such a situation, notification would be made to the individual with direct oversight.

Departments may be faced with a domestic violence incident where the victim is a police officer or both victim and offender are police officers. If this occurs, standard domestic violence response and investigative procedures should be followed. Safety of the victim should be the paramount concern. The department should take steps to protect the privacy of the officer who has been abused, and make referrals to confidential domestic violence services. The department should not allow the reported incident to impact negatively upon the assignments and evaluation of the victimized officer. In the event that an order of protection has been issued, a department will need to make careful decisions concerning work assignments for accused officers pending administrative and criminal investigations. Firearm removal in this situation becomes additionally complex. In the development of the policy, individual departments should seek legal guidance to protect the rights of all concerned.

6. Department Follow Up. The policy requires officers to report to their supervisor if they become the subject of a criminal investigation or protective order proceeding, however departments should not rely on self-reporting. It is recommended that departments establish a mechanism such as annual/periodic checks of protective order databases for names of officers. The chief should require a debriefing of all officers including communications officers/dispatch involved in response to a police officer domestic violence case and should use the opportunity to review with personnel the department's confidentiality guidelines. In addition, a command-level critical incident management review of every domestic violence case involving an officer should be conducted.

The department must select a danger assessment tool to be used to determine the potential for further violence on the part of an accused officer and provide training on the use of the tool to a designated member of the command staff. In addition, the assessment should be supplemented by interviews with the victim, witnesses, and family members. Information gathered should be used to settle on appropriate sanctions, administrative actions, and referrals. Danger assessment findings may be shared with the judge, while the officer is in custody, prior to arraignment. The command officer assigned as the victim's principal contact should discuss the findings with the victim as part of safety planning. All victims shall be informed of the possibility of danger regardless of the outcome of the assessment.

Another tool which supervisors and chiefs are encouraged to use when a pattern of abusive behavior is detected is an administrative order of protection. This is a directive from a supervisor ordering an officer to refrain from particular conduct toward a particular person as a condition of continued employment. The use of administrative orders of protection are helpful in that they may enhance victim safety, and punishment for violations of an order can proceed quickly reducing department liability and eliminating the time a department may need to continue to pay an officer on administrative leave or suspension for the duration of a lengthy criminal case.

#### D. Victim Safety and Protection

IACP efforts within this project have clearly identified victims of police officers as especially vulnerable. Police officers are usually well known within the criminal justice community and may be well respected in law enforcement circles. Victims in these circumstances may feel powerless. They face formidable obstacles in seeking police assistance. Therefore, the department must be actively engaged in outreach to families of officers and connected to the range of services within the community.

1. Advocacy Resources. The support of a domestic violence victim advocate can help the victim proactively enhance personal safety. While at the scene, the supervisor must ensure that the victim receives written information about community resources and local domestic violence organ-

izations. It is the responsibility of the on-scene supervisor to share information on victim rights and the procedures for obtaining a protective order. Providing information on applicable state laws in a timely manner will enable victims to make informed decisions.

2. Designated Principal Contact. Promptly following the report of the incident, the department shall assign a member of the command staff as the victim's principal contact for case information. This connection is essential for addressing safety and informing victims about all aspects of department protocols and policies and applicable laws. As a matter of safety, the victim's whereabouts and any communication with victims must be kept confidential. The principal contact must inform the victim of department confidentiality policies and their limitations.

3. Victim Safety. Departments must recognize that as the consequences of being held responsible for his/her behavior (the potential loss of employment coupled with the loss of control over the intimate partner) become apparent, an abusive officer may escalate behavior to extreme acts of violence such as abducting the victim, taking hostages, and committing homicide and/or suicide. The victim's principal contact must ensure that the victim is offered the opportunity to create a safety plan and discuss stalking. Information learned through the danger assessment tools are critical for alerting the department and the victim to the potential for additional violence and for developing strategies in an attempt to cope with the situation.

#### E. Post-Incident Administrative and Criminal Decisions

Once an arrest has been made or an incident has otherwise been documented, careful attention must be devoted to the proper handling of the case. The department should conduct two separate but parallel investigations. The chief may ask an outside law enforcement agency to handle the administrative or criminal investigation for reasons of limited resources or to avoid the appearance of a conflict of interest. Simultaneous investigations will prevent a department from continuing to employ an officer who has violated department policy while the outcome of a criminal investigation and prosecution may take considerably longer to conclude. In order to ensure that an accused officer's departmental and legal rights are upheld during the administrative and criminal investigations, the department should seek legal guidance.

1. Administrative Investigations and Decisions. The chief shall appoint an investigator within the internal affairs division of the department to conduct the administrative investigation. If a department does not have an internal affairs division, the chief should appoint an investigator. Based on the report of an incident the department must undertake a comprehensive administrative investigation of the accused officer and take steps to reduce the potential for further violence by seizing firearms and using administrative orders of protection. The investigating body/officer must have the authority to make decisions about arrest, access to all pertinent case information, and experience conducting case analysis. Decisions on

administrative actions should not be contingent on anticipated outcomes of the criminal procedure. Departments have a broad range of administrative options; employing these options in a timely manner is crucial to victim and community safety as well as the well-being of the officer and the efficient operation of the department. With respect to seized firearms, departments need to establish policy governing the length of time firearms can be held and the protocol used for their return. Departments need to take responsibility for notifying victims prior to the return of firearms. Court orders of protection may affect the terms of firearm seizure and return. The department may employ the full range of administrative sanctions against an officer who has violated department policy.

Any officer determined through an administrative investigation to have committed domestic violence shall be terminated from the department. (See IACP Model Policy on Investigation of Employee Misconduct.)

2. Criminal Investigations and Decision. The chief shall appoint an investigator within the domestic violence unit to conduct the criminal investigation. If a department does not have a domestic violence unit, the criminal investigations unit or the detective division should handle the criminal investigation. The role the police play in gathering evidence and conducting a thorough criminal investigation has fostered the development of the successful strategy of evidence-based prosecution. Where the victim recants or chooses not to participate in court proceedings, the prosecutor as allowed under state law may determine that, based on the quality of evidence, the case should proceed with the state as complainant. The department should establish a liaison to work closely with the prosecuting attorney's office on each case to support the department's interest in having the case processed in a timely manner.

Upon the conclusion of a criminal investigation, all information pertaining to the incident and all necessary charging paperwork must be forwarded directly to the prosecutor's office. The quality and quantity of information transferred should be thorough, including documentation of earlier calls to the agency, photo documentation of on-scene damage and injuries, previous concerns about officer behavior, danger assessment findings, etc.

Any officer convicted through criminal proceedings of domestic violence shall be terminated from the department. Federal law prohibits anyone convicted of a misdemeanor domestic violence crime from possessing firearms or ammunition. The chief shall ensure the department seizes all firearms owned by the department or possessed by the convicted officer as allowable under state law.

3. Termination Procedures. Once the administrative and/or criminal investigations conclude with the decision to terminate an officer, the chief is responsible for notifying the officer in person and in writing. Because of the heightened risk for violence at the point of termination, it is critical that the officer be given information on available support services and that the victim be notified immediately of the department's intended



course of action and offered all available assistance, to include safety planning. The department should take extra precautions to protect against violence in the workplace. The chief is responsible for notifying the state licensing body about the decision to terminate the officer.

Every effort has been made by the IACP Research Center Directorate and the Police Response to Violence Against Women Advisory Group to ensure that this policy incorporates the most current information and contemporary professional judgment on the issue. However, law enforcement administrators should be cautioned that no "model" policy can meet the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements, and each agency needs to tailor its policies to ensure compliance with all laws, regulations, and agreements.

**STEVEN J. HAUSER v. NEBRASKA POLICE  
STANDARDS ADVISORY COUNCIL AND  
NEBRASKA COMMISSION ON LAW  
ENFORCEMENT AND CRIMINAL JUSTICE**

694 N.W.2d 171 (Neb., 2005).

NATURE OF CASE

The Nebraska Commission on Law Enforcement and Criminal Justice (Commission) approved the revocation of Steven J. Hauser's Nebraska law enforcement certificate. The Hall County District Court affirmed the Commission's decision, and Hauser appeals.

SCOPE OF REVIEW

A judgment or final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act (APA) may be reversed, vacated, or modified by an appellate court for errors appearing on the record. [citation omitted] When reviewing an order of a district court under the APA for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is not arbitrary, capricious, or unreasonable. *Id.*

BACKGROUND

Hauser received his certification as a law enforcement officer and became a Nebraska state trooper in 1978. In 1999, the executive director of the Commission received a petition signed by residents of North Platte, Nebraska, and the vicinity requesting revocation of Hauser's law enforcement certificate. The executive director requested an investigation pursuant to 79 Neb. Admin. Code, ch. 9, § 006.02 (1998), to determine whether the allegations against Hauser were within the purview of Neb.Rev.Stat. § 81-1403(5) (Reissue 1999) (now found at § 81-1403(6) (Cum.Supp. 2004)).

# **EXHIBIT 74**

& Belknap, 1999; Malloy, McCloskey, Grigsby, & Gardner, 2003; Martin, 1997; McMahon & Pence, 2003; Miller, 2001). The implementation of proarrest policies beginning in the 1980s has resulted in women arrested for domestic violence charges in record numbers. Before pro-arrest domestic violence policies, it was almost unheard of for women to be arrested for domestic violence. Since the implementation of such policies, police are far more likely to arrest both members of the couple (if the man reported that the woman abused him in any way), or only arrest the woman. Thus, practitioners and criminal processing personnel have been faced with responding to women charged with domestic violence in unprecedented rates.

