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ENGAGING WITH THE STATE: THE GROWING RELIANCE ON LAWYERS AND JUDGES TO PROTECT BATTERED WOMEN*

JANE C. MURPHY**

INTRODUCTION

The passage of the federal Violence Against Women Act of 2000¹ (“VAWA II”) marked an important milestone in the evolution of the domestic violence movement. VAWA II created, among other things, a complex system for state and federal funding in all fifty states to provide civil legal assistance to battered women.² Its passage completed a process that began in the early 1980s when domestic violence advocates shifted their focus from grass roots efforts to help battered women and their children leave abusive partners to building alliances with government and advocating for legal remedies to assist battered women. This paper looks at the impact of this dramatic shift on both battered women and domestic violence programs. It draws on empirical data examining women’s experiences using these new

* This title is taken from ELIZABETH M. SCHNEIDER, BATTERED WOMEN & FEMINIST LAWMAKING 181 (2000) (citing Nickie Charles, *Feminist Politics, Domestic Violence and the State*, 43 SOC. REV. 617 (1995)). This Article was originally presented at *Confronting Domestic Violence and Achieving Gender Equality: Evaluating BATTERED WOMEN & FEMINIST LAWMAKING* by Elizabeth M. Schneider at Washington College of Law, American University. The author gratefully acknowledges comments of other participants at the symposium. The author also wishes to thank Margaret Potthast, Rebecca Lakowicz, Robin Travis, and Laura Garcia for excellent research assistance and other support for this article. Finally, the author thanks Mary Ann Dutton, Lisa Goodman, and Dorothy Lennig for their many insights and contributions during our collaboration on the study described in this Article.

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1. Violence Against Women Act of 2000 (“VAWA II”), Pub. L. No. 106-386, 114 Stat. 1464, 1491 (codified as amended in scattered sections of 8, 18, 20, 28, and 42 U.S.C.).

2. See 42 U.S.C. § 3796gg (Supp. 2002).

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legal remedies to raise some preliminary questions about the broader issue of how well the strategy of “engaging with the state” serves the interests of battered women.

I. BACKGROUND

The vision of law as an important tool for social change is well established.³ Consistent with this vision, early feminists advocated for laws against wife-beating in New England as early as the seventeenth century.⁴ These efforts to create laws to protect battered women continued and spread through the country during the 19th century under the leadership of Susan B. Anthony, Elizabeth Cady Stanton and other early feminists.⁵ However, the plight of battered women was not the focus of these early reform movements. Instead, the primary goal of these efforts was to encourage temperance, protect children, and improve the status of white women by affording them the right to divorce, hold property, and vote.⁶ The “battered women’s movement”—a coalition of activists working to establish the right of women to be free from violence—did not begin to emerge as a national movement until the late 1960s.⁷ The participants in this movement were community organizers, shelter workers, civil rights workers, and feminist activists. Elizabeth Schneider describes the character and origin of the movement:

The battered women’s movement was an outsider movement, a grassroots movement that developed from the civil rights and feminist movements of the 1960s. Many feminists saw battering as the product of patriarchy, as male control over women. Many in this movement were skeptical of an affirmative role for the state; they saw the state as maintaining, enforcing, and legitimizing male

3. See Jane C. Murphy, *Lawyering for Social Change: The Power of the Narrative in Domestic Violence Law Reform*, 21 HOFSTRA L. REV. 1243, 1244 (1993) [hereinafter Murphy, *Lawyering for Social Change*] (citing ROBERT E. KEETON, *VENTURING TO DO JUSTICE: REFORMING PRIVATE LAW* 11 (1969)); see generally BENJAMIN N. CARDOZO, *THE GROWTH OF THE LAW* (1924); ROSCOE POUND, *INTERPRETATIONS OF LEGAL HISTORY* (1923).

4. See ELIZABETH PLECK, *DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT* 21-22 (1987) (stating that magistrates and church courts in the New England colonies enforced laws that punished spousal abuse).

5. See Kathleen J. Tierney, *The Battered Women’s Movement and the Creation of the Wife Beating Problem*, 29 SOC. PROB. 207, 207-10 (1982) (discussing the social movement to combat wife beating).