The research and critique of the research reported in this document hold some very important implications. Although some of the female offenders may be the primary offender, many may be labeled offenders because they were fighting back or acting in self-defense. This can be very traumatic for these "offenders" to be forced to go through arrest, jail, anger management, and/or batterer's intervention programs when in reality they are the victims. How victims processed and treated as offenders are responded to by practitioners and the criminal processing system will have major implications for whether or not they use these services in the future. Thus, it is very important to improve data collection to accurately identify the rates of female-perpetrated IPA, but also, to make changes in the criminal processing system so that IPA victims are not treated and processed as offenders. At the same time, for those individual women who are indeed abusive and their charges reflect violations of domestic violence laws, it is important to tailor intervention programs that acknowledge that there are gender differences in how men and women come to use abuse in their intimate relationships.

*For References go to: [http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR\\_MaleVictims.php](http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR_MaleVictims.php)*

**PATRICIA TJADEN AND NANCY THOENNES,  
EXTENT, NATURE, AND CONSEQUENCES OF  
INTIMATE PARTNER VIOLENCE: FINDINGS  
FROM THE NATIONAL VIOLENCE AGAINST  
WOMEN SURVEY**

National Institute of Justice and the Centers for  
Disease Control and Prevention (July 2000).

**EXECUTIVE SUMMARY**

This report presents findings from the National Violence Against Women (NVAW) Survey on the extent, nature, and consequences of intimate partner violence in the United States. The National Institute of Justice and the Centers for Disease Control and Prevention cosponsored the survey through a grant to the Center for Policy Research. The survey consists of telephone interviews with a nationally representative sample of 8,000 U.S. women and 8,000 U.S. men about their experiences with intimate partner violence.

The survey compares victimization rates among women and men, specific racial groups, Hispanics and non-Hispanics, and same-sex and opposite-sex cohabitants. It also examines risk factors associated with intimate partner violence, the rate of injury among rape and physical assault victims, injured victims' use of medical services, and victims' involvement with the justice system.

Analysis of the survey data produced the following results:

- Intimate partner violence is pervasive in U.S. society. Nearly 25 percent of surveyed women and 7.5 percent of surveyed men said they were raped and/or physically assaulted by a current or former spouse, cohabiting partner, or date at some time in their lifetime; 1.5 percent of surveyed women and 0.9 percent of surveyed men said they were raped and/or physically assaulted by a partner in the previous 12 months. According to these estimates, approximately 1.5 million women and 834,732 men are raped and/or physically assaulted by an intimate partner annually in the United States. Because many victims are victimized more than once, the number of intimate partner victimizations exceeds the number of intimate partner victims annually. Thus, approximately 4.9 million intimate partner rapes and physical assaults are perpetrated against U.S. women annually, and approximately 2.9 million intimate partner physical assaults are committed against U.S. men annually. These findings suggest that intimate partner violence is a serious criminal justice and public health concern.
- Stalking by intimates is more prevalent than previously thought. Almost 5 percent of surveyed women and 0.6 percent of surveyed men reported being stalked by a current or former spouse, cohabiting partner, or date at some time in their lifetime; 0.5 percent of surveyed women and 0.2 percent of surveyed men reported being stalked by such a partner in the previous 12 months.

According to these estimates, 503,485 women and 185,496 men are stalked by an intimate partner annually in the United States. These estimates exceed previous nonscientific "guesstimates" of stalking prevalence in the general population. These findings suggest that intimate partner stalking is a serious criminal justice problem, and States should continue to develop constitutionally sound and effective antistalking statutes and intervention strategies.

Women experience more intimate partner violence than do men. The NVAW survey found that women are significantly more likely than men to report being victims of intimate partner violence whether it is rape, physical assault, or stalking and whether the timeframe is the person's lifetime or the previous 12 months. These findings support data from the Bureau of Justice Statistics' National Crime Victimization Survey, which consistently show women are at significantly greater risk of intimate partner violence than are men. However, they contradict data from the National Family Violence Survey, which consistently show men and wom-

en are equally likely to be physically assaulted by an intimate partner. Studies are needed to determine how different survey methodologies affect women's and men's responses to questions about intimate partner violence.

Rates of intimate partner violence vary significantly among women of diverse racial backgrounds. The survey found that Asian/Pacific Islander women and men tend to report lower rates of intimate partner violence than do women and men from other minority backgrounds, and African-American and American Indian/Alaska Native women and men report higher rates. However, differences among minority groups diminish when other sociodemographic and relationship variables are controlled. More research is needed to determine how much of the difference in intimate partner prevalence rates among women and men of different racial and ethnic backgrounds can be explained by the respondent's willingness to disclose intimate partner violence and how much by social, demographic, and environmental factors. Research is also needed to determine how prevalence rates vary among women and men of diverse American Indian/Alaska Native and Asian/Pacific Islander groups.

Violence perpetrated against women by intimates is often accompanied by emotionally abusive and controlling behavior. The survey found that women whose partners were jealous, controlling, or verbally abusive were significantly more likely to report being raped, physically assaulted, and/or stalked by their partners, even when other sociodemographic and relationship characteristics were controlled. Indeed, having a verbally abusive partner was the variable most likely to predict that a woman would be victimized by an intimate partner.

These findings support the theory that violence perpetrated against women by intimates is often part of a systematic pattern of dominance and control.

Women experience more chronic and injurious physical assaults at the hands of intimate partners than do men. The survey found that women who were physically assaulted by an intimate partner averaged 6.9 physical assaults by the same partner, but men averaged 4.4 assaults. The survey also found that 41.5 percent of the women who were physically assaulted by an intimate partner were injured during their most recent assault, compared with 19.9 percent of the men. These findings suggest that research aimed at understanding and preventing intimate partner violence against women should be stressed.

Women living with female intimate partners experience less intimate partner violence than women living with male intimate partners. Slightly more than 11 percent of the women who had lived with a woman as part of a couple reported being raped, physically assaulted, and/or stalked by a female cohabitant, but 21.7 percent of the women who had married or lived with a man as part of a couple reported such violence by a husband or male cohabitant. These findings suggest that lesbian couples experience

less intimate partner violence than do heterosexual couples; however, more research is needed to support or refute this conclusion.

Men living with male intimate partners experience more intimate partner violence than do men who live with female intimate partners. Approximately 23 percent of the men who had lived with a man as a couple reported being raped, physically assaulted, and/or stalked by a male cohabitant, while 7.4 percent of the men who had married or lived with a woman as a couple reported such violence by a wife or female cohabitant. These findings, combined with those presented in the previous bullet, provide further evidence that intimate partner violence is perpetrated primarily by men, whether against male or female intimates. Thus, strategies for preventing intimate partner violence should focus on risks posed by men.

The U.S. medical community treats millions of intimate partner rapes and physical assaults annually. Of the estimated 4.9 million intimate partner rapes and physical assaults perpetrated against women annually, approximately 2 million will result in an injury to the victim, and 570,457 will result in some type of medical treatment to the victim. Of the estimated 2.9 million intimate partner physical assaults perpetrated against men annually, 581,391 will result in an injury to the victim, and 124,999 will result in some type of medical treatment to the victim. Because many medically treated victims receive multiple forms of care (e.g., ambulance services, emergency room care, or physical therapy) and multiple treatments (e.g., several days in the hospital) for the same victimization, medical personnel in the United States treat millions of intimate partner victimizations annually. To better meet the needs of intimate partner violence victims, it is suggested that medical professionals receive training on the physical consequences of intimate partner violence and appropriate medical intervention strategies.

Most intimate partner victimizations are not reported to the police. Only approximately one-fifth of all rapes, one-quarter of all physical assaults, and one-half of all stalkings perpetrated against female respondents by intimates were reported to the police. Even fewer rapes, physical assaults, and stalkings perpetrated against male respondents by intimates were reported. The majority of victims who did not report their victimization to the police thought the police would not or could not do anything on their behalf. These findings suggest that most victims of intimate partner violence do not consider the justice system an appropriate vehicle for resolving conflicts with intimates.

# ~~EXHIBIT~~ 75

REPORT BY THE  
AUDITOR GENERAL  
OF CALIFORNIA

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THE ADMINISTRATION OF THE STATE'S  
DOMESTIC VIOLENCE DIVERSION PROGRAM  
COULD BE IMPROVED

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Kurt R. Sjoberg, Acting Auditor General

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January 4, 1990

P-852

Honorable Elihu M. Harris, Chairman  
Members, Joint Legislative Audit Committee  
State Capitol, Room 2148  
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the need for improvement in the State's domestic violence diversion program. The report indicates that county probation departments need to develop and implement clear and comprehensive policies for managing domestic violence diversion cases. In addition, the Legislature should require counties to standardize the requirements for the duration and content of treatment programs. Finally, courts should not divert defendants who are not eligible for the domestic violence diversion program.

Respectfully submitted,

Kurt R. Sjoberg  
Acting Auditor General

**The Administration of the State's  
Domestic Violence Diversion Program  
Could Be Improved**

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**P-852, January 1990**

**Office of the Auditor General  
California**

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## **Summary**

### **Results in Brief**

The purpose of the domestic violence diversion program established pursuant to Section 1000.6 et seq. of the Penal Code is to prevent further domestic violence by persons charged with misdemeanor acts of domestic violence by requiring these individuals to attend batterers' treatment programs. During our review, we noted the following conditions:

- County probation departments in the five counties we visited are not ensuring that persons diverted from prosecution for committing acts of domestic violence (divertees) are complying with the terms of their diversion;
- Divertees are not always attending treatment programs that provide counseling specifically for violent behavior;
- Sometimes divertees attend treatment programs that require only a few counseling sessions; and
- The courts in some counties are granting diversion to defendants who are not eligible.