6. See *id.*; see also ELIZABETH M. SCHNEIDER, *BATTERED WOMEN & FEMINIST LAWMAKING* 15-16 (2000).

7. See SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT* 53-58 (1982) (discussing the early days of the battered women’s movement).

violence against women, not remedying it; they rejected the idea that battered women activists ought to trust the state, expect much from the state, or engage with the state in any way. The movement developed shelters, safe houses, and alternative institutions. Groups rejected governmental funding for battered women's services and programs.⁸

Despite ambivalence about the government's role in protecting battered women, "engaging with the state" emerged as a principal strategy of the battered women's movement in the early 1980s and developed over the next two decades.⁹ The movement became dominated by lawyers, elected officials and courts. The work shifted from establishing shelters, safe houses, and hotlines to drafting legislation, lobbying elected officials, and litigating cases to create and expand legal protections for battered women. Strategizing about how to help battered women shifted from networks of privately funded shelters to government sponsored and staffed Family Violence Councils.¹⁰ This advocacy resulted in the passage of legislation creating a variety of state criminal statutes designed to prosecute and punish domestic violence.¹¹ These efforts to enhance criminal prosecution of domestic violence culminated in the passage of the Violence Against Women Act of 1994 ("VAWA").¹² This Act, among other things, made certain acts of domestic violence federal

8. SCHNEIDER, *supra* note 6, at 182.

9. See *id.* at 182-83; see also NAT'L COMM'N ON THE OBSERVANCE OF INT'L WOMEN'S YEAR, BATTERED WOMEN (1978) (calling on the President and Congress to "declare the elimination of violence in the home to be a national goal . . . [by] establish[ing] a national clearinghouse for information . . . and crisis intervention techniques, and the need for prompt and effective enforcement of laws that protect the rights of battered women"), available at <http://womhist.binghamton.edu/vawa/doc1.htm>.

10. See, e.g., MD. ATT'Y GEN., FAMILY VIOLENCE COUNCIL (last visited Nov. 6, 2002) (describing the Family Violence Council in Maryland, which is housed in the Attorney General's Office), available at <http://www.oag.state.md.us/Family/index.htm>; N.Y. STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, DOMESTIC VIOLENCE POLICY DEVELOPMENT TOOL (last visited Nov. 6, 2002), available at http://www.opdv.state.ny.us/coordination/poldev_tool.html; PA. ATT'Y GEN. DOMESTIC VIOLENCE UNIT, FINAL ACTION PLAN - A COORDINATED, COMMUNITY-BASED RESPONSE TO FAMILY VIOLENCE (last visited Nov. 6, 2002), available at www.attorneygeneral.gov/family/; see also Leonard P. Edwards, *Reducing Family Violence: The Role of the Family Violence Council*, 43 JUV. & FAM. CT. J. NO. 3, 1, 3-7 (1992).

11. See CLARE DALTON & ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND THE LAW 51 (2001).

12. Pub. L. No. 103-322, 108 Stat. 1796, 1902 (1994) (codified as amended at scattered sections of 8, 18, 20, 28, and 42 U.S.C.). For a discussion of the history of VAWA and a summary of its contents, see Sally F. Goldfarb, "No Civilized System of Justice": *The Fate of the Violence Against Women Act*, 102 W. VA. L. REV. 499, 504-09 (2000) (detailing the various subtitles of VAWA and explaining that the Act increased prison sentences for individuals convicted of some federal sex crimes).

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crimes,¹³ mandated interstate enforcement of protective orders,¹⁴ and provided training for prosecutors, police and state and federal judges.¹⁵

While improving the criminal justice response to domestic violence was an important piece of the new array of legal remedies, the enactment and expansion of civil protection or restraining orders evolved into a primary strategy for improving the safety of battered women.¹⁶ Between 1976 and 1992, all fifty states enacted civil protection order legislation,¹⁷ making it one of the most commonly used legal remedies for battered women.¹⁸ After enactment of the statute, advocacy efforts shifted to training judges, lawyers, and clerks, as well as funding services, including legal representation, to implement the statute.¹⁹ While state governments contributed some funding to these efforts, the passage of VAWA II marked a major national commitment of funding to encourage the use of civil protection orders and other civil remedies as a response to domestic violence.²⁰ Some funding was made available to shelters, but the vast

13. See 18 U.S.C. §§ 2261-2262 (1994 & Supp. 2002) (imposing federal prison terms for persons who travel in interstate commerce and commit a crime of violence or attempt to commit a crime of violence against a spouse or intimate partner).