### **Background**

In 1979, the Legislature enacted a diversion program specifically designed to allow judges to divert some defendants in misdemeanor domestic violence cases from criminal proceedings and into treatment programs. Under current law, divertees must be referred to batterers' treatment counseling specifically designed to address the violent conduct of the defendant unless the court determines that no batterers' treatment programs are available.

Once the divertee successfully completes the diversion program, the arrest is deemed never to have occurred. However, criminal proceedings can be reinstated if the divertee fails to comply with the terms of his or her diversion by not performing satisfactorily in the assigned program, not benefiting from diversion, or being convicted of a violent offense while diverted.

Once a prosecutor determines that a defendant is eligible for diversion, the court refers the case to the county probation department if the defendant consents and waives his or her right to a speedy trial. The probation department provides the court with its opinion on whether the defendant would benefit from a treatment program and which treatment programs would accept the defendant. Judges may order defendants into diversion programs only after considering the nature of the victim's injury, any previous incidents of domestic violence, any factors adversely influencing the likelihood of the defendant's success in the diversion program, and the probation department's recommendations.

**Inadequate  
Monitoring of  
Domestic  
Violence  
Diversion  
Cases**

In our review of five counties, we found that probation departments do not regularly monitor defendants granted diversion through the domestic violence diversion program. For example, of the cases we reviewed in the five counties, we found that 165 (54 percent) of the 304 cases active for longer than four months had no evidence of contact between the probation department and the divertee for at least four months. Without regular monitoring, probation departments may be unaware of instances when divertees do not comply with the terms of their diversion and may, thus, lack relevant information to report promptly to the courts. When probation departments do not promptly report instances of non-compliance to the courts, the courts do not have the information necessary to determine whether to reinstate criminal proceedings or to continue diversion. Moreover, delays in reporting may hinder prosecutors' attempts to convict defendants against whom criminal proceedings are reinstated.

**Attendance at  
Inappropriate  
Treatment  
Programs and  
at Programs  
That Consist of  
Only a Few  
Treatment  
Sessions**

County probation departments are not always requiring divertees to attend treatment programs specifically tailored for violent behavior, as required by law. Of the 95 treatment programs we reviewed in five counties, 46 (48 percent) are not specifically batterers' treatment programs. Thus, some divertees may not be receiving appropriate counseling to address their violent behavior. We also found that neither current law nor county probation department policies in the five counties we visited provide requirements for the minimum time a divertee should receive batterers' treatment. For example, during our review of the five counties, we documented treatment programs that lasted for only a few assessment sessions and treatment programs that required weekly attendance for one year.

**Granting of  
Diversion to  
Some Ineligible  
Defendants**

Some courts in the five counties we visited divert defendants from prosecution even though the defendants are ineligible for the domestic violence diversion program. Twenty-seven percent of the defendants in our sample who were granted domestic violence diversion were ineligible for diversion. As a result, some defendants are not being prosecuted as intended by the Legislature.

**Recommendations**

To ensure that domestic violence diversion cases are better monitored and that divertees attend appropriate treatment programs, the five county probation departments we visited should take the following actions:

- Develop and/or implement clear and comprehensive procedures for managing domestic violence diversion cases. These procedures should include a requirement that the probation department maintain regular contact with the divertee or the divertee's treatment provider;
- If the divertee is not attending a batterers' treatment program or is not progressing satisfactorily in the diversion program, promptly request a court hearing to determine whether criminal proceedings should be reinstated against the divertee; and

- Refer divertees specifically to batterers' treatment programs. If a batterers' treatment program is not available, inform the court so that the judge can place the divertee in another appropriate treatment program.

The Legislature should amend Section 1000.6 et seq. of the Penal Code to require counties to develop standards for batterers' treatment programs, which may include a minimum period of treatment or counseling sessions.

To prevent ineligible defendants from being diverted from prosecution, the courts in the five counties we visited should not divert ineligible defendants, including those against whom charges of violating Sections 245(a) or 273.5 of the Penal Code are pending.

**Agencies'  
Comments**

We gave copies of the draft report to the probation departments in Glenn, Los Angeles, Sacramento, San Diego, and San Francisco counties. In written responses, the probation departments in Los Angeles, Sacramento, and San Francisco generally agree with our conclusions and have taken or will take action to correct the identified deficiencies. Furthermore, the San Francisco County Probation Department stated that it could provide closer supervision of its domestic violence diversion cases if it had more resources. The probation departments of Glenn and San Diego counties did not respond in writing.

We also gave copies of the draft report to the Glenn County Justice Court and to the four judicial districts in San Diego County (San Diego, North County, El Cajon, and South Bay). In its written response, the Glenn County Justice Court disagrees with the Legislative Counsel's opinion that granting informal diversion is beyond the court's jurisdiction.

The Municipal Court of the San Diego Judicial District, in its written response, generally agrees with our analyses of ineligible divertees. However, this district asks that we clarify that San Diego County is divided into four judicial districts and that some of the findings apply to the other three districts. The other three districts did not respond in writing to the draft reports they received.

## Summary

Finally, we gave copies of the draft report to municipal courts in Los Angeles, Sacramento, and San Francisco counties. The Sacramento Municipal Court, in its written response, confirmed modifications made in the report based on discussions between the court and the Office of the Auditor General. The courts in Los Angeles and San Francisco counties did not respond in writing.

## Introduction

In 1979, the Legislature enacted a diversion program designed to allow judges to divert defendants charged with misdemeanor offenses of domestic violence (divertees) from criminal proceedings and into treatment programs. The purpose of this program is to prevent further domestic violence by requiring these individuals to attend treatment programs specifically designed to address their violent behavior.

Section 1000.6 et seq. of the Penal Code, which established the domestic violence diversion program, became effective on January 1, 1980. On September 26, 1985, the Commission on State Mandates determined that this legislation imposed a new program on the counties. Consequently, any county incurring increased costs as a result of this legislation is eligible to claim reimbursement from the State for these costs. The Commission on State Mandates subsequently developed a statewide county cost estimate of \$6.5 million for the period from July 1, 1980, to June 30, 1989. According to the State Controller's Office, as of October 27, 1989, 35 counties had filed claims with the State totaling over \$5.8 million.

Section 1000.6 of the Penal Code defines domestic violence as intentionally or recklessly causing or attempting to cause bodily injury to a family or household member or placing a family or household member in reasonable apprehension of imminent serious bodily injury. In addition, this section of the Penal Code defines a family or household member as "a spouse, former spouse, parent, any other person related by consanguinity [blood],



or any person who regularly resides or who within the previous six months regularly resided in the household." Children are not considered household members under this statute. Persons arrested for child abuse are prosecuted under different Penal Code sections and are not eligible for domestic violence diversion.

**Eligibility for  
the Program**

To be eligible for diversion from criminal proceedings, the defendant must be charged with, or have had charges reduced to, a misdemeanor count of domestic violence; must not have been convicted of any offense involving violence within seven years of the present offense; must not have failed to complete probation or parole; and must not have been diverted under the domestic violence diversion proceedings within five years of the present offense. The prosecutor must determine if the defendant is eligible for diversion and notify the court, the defendant, and the defense attorney of his or her eligibility.

When a defendant is eligible for diversion, the court refers the case to the county probation department. The probation department provides the court with its opinion on whether the defendant would benefit from a treatment program. The probation department also assesses which treatment program would be of benefit to the defendant and which program would accept the defendant.

Judges may grant defendants diversion only after considering the nature of the victim's injury, any prior incidents of domestic violence by the defendant, any factors adversely influencing the likelihood of the defendant's success in the diversion program, and the probation department's findings and recommendations. The judge may order the defendant to pay all or part of the costs of the treatment program. The period during which criminal proceedings may be diverted is no less than six months nor longer than two years.

**Other Methods  
of Deferring  
Prosecution**

In addition to the provisions of Section 1000.6 et seq. of the Penal Code, some prosecutors and judges are granting "informal diversion" to defendants charged with domestic violence offenses. As with diversion under Section 1000.6 et seq. of the Penal Code, legal proceedings are delayed while the alleged offender undergoes batterers' treatment; however, the probation departments are not involved in the informal diversion process. For example, prosecutors in Glenn County grant informal diversion to alleged domestic violence offenders. Also, prosecutors in Sacramento County granted informal diversion to alleged domestic violence offenders before criminal charges were filed, although prosecutors have discontinued this practice. Furthermore, some courts in Glenn and San Diego counties grant informal diversion by delaying legal proceedings while a defendant accused of domestic violence attends a batterers' treatment program.

According to a legal opinion by the Legislative Counsel, prosecutors can decline to prosecute a defendant on the condition that the defendant participate in a treatment program. However, according to the Legislative Counsel, once criminal charges have been filed, a court does not have the authority to delay criminal proceedings for this purpose since the Legislature determined the exclusive procedures for judicial grants of diversion by enacting Section 1000.6 et seq. of the Penal Code. We issued a management letter to the presiding judge at the courts where we determined that informal diversion is being granted in the five counties we reviewed recommending that this practice be discontinued.

**Completion of  
the Diversion  
Process**

Once the divertee successfully completes the diversion program, the arrest is deemed never to have occurred. The divertee then may indicate, in response to any question concerning a criminal record, that he or she was not arrested or diverted for the offense for which he or she was diverted. The record of an arrest resulting in successful completion of a diversion program cannot, without the divertee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

If the prosecuting attorney, the court, or the probation department is dissatisfied with the divertee's performance in the diversion program, if the divertee is not benefiting from counseling, or if the divertee is convicted of any offense involving violence, criminal proceedings can be reinstated against the divertee. Upon request by the probation officer or the court, a court hearing must be held to determine whether the criminal proceedings should be resumed.