14. See 18 U.S.C. § 2265 (1994 & Supp. 2002) (mandating that protective orders issued by one state be given full faith and credit and mandating their enforcement by any state having jurisdiction).

15. See 42 U.S.C. § 13991 (1994 & Supp. 2002). In the first year of implementation of VAWA, fifty-six awards totaling \$26 million were made to the states and District of Columbia. By 1996, there were 400 grants amounting to more than \$165 million.

16. Civil protection orders are temporary orders designed to provide battered women with a quick, easily obtainable order requiring the batterer to refrain from abuse and providing other potential relief including use of the home, financial relief, and child custody while the victim pursues more long term solutions such as divorce or relocation. See Catherine F. Klein & Leslye E. Orloff, *State and Federal Laws on Domestic Violence Injunctions*, in VIOLENCE AGAINST WOMEN 16-1 (David Frazee et al. eds., 1997); see also NAT'L COUNCIL OF JUVENILE AND FAMILY CT. JUVENILE JUDGES, MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE (1994).

17. See *Developments in the Law: Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1498, 1529 (1993).

18. See Michelle R. Waul, *Civil Protection Orders: An Opportunity for Intervention with Domestic Violence Victims*, 6 GEO. PUB. POL'Y REV. 51, 52 (2000) (noting that civil protection orders serve two purposes: to empower victims and to deter the perpetrators of violence); see also SCHNEIDER, *supra* note 6, at 49-50.

19. See, e.g., Katherine Triantafillou, *Massachusetts: New Legislation to Help Battered Women*, 27 JUDGES J. No. 3, Summer 1988, at 20 (discussing legislation enacted in Massachusetts).

20. See Pub. L. No. 106-386, 114 Stat. 1464 (2000); see also Press Release, Violence Against Women Office, U.S. Dep't of Justice, Justice Department Awards Over \$23 Million for Civil Legal Assistance to Victims of Domestic Violence (Oct. 19, 2000) [hereinafter Press Release] (describing VAWA II as the first time Congress has authorized a civil legal assistance program for battered women), available at <http://www.usnewswire.com/OJP/docs/ojp000114.html>.

majority of the over \$23 million in civil legal assistance funding in 2001 went to law school clinics, legal services offices, and bar associations in all fifty states, three territories, and the District of Columbia.²¹ In addition to the direct funding for civil legal assistance, VAWA II also authorized formula grants to states for “Services, Training, Officers, Prosecutors” (“STOP grants”). Many of the state STOP grant implementation plans include direct funding for legal assistance in proceedings to obtain or enforce civil protection orders.²² In addition, substantial funding for initiatives for data collection, communications systems, and community coordination approaches have been designed with the goal of improving the effectiveness of civil protection orders.²³

II. IMPACT OF ENGAGING THE STATE: UNDERSTANDING BATTERED WOMEN’S USE OF CIVIL PROTECTION ORDERS

The question raised by Elizabeth Schneider and others is what impact state engagement in the battered women’s movement has had on women who experience domestic violence.²⁴ Heavy reliance on the coercive power of the state’s criminal laws as a response to domestic violence has been controversial from the start.²⁵ However,

21. See Press Release, *supra* note 20 (noting that many domestic violence victims do not have the resources to hire attorneys).

22. See U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, STOP VIOLENCE AGAINST WOMEN FORMULA GRANTS, VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994 (last visited Nov. 13, 2002) (authorizing formula grants to states), available at <http://www.ojp.usdoj.gov/ocpa/atagance/family.htm>. See, e.g., MD. GOVERNOR’S OFFICE OF CRIME CONTROL & PREVENTION, STOP VIOLENCE AGAINST WOMEN GRANTS (last visited Nov. 13, 2002) (reporting the availability of \$2.104 million in grant funds to states), available at <http://www.goccp.org/goccp/grants/grantlist.sap#s>.

23. See SUSAN L. KEILITZ ET AL., NAT’L CTR. FOR STATE COURTS, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE 4-5 (1997).

24. See SCHNEIDER, *supra* note 6, at 181-98. While Schneider focuses her exploration of these issues on mandatory arrest legislation and the VAWA civil rights remedy, her thoughtful analysis of the theoretical and practical implications of state engagement in those arenas is helpful in considering the whole range of state involvement. *Id.*; see also Merle H. Weiner, *From Dollars to Sense: A Critique of Government Funding for the Battered Women’s Shelter Movement*, 9 LAW & INEQUALITY 185, 204-46 (1991) (examining and critiquing the battered women’s shelter movement’s reliance on government funding).

25. See, e.g., Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 557-71 (1999) (arguing against the implementation of mandatory arrest, prosecution, and reporting policies because these mandatory state interventions may worsen the mental and physical health and safety of the battered woman they are meant to help); Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence: A Critical Review*, 4 BUFF. CRIM. L. REV. 801, 805 (2001) (noting that the focus on the criminal aspect of domestic violence deflects attention from other strategies for combating domestic violence); see also

less critical attention has been paid to the significant public resources devoted to encouraging the use of civil protection orders. This may be because the use of civil protection orders (“CPOs”) does not involve the same degree of coercion and state control inherent in criminal remedies. Michelle Waul has described the protective order as unique among the array of judicial responses to domestic violence because it “represent[s] the intersection of traditional community-based and justice system approaches: victim empowerment coupled with deterrence. A CPO combines a victim-initiated intervention with the power of enforcement by the criminal justice system.”²⁶

Despite the element of “empowerment” in CPOs, the level of state endorsement, state funding, and advocacy focus on this remedy warrant a closer look at its value to battered women. Evaluating the impact of this aspect of the strategy shift is difficult. Most would agree that the intense focus on CPOs has been a success if it improved the safety and well-being of battered women. But how to measure “improved safety and well-being” is open to debate. Much of the existing empirical research examining the impact of the new array of legal remedies define “improved safety” in terms of orders obtained or rates of reabuse.²⁷ In other studies, surveys of service providers, police or court records, rather than women’s voices, are

SCHNEIDER, *supra* note 6, at 184-85 (indicating the conflict among advocates concerning coercive actions such as mandatory arrests and no-drop prosecution and discussing some of the reasons battered women may not wish to prosecute complaints); SCHECHTER, *supra* note 7, at 174-83.

26. Waul, *supra* note 18, at 53. Interestingly, the advocacy for this legislation was most effective when it was a collaborative effort between grass-roots activists, lawyers, and government officials. See Murphy, *Lawyering for Social Change*, *supra* note 3, at 1268-92 (analyzing the effort to improve legal remedies to protect battered women in Maryland).

27. See, e.g., Janice Grau et al., *Domestic Violence-Battered Women: Restraining Orders for Battered Women: Issues of Access and Efficacy*, in CRIMINAL JUSTICE POLITICS AND WOMEN: THE AFTERMATH OF LEGALLY MANDATED CHANGE 13, 21-24 (Claudine Schweber & Clarice Feinman eds., 1985); ADELE V. HARRELL ET AL., COURT PROCESSING THE EFFECTS OF RESTRAINING ORDERS FOR VICTIMS OF DOMESTIC VIOLENCE (1993); Andrew K. Klein, *Re-abuse in a Population of Court-Restrained Male Batterers: Why Restraining Orders Don't Work*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 192, 199-209 (Eve S. Buzawa & Carl G. Buzawa eds., 1996); Richard A. Berk et al., *Mutual Combat and Other Family Violence Myths*, in THE DARK SIDE OF FAMILIES: CURRENT FAMILY VIOLENCE RESEARCH 197, 204-10 (David Finkelhor et al. eds., 1983); Matthew J. Carlson et al., *Protective Orders and Domestic Violence: Risk Factors for Re-Abuse*, 14 J. OF FAMILY VIOLENCE 205, 213 (1999); Kit Kinports & Karla Fischer, *Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes*, 2 TEX. J. WOMEN & L. 163, 167 (1993). But see Molly Chaudhuri & Kathleen Daly, *Do Restraining Orders Help? Battered Women's Experience with Male Violence and Legal Process*, in DOMESTIC VIOLENCE 227, 233-45 (Eve S. Buzawa & Carl G. Buzawa eds., 1992) (discussing the successes and failures of women obtaining temporary restraining orders in New Haven, Connecticut); KEILITZ, *supra* note 23, at 37-44 (discussing the benefits and limitations of civil protection orders and how improvements to quality of life were measured).

the primary source of data.²⁸ As a result, these studies tell us relatively little about how the emphasis on CPOs has affected battered women's experience of abuse and its changes over time, particularly during and following court intervention.²⁹