#### **County Domestic Violence Diversion Programs**

We conducted a statewide survey and determined that 55 of the State's 58 counties have established domestic violence diversion programs. The county probation departments monitor the diversion cases in 54 of the 55 counties that established domestic violence diversion programs; the sheriff's department in the remaining county monitors its diversion cases. Nineteen counties refer divertees to the county mental health department for batterers' treatment. At the time of our review, 22 county probation departments maintained statistics on their programs, and 25 county probation departments used automated systems for managing their cases. However, none of the counties had evaluated their domestic violence diversion programs.

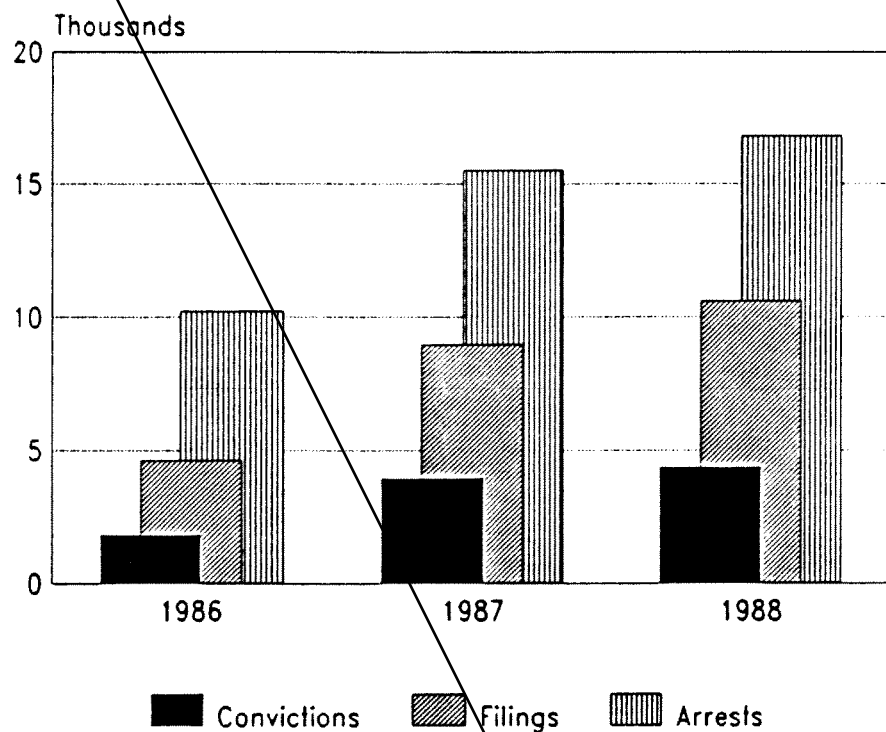
#### **Increase in Some Types of Domestic Violence Offenses**

The Bureau of Criminal Statistics and Special Services of the California Department of Justice provides information on felony domestic violence cases under Section 273.5 of the Penal Code in California. Section 273.5 of the Penal Code states that any person who willfully inflicts a bodily injury resulting in a traumatic condition upon his or her spouse, cohabitant of the opposite sex, or mother, father, or child is guilty of a felony. "Traumatic condition" is defined as a wound or internal or external injury, whether minor or serious, which is caused by physical force.

Although a person charged with a violation of Section 273.5 cannot be diverted under Section 1000.6 of the Penal Code (the domestic violence diversion program), the criminal charges can

be reduced to a divertible misdemeanor, qualifying the defendant for diversion. In fact, in the five counties we visited, 58 percent of those placed on diversion were initially charged with a violation of Section 273.5 of the Penal Code. As Chart 1 shows, felony arrests for domestic violence complaints filed and convictions for violations of Section 273.5 of the Penal Code in California have increased steadily since 1986. See Appendix A for a detailed presentation of the statistics for domestic violence felony arrests and dispositions under Section 273.5 of the Penal Code for all 58 counties in California from 1986 through 1988.

**Chart 1** Arrests and Dispositions for Felony Domestic Violence (Section 273.5 of the Penal Code)—Unaudited



Source: California Department of Justice, Bureau of Criminal Statistics and Special Services.

Note: For limitations on this information, see Appendix A.

**Scope and  
Methodology**

The purpose of this audit was to review the administration of the domestic violence diversion program established in Section 1000.6 et seq. of the Penal Code. We visited probation departments in five counties, both rural and urban, in northern and southern California, and we reviewed case files of defendants who were diverted from criminal proceedings between January 1, 1986, and May 31, 1989. We also interviewed prosecutors, judges, and treatment providers in these five counties.

To determine the number of defendants who were granted domestic violence diversion during the review period, we obtained or created lists of divertees from the county probation departments in Glenn, Los Angeles, Sacramento, San Diego, and San Francisco counties. These lists contained the names of divertees who were currently being supervised by the county probation departments (active cases) and of those whose diversion was terminated (closed cases) as of May 31, 1989, for each county except Sacramento. For Sacramento County, we created a list of these divertees as of May 15, 1989. Based on these lists, we reviewed a random sample of active and closed domestic violence diversion cases from all five counties.<sup>1</sup>

Although the Los Angeles County Probation Department provided us with lists of divertees, it gave us an unreliable list of all the domestic violence diversion cases that were closed for the two area offices we visited: the Crenshaw Area Office and the East San Fernando Valley Area Office. In our attempt to validate the lists' reliability, we reviewed the court calendars for two months in two divisions of the Los Angeles Municipal Court and for two months in one division of the San Fernando Municipal Court. Listed on these calendars were 25 closed cases of domestic

<sup>1</sup> At some sites, because the number of cases was small, we reviewed every case.

These diversion that we did not find on the lists provided by the probation department. The county probation department does not provide probation records or case files for any of these diversion cases. We issued a management letter to Los Angeles County recommending that the county ensure that established recordkeeping procedures are followed.

To determine the number of contacts between probation departments and diverttees, we reviewed a random sample of domestic violence diversion case files at each of the probation department sites, based on a 90 percent confidence level. We also reviewed this sample of case files to identify the treatment programs the diverttees attended and to identify the cases in which the defendant appeared to be ineligible for diversion. Additional evidence concerning a defendant's eligibility may be presented at a court hearing. This evidence may not be reflected in the probation department's file. Thus, a defendant who appears eligible based on the probation department's file may be found ineligible during the hearing.

To determine subsequent arrest data for the diverttees in our sample we obtained criminal history reports from the California Department of Justice. We also contacted the court where the diversion case was heard to obtain additional data on cases in which criminal proceedings against a diverttee were reinstated.

To determine the type of treatment or counseling provided by each of the treatment providers identified, we contacted the provider and obtained a description of the treatment program, the approximate duration of the program, and the cost of the program to the diverttee. Our review of the costs of treatment programs in the five counties we visited indicate that some provided counseling for no fee, and some treatment programs cost over \$1,000.

To determine the number of arrests and convictions for domestic violence under Section 273.5 of the Penal Code, we

obtained statistics from the California Department of Justice. We obtained data for the period from 1986 through 1988 for each county in the State. These totals appear in Appendix A of this report.

To determine the number of divertees in diversion programs statewide, we submitted a written questionnaire to each county's chief probation officer, except in those counties that we visited. We tabulated the totals from all of the counties that returned our questionnaire. These totals appear in Appendix B of this report.

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## **Chapter 1 Probation Departments in the Counties We Reviewed Are Not Adequately Monitoring Their Domestic Violence Diversion Cases**

### **Chapter Summary**

According to a report by the National Institute of Justice, the success of the domestic violence diversion program requires that probation departments closely monitor defendants granted diversion (divertees), including contacting diverttees regularly to gather information and reporting to the court violations of the terms of diversion. However, in our review of five counties, we found that the probation departments and diverttees are not maintaining regular contact. As a result, the probation departments may not be aware of instances when diverttees do not comply with the terms of their diversion and, thus, may not promptly report these instances to the courts. When probation departments do not promptly report violations of the terms of diversion, courts do not have the information necessary to determine whether to reinstate criminal proceedings or to continue diversion. Further, delays in reporting may hinder attempts to convict defendants against whom criminal proceedings are reinstated.

### **Lack of Regular Contact With Divertees**

Section 1000.7(b) of the Penal Code requires county probation departments to investigate the background of defendants referred by the court for possible diversion, to determine appropriate and available batterers' treatment programs for these defendants, and to report their determination to the court for consideration. In addition, the 1985 California Court of Appeal decision in the case of County of Orange vs. State Board of Control states that probation departments are required to monitor do-



mestic violence diversion cases. Furthermore, the orders issued by most courts require the divertee to comply with probation department procedures, including procedures that require contact between the divertee and the probation department. According to a report by the National Institute of Justice, the effectiveness of diversion depends upon, among other things, close monitoring by probation officers. This includes "monitoring the offender's compliance with probation conditions by gathering information from the offender, the victim, and the counselor."

Of the five counties we visited, probation departments in Glenn, Los Angeles, and Sacramento counties have monitoring procedures that require divertees to report monthly to the probation department. However, of the 120 cases in our sample that were active for more than four months during our review period at these three county probation departments, we found that 94 cases (78 percent) had no evidence of contact between the probation department and the divertee for more than one month. Moreover, we found that 48 (40 percent) of the 120 cases had no evidence of contact for at least four months. For example, in one case at the Crenshaw Area Office of the Los Angeles County Probation Department, the probation department had not maintained contact with a divertee for over one year.