A. *Ecological Model of Battered Women's Experience Over Time*

A recently completed study, *Ecological Model of Battered Women's Experience Over Time*,³⁰ attempted to fill some of the gaps in existing domestic violence research. The study was a collaborative effort in which I was joined by three others who focused much of their professional lives on domestic violence issues: two researchers in the field of clinical psychology³¹ and a practitioner who has advocated for battered women in the courts and legislature for over fifteen years.³² The study was interdisciplinary in two senses: it was a researcher/practitioner collaboration joining experts from the fields of law and psychology.³³

The study examined the experiences of 406 women who sought intervention for domestic violence. The women were recruited over seven months (June 1999 to January 2000) from three sites in Baltimore, Maryland. The first site, the House of Ruth Shelter (16.7% of the sample recruited), is the main shelter for battered women in Baltimore. The second site (29.1%) is a specialized criminal court handling all domestic violence misdemeanor cases in the city. The third site, from which the majority of participants were recruited (54.2%), is the court where domestic violence victims seek civil protection orders. To participate in the study, a participant had

28. See, e.g., Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, CONTEMPORARY ECONOMIC POLICY (forthcoming Apr. 2003) (on file with author); HARRELL ET AL., *supra* note 27; Klein, *supra* note 27; Berk et al., *supra* note 27, at 198; Richard J. Gelles, *Methodological Issues in the Study of Family Violence*, in PHYSICAL VIOLENCE IN AMERICAN FAMILIES 24 (Murray A. Straus & Richard J. Gelles eds., 1990).

29. See *supra* note 28.

30. MARY ANN DUTTON ET AL., *ECOLOGICAL MODEL OF BATTERED WOMEN'S EXPERIENCE OVER TIME* (2002). This study was funded under Award No. RX 429806 by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice.

31. Principal Investigator Mary Ann Dutton, Ph.D. (*Georgetown University Medical Center*) and Co-Principal Investigator Lisa Goodman, Ph.D. (*Boston College*).

32. Dorothy J. Lennig, Esq., Director, House of Ruth Domestic Violence Legal Clinic, Baltimore, Maryland.

33. The need for researcher/practitioner collaborations in domestic violence research has been identified by domestic violence advocates in recent years. See, e.g., Joan Zorza, *The Problem with Proxy Measures: The Inaccuracy of the Conflict Tactic Scales and Other Crime Surveys in Measuring Intimate Partner Violence*, DOMESTIC VIOLENCE REP., Aug./Sept. 2001, at 83.

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to be a female victim of intimate partner violence perpetrated by a man who was a current or former intimate partner. The women were interviewed at the time of recruitment and were followed in four telephone interviews conducted every three months over the year following recruitment. The retention rate at the end of the study was 82%.³⁴

The study did not set out to address the impact of state engagement in domestic violence or even answer the narrower question of the effectiveness of civil protection orders in reducing violence. Rather, the primary purposes of the study were to identify and predict the patterns of battered women's experiences of violence and abuse, their appraisals of risk, and strategic responses to violence.³⁵ Listening to women's experiences and responses to domestic violence does lead, however, to some important observations about the practical impact of increased government funding and involvement in civil protection orders. How has the shift in emphasis changed the focus of domestic violence programs and, more importantly, does this shift best address the needs and interests of battered women?

1. Supporting Data

The study produced substantial data about the range of strategies women use in response to intimate partner violence, how often they use particular strategies and how helpful women believe these strategies have been.³⁶ At the initial interview, participants were asked:

There are a lot of different things that women do to deal with violence or threats. Some can be helpful and some can make things worse. Have you ever done any of the following things to help yourself feel better about the violence or abuse? If your response is 'yes,' looking back, please indicate how helpful this was (scale of 1 to 5).³⁷

The questionnaire listed thirty-nine strategies³⁸ and women

34. For a complete description of the study methodology, see MARY ANN DUTTON ET AL., NAT'L INST. OF JUSTICE, LONGITUDINAL PATTERNS OF INTIMATE PARTNER VIOLENCE, RISK, WELL-BEING, AND EMPLOYMENT: PRELIMINARY FINDINGS (2001).

35. See, e.g., Lisa Goodman et al., *The Intimate Partner Violence Strategies Index: Development and Application*, in 9 VIOLENCE AGAINST WOMEN 163 (Feb. 2003); Robin J. Belamaric et al., *The Role of Family Structure in Battered Women's Threat Appraisal and Re-abuse*, 18 FAMILY VIOLENCE & SEXUAL ASSAULT BULLETIN 15 (Fall 2002).