The San Diego and San Francisco county probation departments had no monthly contact requirement, and we found that 117 (64 percent) of the 184 cases we reviewed that were active for more than four months had no evidence of contact between the probation department and the divertee for at least four months. Overall, in the five counties we visited, 165 (54 percent) of the 304 cases had no evidence of contact for at least four months. Table 1 presents the number of domestic violence diversion cases in our sample that were active for more than four months in which a probation department failed to contact a divertee or the divertee's treatment provider for at least four months.

**Table 1**      **Contacts Between County Probation Departments and Domestic Violence Divertees and Treatment Providers (Cases in Our Sample Active More Than Four Months During Our Review Period)**

County Probation Department	Domestic Violence Diversion Cases Reviewed	Domestic Violence Diversion Cases Without Contact for More Than Four Months	Percent of Cases
Glenn	24	9	38%
Los Angeles (Crenshaw Area Office) <sup>a</sup>	28	10	36
Los Angeles (East San Fernando Valley Area Office) <sup>a</sup>	15	7	47
Sacramento	53	22	42
San Diego <sup>b</sup>	93	76	82
San Francisco <sup>b</sup>	91	41	45
<b>Totals</b>	<b>304</b>	<b>165</b>	<b>54</b>

<sup>a</sup> Because the Los Angeles County Probation Department could not provide a reliable list of closed cases at the two area offices we visited, we did not review any closed cases at these sites.

<sup>b</sup> The San Diego and San Francisco county probation departments do not require periodic contacts with domestic violence diverttees.

**Possible  
Lack of  
Awareness of  
Noncompliance**

When probation departments fail to maintain regular contact with diverttees, the departments cannot ensure that diverttees are progressing satisfactorily in the diversion programs. For example, probation departments may not know whether diverttees are enrolling in or completing batterers' treatment programs. In Sacramento County, the probation department has established requirements that specify the time within which a diverttee must enroll in and complete a treatment program. However, of the 66 active cases we reviewed, diverttees in 62 cases (94 percent) had not complied with the probation department's requirement that a diverttee enroll in a treatment program within one week after being granted diversion.

Of the 23 closed cases we reviewed in Sacramento County, none of the divertees had complied with the probation department's requirement to complete a treatment program within 4 months. However, these cases remained active for an average of 9.4 months before the probation department informed the court of the noncompliance. In one of these cases, a divertee did not enroll in a treatment program during his entire 12-month diversion period. Nevertheless, the probation officer did not request a hearing to reinstate criminal proceedings until after the diversion period had expired. Because the probation department failed to report the noncompliance to the court during the diversion period, the judge may have lacked relevant information to indicate that criminal proceedings should be reinstated. According to the judge, since the diversion period had expired, the court had lost jurisdiction over the case, and the judge, therefore, denied the probation department's request to reinstate criminal proceedings against the divertee even though the divertee had not complied with the terms of the diversion.

In the five counties we visited, we found that only 261 (61 percent) of the 425 divertees whose cases we reviewed attended a treatment program. Of these 425 cases, we reviewed 161 closed cases and found that the courts terminated diversion and dismissed the criminal charges for 83 cases. However, in 27 (33 percent) of the 83 cases terminated and dismissed by the court, we found no evidence that the divertee had completed a treatment program.

**Effect of Late  
Reporting of  
Noncompliance**

A report issued by the National Institute of Justice concludes that the effectiveness of diversion depends upon, among other things, a credible threat of reinstating criminal charges. Furthermore, the report indicates that probation officers should be responsible for bringing the case back before the judge if the offender fails to comply with any of the conditions that were imposed. Section 1000.9 of the Penal Code allows the probation department to request a hearing to report to the court instances of unsatisfactory performance in a diversion program, such as repeated acts of

violence. The court is then required to hold a hearing to determine whether criminal proceedings against the diverttee should be reinstated.

Since probation departments are not closely monitoring the progress of diverttees in the domestic violence diversion program, they may lack relevant information to report to the court instances about noncompliance by the diverttee. When probation departments do not promptly report violations of the terms of diversion, courts may not have the information necessary to determine whether to reinstate criminal proceedings or to continue diversion.

Some prosecutors state that it is more difficult to prosecute a diversion case in which criminal proceedings have been reinstated after a substantial time has passed since witnesses may move and the victim may be more reluctant to testify against the diverttee. Therefore, any delay by the probation officer in reporting subsequent abuse may increase the difficulty of convicting a defendant for the original offense for which he or she was diverted.

Two of the five probation departments we reviewed do not have formal written procedures for promptly reporting instances of noncompliance to the court. In addition, the San Francisco County Probation Department does not have formal procedures for managing domestic violence diversion cases. Instead, according to the director of the Community Services Division, the department uses a probation department job description as its guideline for supervising these cases.

**Conclusion** Probation departments in the five counties we reviewed are not monitoring, through regular contacts, defendants granted domestic violence diversion. As a result, these probation departments are not assured that divertees are entering or completing treatment programs. In addition, without adequate monitoring, probation departments may not be aware of instances when divertees do not comply with the terms of their diversion and, thus, may not promptly report these instances to the prosecutors and the courts. The resulting delay in reporting may hinder prosecutors' attempts to convict defendants against whom criminal proceedings are reinstated for failure to comply with the terms of their diversion.

**Recommendations** To ensure that domestic violence diversion cases are better monitored, county probation departments in the five counties we visited should take the following actions:

- Develop and/or implement clear and comprehensive procedures for monitoring domestic violence diversion cases. These procedures should include contact requirements between the probation officer and the defendant granted domestic violence diversion or the treatment provider; and
- If the divertee is not attending a batterers' treatment program or is not progressing satisfactorily in the diversion program, promptly request a court hearing to determine if criminal proceedings should be reinstated against the divertee.

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## **Chapter 2    Defendants in Domestic Violence Diversion Sometimes Attend Inappropriate Treatment Programs and Programs That Consist of Only a Few Treatment Sessions**

### **Chapter Summary**

Some county probation departments are allowing defendants who are granted domestic violence diversion (divertees) to attend treatment programs other than batterers' treatment programs although the law specifies that they must attend batterers' treatment programs unless the court determines that such programs are unavailable. We reviewed 95 treatment programs for 297 diverttees in five counties and found that 46 (48 percent) of the treatment programs were not batterers' treatment programs. Furthermore, of the 297 diverttees who attended these programs, 76 (26 percent) attended programs that were not batterers' treatment programs. Because some diverttees are attending treatment programs other than batterers' treatment programs, their battering behavior may not be addressed. We also found that neither current law nor the policies of the five county probation departments establish a minimum time diverttees should receive batterers' treatment. As a result, some diverttees are attending treatment programs that consist of only a few treatment sessions.

### **Divertees Are Not Always Required To Attend Batterers' Treatment Programs**

Section 1000.8 of the Penal Code requires that, if available, diverttees be referred to batterers' treatment programs specifically tailored for the diverttees' battering behavior. Section 1000.7(b) of the Penal Code requires county probation departments to determine which programs would benefit the defendant and which of those programs would accept the defendant. According to professionals in the field of domestic violence counseling, treatment specifically designed for violent behavior can be successful in preventing a batterer from continuing his or her behavior.

Our review disclosed that county probation departments do not always require divertees to attend treatment programs that are specifically designed for batterers. Of the 95 treatment programs that divertees were referred to in the five counties that we visited, 46 (48 percent) programs were not batterers' treatment programs. Of the 297 divertees who attended these programs, 76 (26 percent) attended treatment programs that did not provide treatment for violent behavior. For example, of the 19 treatment programs we reviewed at the Los Angeles County Probation Department's Crenshaw Area Office, we found that nine did not provide treatment for violent behavior. Rather than attending programs that treat violent behavior, some divertees are attending treatment programs for alcohol abuse or drug abuse. Table 2 compares the number of nonbatterers' treatment programs with the total number of treatment programs that we reviewed in the five counties we visited. It also shows the number of divertees in our sample who were referred to these programs.

Table 2

The Total Number of Treatment Programs Reviewed  
and Divertees Who Attended These Programs

County Probation Department	Total Number of Treatment Programs Reviewed	Number of Nonbatterers' Treatment Programs	Percent of Nonbatterers' Treatment Programs	Total Number of Divertees In Treatment Programs	Number of Divertees In Nonbatterers' Treatment Programs	Percent of Divertees Who Attended Nonbatterers' Treatment Programs
San Francisco	26	12	46%	66	19	22%
Sacramento	6	2	25	37	3	8
Los Angeles (East San Fernando Valley Area Office)	15	6	53	28	9	32
Los Angeles (Crenshaw Area Office)	19	9	47	34	13	38
San Diego	23	14	61	66	29	34
Glenn	4	1	25	26	3	11
Total	93	46	48	297	76	26



According to Section 1000.8(a) of the Penal Code, the court can place a divertee in another appropriate treatment program if the court determines that a batterers' treatment program is unavailable. Of the cases we reviewed in the five counties we visited, we did not find any in which the court determined that a batterers' treatment program was not available. In addition, the probation departments in these counties have not established policies for determining which programs are acceptable as batterers' treatment programs. As a result, some probation officers are sending divertees to alternative treatment programs such as substance abuse or alcohol abuse. Although divertees in these alternative programs may receive some type of counseling, the curriculum of the alternative programs is not specifically tailored to address divertees' violent behavior.

#### **Variation in Duration of Programs**

Current law does not provide minimum requirements for the duration of treatment programs for domestic violence diversion cases. Furthermore, the counties that we visited do not specify minimum requirements for the duration of treatment programs. Section 1000.8(c) of the Penal Code requires that the defendant be diverted from criminal proceedings for no less than six months and no more than two years. According to a Legislative Counsel opinion, Section 1000.8(c) of the Penal Code does not require that the treatment program last for a period of six months to two years. Rather, the period during which the charges against the defendant may be diverted is limited to this time.

Although the law does not establish minimum treatment requirements, the program guidelines of the Los Angeles Domestic Violence Council recommend a minimum of one year of weekly treatment sessions for batterers' treatment programs. Moreover, Dr. Anne Ganley, a noted mental health professional whose recommendations for treatment are published in the National Institute of Justice's "Confronting Domestic Violence: A Guide for Criminal Justice Agencies," states that termination from counseling is appropriate only when the client, the victim,

fellow group members, and the counselor are all confident that battering will not recur. According to Dr. Ganley, this typically happens after a counseling period of approximately one year. Thus, treatment programs that consist of only a few sessions may not be sufficient to address the violent behavior of the divertee.

We found that divertees in the five counties we reviewed attend treatment programs of varying duration. We documented treatment programs that lasted for only a few assessment sessions and treatment programs that required weekly attendance for one year. For example, in San Francisco County, a divertee was successfully terminated from the program by the court after attending two treatment sessions. The treatment provider felt that the divertee no longer had a problem with violence because the divertee was no longer living with the victim.

In some instances, we also found that probation officers are determining when a divertee has completed treatment because treatment programs often do not specify this. For example, in Los Angeles County, a treatment provider had no requirements for the number of sessions divertees had to attend. As a result, according to the Los Angeles County Probation Department, the probation officers at the Crenshaw Area Office have had to decide when divertees have attended enough sessions.

## **Conclusion**

Defendants who are granted domestic violence diversion do not always receive batterers' treatment for their violent behavior because county probation departments are not requiring the divertees to attend treatment programs specifically designed to treat violent behavior, as required by law. As a result, some divertees may not be receiving appropriate treatment to address their violent behavior. In addition, neither current law nor the policies of the five county probation departments we visited require minimum treatment periods for violent behavior. For

example, during our review of the five counties, we documented treatment programs that lasted for only a few assessment sessions and treatment programs that required weekly attendance for one year.

**Recommendations**

To ensure that defendants who are granted domestic violence diversion attend appropriate treatment programs, the county probation departments in the five counties we visited should refer divertees to batterers' treatment programs. If a batterers' treatment program is not available, the probation department should inform the court so that the judge can place the divertee in another appropriate treatment program.

The Legislature should amend Section 1000.6 et seq. of the Penal Code to require counties to develop standards for batterers' treatment programs. These standards may include a minimum period of treatment or number of counseling sessions.

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## **Chapter 3      Courts Are Granting Domestic Violence Diversion to Some Defendants Who Are Not Eligible**

### **Chapter Summary**

The Penal Code specifically disqualifies certain defendants from the domestic violence diversion program, including those with recent convictions for violent offenses and those charged with inflicting a traumatic injury on a spouse or cohabitant and assault with a deadly weapon. Nevertheless, our review of probation department case files indicates that some courts in the five counties we visited divert these defendants from criminal proceedings. In our review of 425 defendants who were granted domestic violence diversion (divertees), 113 (27 percent) were ineligible for diversion. When ineligible defendants are diverted from criminal proceedings, they are not being prosecuted as the Legislature intends.

### **Some Ineligible Defendants Are Diverted**

Section 1000.6(a) of the Penal Code describes the conditions under which a defendant cannot be granted domestic violence diversion. These conditions include any conviction for a violent offense within the past seven years, any prior revocation of parole or probation, and any prior domestic violence diversion within the past five years. In addition, the Penal Code prohibits diversion from prosecution when the defendant is charged with a violation of Sections 245(a) (assault with a deadly weapon) or 273.5 (inflicting traumatic injury upon a spouse or cohabitant of the opposite sex or upon the parents of the cohabitant's child) of the Penal Code. Section 1000.6 of the Penal Code prohibits diversion when the victim is a child or when the victim is a person who has not resided with the defendant within the previous six

months. According to an opinion of the Legislative Counsel, in cases when multiple charges are filed, the court must first reduce or dismiss the charges of an offense for which diversion is prohibited before a defendant can be eligible for domestic violence diversion.

In our sample of 425 probation department case files in which domestic violence diversion was granted to defendants, we found 113 cases (27 percent) in which the divertee was ineligible under the provisions of the Penal Code. In 94 of these 113 cases, the court granted diversion to defendants charged with violations of either Section 245(a) or Section 273.5 of the Penal Code. In 66 of these 94 cases, multiple charges were filed, and the court granted diversion on a charge for which diversion is allowed, such as a violation of Section 242 of the Penal Code (simple battery). However, the court did not dismiss the charge of violating either Section 245(a) or Section 273.5 of the Penal Code. The remaining 28 cases were cases in which the only charge at the time of diversion was a violation of either Section 245(a) or Section 273.5 of the Penal Code.

In the remaining 19 of the 113 cases, courts granted diversion to defendants although the victim was a minor, the defendant had recent parole or probation violations, the defendant had recent convictions for violent offenses, or the alleged criminal act did not involve domestic violence. Table 3 identifies the ineligible divertees in our sample by county and by reason for the divertee's ineligibility.

Table 3

**Summary of Cases in Which Domestic Violence Diversion  
Was Granted to Ineligible Defendants**

County Probation Department	Number of Domestic Violence Diversion Cases Reviewed	Divertees With Ineligible Criminal Charges <sup>a</sup>	Divertees With Other Reasons for Ineligibility <sup>b</sup>	Total Ineligible	Percent of Total Cases Reviewed
Glenn	30	12	2	14	47%
Los Angeles (Crenshaw Area Office)	47	13	0	13	28
Los Angeles (East San Fernando Valley Area Office)	52	19	1	20	38
Sacramento	87	1	1	2	2
San Diego	99	27	7	34	34
San Francisco	110	22	8	30	27
<b>Total</b>	<b>425</b>	<b>94</b>	<b>19</b>	<b>113</b>	<b>27</b>

Note: These data are based on our review of probation department files.

<sup>a</sup> Ineligible criminal charges include violations of Sections 245(a) (assault with a deadly weapon) and 273.5 (inflicting traumatic injury upon a spouse or cohabitant).

<sup>b</sup> Other reasons for ineligibility include cases in which the victim was a child, the divertee had previously violated parole or probation, and the divertee had been convicted of a violent offense within the past seven years.

Examples of instances when the court apparently granted diversion to ineligible defendants include one case in San Diego County in which the defendant was diverted after having allegedly attacked his eleven-year old daughter. In this case, the court did not request or review a report from the county probation department before granting diversion. This type of report typically includes information about the defendant's suitability for diversion. According to an opinion of the Legislative Counsel, courts are required to review such reports before granting or denying diversion. The county probation department subsequently noted in its first progress report to the court in this case that the diveree was an "inappropriate referral." Also, in Glenn County, one defendant was diverted after allegedly burglarizing the home of his ex-spouse while she was not home. Although no violence was noted in the police report or the probation department's reports to the court, the court granted the defendant diversion under Section 1000.6 of the Penal Code.

In San Diego County, our review of probation department case files indicates that some courts in some judicial districts granted diversion to defendants without the benefit of a report prepared by the probation department. One judge in San Diego County stated that, in his interpretation, Section 1000.6 of the Penal Code does not require the court to request such a report before granting diversion.

The Legislature has determined that defendants charged with certain offenses, as well as defendants with particular criminal backgrounds, should not be diverted under the domestic violence diversion statute. Because the courts sometimes grant domestic violence diversion to these ineligible defendants, they are not being prosecuted as intended by the Legislature.

**Conclusion** Some courts are granting domestic violence diversion to defendants who are not eligible for diversion under Section 1000.6 of the Penal Code. We found that 113 (27 percent) of the 425 defendants in our sample who were granted domestic violence diversion in the five counties we visited were not eligible for diversion. When ineligible defendants are diverted from criminal proceedings, they are not being prosecuted as the Legislature intends.

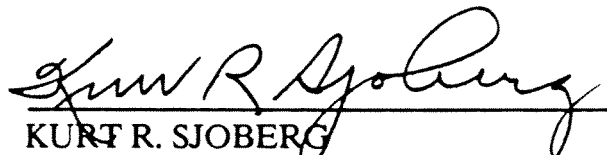
**Recommendations** To prevent ineligible defendants from being diverted from prosecution, the courts in the five counties we visited should not divert ineligible defendants, including those against whom charges of violating Sections 245(a) or 273.5 of the Penal Code are pending.

In addition, all of the courts in San Diego County should request reports from the probation department, as required by Section 1000.8(a) of the Penal Code, before granting or denying diversion to defendants in domestic violence cases.



We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

  
KURT R. SJOBERG  
Acting Auditor General

Date: January 2, 1990

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# Appendix A

## Department of Justice Statistics for Felony Domestic Violence Cases for All 58 California Counties (Section 273.5 of the Penal Code)—Unaudited

County	Number of Arrests			Number of Complaints Filed			Number of Convictions		
	1986	1987	1988	1986	1987	1988	1986	1987	1988
Alameda	376	682	585	159	206	310	49	63	57
Alpine	0	1	0	0	0	0	0	0	0
Amador	6	10	14	6	10	12	2	3	3
Butte	14	27	40	7	19	31	3	7	6
Calaveras	12	19	33	7	12	16	0	0	1
Colusa	3	5	3	1	3	3	0	0	0
Contra Costa	75	119	154	13	22	45	2	8	18
Del Norte	17	44	82	9	36	70	3	4	7
El Dorado	21	46	61	9	38	52	2	11	16
Freem	221	457	496	148	288	313	39	39	38
Glenn	0	3	6	0	3	6	0	0	2
Humboldt	104	156	201	85	121	166	7	28	27
Imperial	13	6	21	5	6	14	0	1	5
Inyo	7	15	9	3	15	7	2	9	3
Kern	472	906	914	422	821	846	313	596	581
Kings	14	49	67	13	37	55	4	6	6
Lake	24	57	72	11	34	48	3	18	18
Lassen	0	9	7	0	5	5	3	0	3
Los Angeles	5,185	6,152	5,718	1,235	3,004	2,919	599	1,780	1,593
Madra	6	17	40	6	17	39	4	4	19
Marin	49	69	89	20	39	62	6	8	14
Mariposa	2	7	5	1	6	6	0	3	2
Mendocino	16	23	31	11	19	31	3	7	11
Merced	15	23	39	9	18	36	5	5	13
Modoc	3	3	9	3	2	6	1	0	0
Mono	3	5	8	1	4	5	0	1	1
Monterey	365	537	476	352	489	450	51	48	79
Napa	13	57	66	12	54	76	12	18	17
Nevada	9	19	28	6	15	24	3	2	2
Orange	119	209	322	65	126	222	23	44	73

## Appendix A Continued

County	Number of Arrests				Number of Complaints Filed				Number of Convictions			
	1986	1987	1988	1988	1986	1987	1988	1988	1986	1987	1988	1988
Placer	55	85	137	137	35	73	117	117	8	20	45	45
Plumas	1	3	6	6	1	3	8	8	0	3	3	3
Riverside	154	395	460	460	53	186	174	174	21	35	42	42
Sacramento	866	1,130	1,240	1,240	759	844	1,067	1,067	264	400	581	581
San Benito	8	13	25	25	4	5	9	9	0	3	3	3
San Bernardino	120	299	519	519	38	74	146	146	6	15	42	42
San Diego	367	699	985	985	116	254	471	471	52	68	150	150
San Francisco	274	716	826	826	110	251	295	295	28	92	122	122
San Joaquin	129	266	274	274	116	248	261	261	32	58	101	101
San Luis Obispo	26	56	90	90	18	47	75	75	4	10	19	19
San Mateo	113	209	184	184	108	197	170	170	28	53	44	44
Santa Barbara	86	164	214	214	76	111	176	176	23	30	44	44
Santa Clara	305	667	724	724	187	347	523	523	98	218	239	239
Santa Cruz	62	104	173	173	58	102	155	155	11	18	11	11
Shasta	24	63	104	104	24	63	102	102	6	16	24	24
Sierra	1	2	2	2	1	2	2	2	0	0	2	2
Slackyou	0	10	34	34	0	9	30	30	0	3	8	8
Solano	137	183	244	244	64	88	180	180	24	28	42	42
Sonoma	82	211	227	227	69	158	167	167	5	10	20	20
Stanislaus	47	164	237	237	29	138	210	210	26	40	59	59
Sutter	9	16	11	11	8	16	10	10	2	5	3	3
Tehama	13	24	28	28	12	24	28	28	2	4	6	6
Trinity	2	4	10	10	1	4	10	10	1	3	3	3
Tulare	35	67	86	86	16	37	75	75	9	14	35	35
Tuolumne	3	3	2	2	2	3	2	2	0	0	1	1
Ventura	60	180	245	245	39	116	165	165	19	43	67	67
Yolo	47	58	71	71	44	49	66	66	15	23	17	17
Yuba	33	23	41	41	29	22	40	40	5	14	17	17
<b>Total</b>	<b>10,243</b>	<b>15,528</b>	<b>16,817</b>	<b>16,817</b>	<b>4,636</b>	<b>8,990</b>	<b>10,806</b>	<b>10,806</b>	<b>1,819</b>	<b>3,939</b>	<b>4,366</b>	<b>4,366</b>

Source: Department of Justice, Bureau of Criminal Statistics and Special Services. For limitations on this information, please see the following page.

**Data  
Limitations**

According to the California Department of Justice, the following general information and limitations should be considered when using the data in this appendix.

1. The table contains case disposition data based on information provided to the California Department of Justice (department) before April 25, 1987 (for 1986 dispositions), April 24, 1988 (for 1987 dispositions), and February 10, 1989 (for 1988 dispositions). Therefore, these data may not contain all final dispositions.
2. An important difference between the arrest and the disposition data is that arrest data are based on the year in which the defendants were arrested while the disposition data are based on the year in which the defendants' cases were disposed. Consequently, the disposition of a case may be reported a year or more after the actual arrest in the case.
3. The actual number of case dispositions that law enforcement agencies reported to the department may be slightly higher than what is included in the department's statistics since intermediate dispositions (such as suspended proceedings and reopened cases) are excluded in the department's statistics.
4. If a person is arrested and charged with multiple offenses, only the disposition with the most serious possible penalty is included. Similarly, the department's statistics include dispositions for only the most serious offense charged, based on the severity of possible punishment. Therefore, the arrest offense and the disposition offense may not necessarily correspond.
5. Comparison of county data should be made with caution since the level of reporting may vary by jurisdiction and from year to year. The data in the table do not represent the total number of adult felony arrest dispositions during 1986, 1987, or 1988. The department estimates that the information presented in the table is underreported by 30 to 40 percent.

# Appendix B

## The Number of Domestic Violence Diversion Cases by County, January 1, 1986 Through January 1, 1989—Unaudited

Domestic Violence Diversion Cases as of January 1st Each Year					
County	1986	1987	1988	1989	Percent Change 1986-1989
Alameda	87	107	102	150	72%
Alpine	0	0	0	0	-
Butte	26	36	33	35	35
Colusa	3	5	4	3	0
Contra Costa	15	16	17 <sup>a</sup>	17 <sup>a</sup>	13
El Dorado	0	16	26	43	-
Fresno	165	297	386	311	88
Humboldt	42	76	138	126	200
Imperial	10	4	13	21	110
Kings	10	10	10	10	0
Madera	35	61	68	69	97
Marin	-	-	8	33	-
Mariposa	2	3	6	7	250
Mendocino	8	17	30	48	500
Merced	-	7	29	59	-
Monterey	-	-	328	457	-
Napa	17	65	98	83	388
Nevada	3	8	22	67	2,133
Orange	139	181	178	295	112
Plumas	4	6	6	8	100
Riverside	52	47	117	256	392
San Bernardino	-	-	-	78 <sup>b</sup>	-
San Luis Obispo	39	46	97	195	400
San Mateo	0	0	0	125	-
Santa Barbara	50	126	160	296	492
Santa Clara	43	76	314	420	877
Santa Cruz	-	-	-	12	-
Shasta	-	64	177	136	-
Sierra	0	2	3	1	-
Siskiyou	4	1	11	11	175
Tehama	3	6	6	29	867
Trinity	0	0	1	2	-
Tulare	47	48	109	235	400
Yolo	-	-	-	110	-
Yuba	-	-	30 <sup>a</sup>	10 <sup>a</sup>	-

Source: Survey of county probation departments conducted by the Office of the Auditor General in 1989.

Note: The counties that did not provide data were omitted from the table.

<sup>a</sup> These data are estimates.

<sup>b</sup> This datum is as of September 1, 1989.



BARRY J. NIDORF  
Chief Probation Officer

## COUNTY OF LOS ANGELES PROBATION DEPARTMENT

9150 EAST IMPERIAL HIGHWAY — DOWNEY, CALIFORNIA 90242

(213) 940-2501

December 14, 1989



Kurt R. Sjoberg, Acting Auditor General  
State of California  
Office of the Auditor General  
660 J Street, Suite 300  
Sacramento, CA 95814

Dear Sir:

This is in response to your letter to Richard Dixon, Chief Administrative Officer, dated December 7, 1989. I appreciate your sharing the audit findings and the opportunity to respond prior to finalization of your report.

The recommendations you make are consistent with departmental policy in each and every area. The audit is helpful since it pinpoints areas where we need to employ greater management control.

We are in the process of developing a new adult manual which will include specific procedural guidelines for supervising domestic violence diverttees. Pending the manual publication I will issue formal directives reminding staff of the need to comply with mandated requirements. Among the instructions will be one which will mandate use of a service directory published by the Los Angeles County Domestic Violence Council in referring domestic violence diverttees.

My staff and I are available to discuss these issues in further detail should you require further information.

Sincerely,

BARRY J. NIDORF  
Chief Probation Officer

BJN:vmh

cc: Richard Dixon  
Chief Administrative Officer



# COUNTY OF SACRAMENTO PROBATION DEPARTMENT

ROBERT E. KELDGORD  
CHIEF PROBATION OFFICER

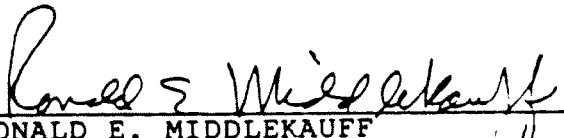
LEONARD BROWN  
ASSISTANT CHIEF PROBATION OFFICER

711 E STREET • SACRAMENTO, CALIFORNIA 95814 • TELEPHONE (916) 440-6311

## Response to Auditor General's Report On Domestic Violence Diversion

We have reviewed a draft of this report and appreciate the opportunity to have done so prior to its release.

The report accurately reflects the conditions as they existed seven months ago and we have taken measures to address the concerns raised in the report.

  
RONALD E. MIDDLEKAUFF  
CHIEF DEPUTY

Date: 12/13/89

City and County of San Francisco



Adult Probation Department  
Hall of Justice

ARLENE M. SAUSER  
CHIEF ADULT PROBATION OFFICER

December 11, 1989

Kurt R. Sjoberg, Acting Auditor General  
Office of the Auditor General  
660 J Street, Suite 300  
Sacramento, CA 95814

Dear Mr. Sjoberg:

I have read the draft of your report entitled, "The Administration of the State's Domestic Violence Diversion Program Could Be Improved," and I have the following comments.

I agree that clear procedures are important for the proper administration of diversion programs, and that divertees should be referred to batterer's treatment. Monitoring of a divertee's progress on diversion is also important, but this Department would require additional resources before it could provide close supervision of diversion cases.

In response to your audit of this Department, we have formalized our diversion duty statement into a policy on the investigation and monitoring of domestic violence diversion cases. It requires that divertees be referred for batterer's treatment (unless they require detoxification first) and that they give the probation officer periodic verification of their participation in treatment. The policy also contains guidelines for the probation officer to follow in monitoring the compliance of divertees. New crimes and victim's complaints require immediate action. Issues of the divertee's compliance with the treatment order are generally to be handled in the regularly scheduled progress reports. Given the size of the diversion caseload (120 diversion cases and 50 convicted domestic violence offenders for one officer), this is a realistic level of supervision. It is also consistent with the Department's policy of supervising most closely those clients who present the highest risk. Divertees, not having been convicted, are a lower risk category than convicted violent offenders. (Divertees do get closer supervision than most misdemeanants in this Department, who are assigned to caseloads ranging from 300 to 600 probationers each.)




Kurt R. Sjoberg  
December 11, 1989  
Page two

However, were we to receive funds from the State or from some other source to permit the supervision of divertees in caseloads of 50 or less, we would obviously be able to exercise much tighter control over their performance on diversion.

Finally, a recommendation to the Legislature for a lengthy mandated minimum treatment period for divertees raises some concerns. The needs of divertees vary greatly. Treatment resources, at least in San Francisco, are scarce for the probation population. A minimum treatment period (one year is mentioned in the draft) might make it more difficult for us to place divertees in programs at all.

In closing, I want to thank you for the opportunity to review and respond to your draft report. I hope that my comments are useful to you.

Sincerely,

  
Arlene M. Sauser, Chief  
Adult Probation Officer

AMS:TJ:mwc

1550R

# JUSTICE COURT

GLENN COUNTY JUDICIAL DISTRICT

WILLOWS, CALIFORNIA

WILLOWS BRANCH  
543 W. Oak St.  
Willows, CA 95988  
Telephone: 934-3189

ANGUS I. SAINT-EVENS  
Judge

☐ ORLAND BRANCH  
Co. Rd. 200, Co. Bldg.  
P.O. Box 577  
Orland, CA 95963  
Telephone: 865-9691

December 13, 1989

Mr. Kurt R. Sjoberg  
Acting Auditor General  
Office of the Auditor General  
660 J Street, Suite 300  
Sacramento, California 95814

Re: Draft report by Auditor General on  
Domestic Violence Diversion

Dear Mr. Sjoberg:

I have read and reviewed the above mentioned draft report and will take this opportunity to comment on same.

1. On page three (last 2 lines of second paragraph): While informal diversion is sometimes used, its use is not confined to domestic violence situations and when it is not for mandating batterers' treatment and if so the supervision of that is not with the court but would be with the District Attorney's Office. I can only assume that this comment is somehow derived from my letter (paragraph 11) or my conversation with Mr. Lynch at no time did I intend to leave the impression that this is what happens all the time in Glenn County. In this respect I note that you issued a "management letter" to the court forbidding such a practice, this court has never received such a letter. <sup>(1)</sup> In any event I feel that the Legislative Counsels analysis is incorrect in that it assumes that because Penal code section 1000.6 is not being followed the courts are somehow involved in the process, in actuality what happens is that the defendant waives time for trial for the period of 6-12 months and then the DA moves to dismiss.

2. In some cases other forms of or procedures of diversion are granted as authorized by statute. see Penal Code Section 1000 et. seq.

3. I am assuming that the actual data you are using for Glenn County comes in fact from Glenn County, however to my knowledge no one has reviewed any court document and thus the records must have come from the probation

<sup>(1)</sup> The Office of the Auditor General's management letter was sent to the judge on December 14, 1989.

department(who may not have the final disposition in some cases e.g. a reduction/dismissal from a 245a to a charge that is in fact divertible.)<sup>(2)</sup> Furthermore, this data for my small court seems to be of more cases then I can recall. I would like the opportunity of knowing what are the actual case names in order to verify the same, it should only take less then one day. It may very well be that some of the case have been handled by the Superior court.<sup>(3)</sup>

As you can see your report with the short response time has caused me some serious concerns not only about the report itself but also the fact that this court may be acting in excess of its jurisdiction. Regardless of the report submitted by you to the state I would like to know the actual cases names so that efforts can be made to correct the situation and/or conduct an analysis as to how these discrepancies occur and thus be able to prevent them in the future.<sup>(3)</sup>

Lastly, diversion is an effective tool available to the courts in dealing with an ever increasing case load and in particular Domestic Violence Diversion is a valuable tool for the courts in responding the the increasing numbers of persons who are committing domestic violence.

Your very truly,

  
Angus I. Saint-Evens  
Judge, Glenn County Judicial District

Faxed 12-18-89 (916) 327-0019 and mailed 12-18-89

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The Office of the Auditor General's Comments:

- <sup>(2)</sup>The text has been changed to reflect these comments.
- <sup>(3)</sup>The case names requested by the judge were provided on December 18, 1989.

THE MUNICIPAL COURT  
OF THE SAN DIEGO JUDICIAL DISTRICT

PRESIDING DEPARTMENT  
COUNTY COURTHOUSE

SAN DIEGO, CALIFORNIA 92101-3877  
(619) 531-3018  
LOCATION CODE 740

HONORABLE E. MAC AMOS, JR.  
PRESIDING JUDGE



December 14, 1989

Kurt R. Sjoberg  
Acting Auditor General  
Office of the Auditor General  
660 J St., Ste. 300  
Sacramento, CA 94814

Dear Mr. Sjoberg:

I have reviewed a draft copy of your report entitled "The Administration of the State's Domestic Violence Diversion Program Could Be Improved". I do not question the accuracy of the figures contained in your report, but I am concerned about the implication that the San Diego Municipal Court is responsible for placing ineligible people in the diversion program and for diverting people without obtaining a probation report. My investigation reflects that this Court is not responsible for handling cases in this manner.

San Diego County contains four judicial districts. These include San Diego Judicial District, North County Judicial District, El Cajon Judicial District, and South Bay Judicial District. The City Attorney is responsible for the prosecution of misdemeanor domestic violence cases in the San Diego Judicial District. The District Attorney's Office is responsible for prosecution of these cases in the outlying judicial districts. After reviewing your report, I spoke with Deputy City Attorney Casey Gwinn who is in charge of the domestic violence unit in the City Attorney's Office. He advised me that he was aware of no cases where a person had been placed into a diversion program who was ineligible for that program. I also spoke with Cecil Steppe, the Probation Officer for the County of San Diego. Mr. Steppe advised me that the judges in the San Diego Judicial District were obtaining probation reports in all cases.

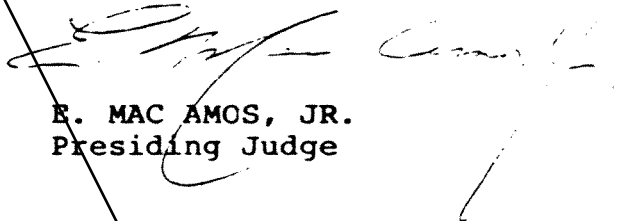
By lumping all of the San Diego judicial districts together and referring to them as "San Diego", the inference is that our Court is improperly applying the diversion law.

Kurt R. Sjoberg  
December 14, 1989  
Page Two

This inference is incorrect. ① Both Mr. Gwinn and Mr. Steppe indicated that if the law is being improperly applied, improper applications are occurring in the outlying judicial districts. I believe that your report should reflect this fact to correct the false implication that our Court is not handling these cases properly.

I am sure that Mr. Gwinn and Mr. Steppe will be more than happy to confirm the facts set forth in this letter. Thank you for allowing us the opportunity to review the draft report.

Very truly yours,



E. MAC AMOS, JR.  
Presiding Judge

EMA:sm

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① The Office of the Auditor General's Comment: The text has been changed to reflect these comments.



John R. Lewis, Presiding Judge

**The Municipal Court**  
Sacramento County Courthouse  
720 Ninth Street  
Sacramento, California 95814

Telephone (916) 440-3238

December 13, 1989

Kurt R. Sjoberg  
Acting Auditor General  
State of California  
Office of the Auditor General  
660 J Street, Suite 300  
Sacramento, California 95814

Dear Mr. Sjoberg:

I wanted to take the opportunity to follow up on your letter of December 7, 1989 regarding the draft report titled "The Administration of the State's Domestic Violence Diversion Program Could Be Improved."

Judge Ullman of our Court has had several conversations with members of your staff. It was noted that five (5) Sacramento Municipal Court cases were reflected in the report as being inappropriately diverted. ① We received confirmation from your office that upon further review, two of the cases were not inappropriately diverted. We were also advised that a footnote would be added to reflect that the case reviews were done solely by reviewing probation files and did not consider what occurred at the court hearing either through review of the court file or a transcript of the proceeding. ①

Thank you for the opportunity to review a draft copy of the report prior to publication and for your willingness to make modifications.

Sincerely yours,

John R. Lewis  
Presiding Judge of the Municipal Court

JRL:tg  
121389a

cc: Judge Michael S. Ullman

① The Office of the Auditor General's Comment: The text has been changed to reflect these comments.