36. See Goodman et al., *supra* note 35.

37. TIME 1 RECRUITMENT QUESTIONNAIRE, AN ECOLOGICAL MODEL OF BATTERED WOMEN'S EXPERIENCE OVER TIME, PHASES I.

38. Goodman et al., *supra* note 35, at app.

indicated whether they had ever used them and, if so, how helpful they had been. In analyzing the data gathered from these responses, the thirty-nine strategies were divided into either “public” or “private.”³⁹ The list was further refined into six categories of strategic responses: Placating,⁴⁰ Resistance,⁴¹ Safety-planning,⁴² Legal,⁴³ Formal Network,⁴⁴ and Informal Network.⁴⁵ Not surprisingly, we learned that most women use a combination of strategies over time.⁴⁶ In trying to understand how the four strategies categorized as “legal” fit within the framework,⁴⁷ we found that two of those strategies—“called police” and “filed for a protective order”—were among the ten most commonly used strategies.⁴⁸ Although women generally started with private strategies and moved to public strategies, the subset that turned to public strategies also continued to use private strategies.⁴⁹ Overall, the data suggested that “women were more likely to use private strategies, such as placating and resisting than public strategies that involved seeking help from the legal system or other community agencies This is especially striking given that the

39. SCHNEIDER, *supra* note 6, at 91-97 (discussing that this public/private and formal/informal divide found in battered women’s strategies reflects the shifting parameters of private and public for battered women Schneider and others have discussed).

40. Placating: private strategies intended to change batterer behavior, do not challenge his control, may or may not involve direct communication with the batterer, *example—did whatever he wanted in order to stop or prevent violence or abuse*. Goodman et al., *supra* note 35, at app.

41. Resistance: private strategies intended to change batterer behavior, directly challenge his control, may or may not involve direct confrontation with the batterer, *example—refused to do what he said*. *Id.*

42. Safety-planning: private strategies do not involve direct communication with the batterer, are not intended to change batterer behavior, but are intended to increase resources and/or options for escaping or preventing a future assault, *example—kept a supply of basics ready for escape*. *Id.*

43. Legal: public strategies intended to change batterer behavior, involve use of the legal system, *example—filed a petition for an ex parte/protection order*. *Id.*

44. Formal Network: public strategies intended to change batterer behavior or increase resources/options for escape, involve use of community (non-legal) resources, *example—talked to a doctor or nurse about the abuse*. *Id.*

45. Informal Network: private strategies which are not intended to change batterer behavior, increase resources, involve use of informal resources such as family or friends. *Id.*

46. *See id.* at 175 (highlighting that over half (54%) of the participants reported using at least one strategy within each category).

47. *See id.*

48. *See infra* at app. A (listing commonly used strategies for battered women).

49. *See Goodman, supra* note 35, at 181 (finding that “the more violence women endure, the more determined they become to find ways to end it, and the more willing they become to intensify their efforts without a broad range of arenas, both private and public, both confrontational and nonconfrontational, both placating and resisting.”).

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sample selection was based on women who had pursued public strategies.”⁵⁰ While some researchers have found that ethnicity⁵¹ and income⁵² influence women’s response to domestic violence, this study did not reveal differences in strategies based on those factors.

When we asked study participants to rate the helpfulness of the strategies they used, we again found that the same two legal strategies—“calling the police,” and “filing for a protective order”—ranked among the top ten most helpful strategies.⁵³ Interestingly, however, the remaining strategies on the list were mostly private “safety planning” strategies, with the strategy identified as *the* most helpful being “talked to someone at a domestic violence program.”⁵⁴

To explore women’s experiences in attempting to obtain civil protection orders, the study collected data from court files as well as interviews.⁵⁵ An examination of the court records available for the study participants in the CPO sample revealed that more than half of the women who filed petitions for protective orders never received one.⁵⁶ While 99% of women obtained the first stage or *ex parte* order, less than half of the women (41%) received the full protection

50. *Id.* at 179-80 (noting that this data is consistent with other research that has found that most battered women initially respond to violence with private strategies and only a smaller group add public strategies to combat violence). See generally L.B. Lempert, *Women’s Strategies for Survival: Developing Agency in Abusive Relationships*, 11 J. OF FAM. VIOLENCE 3, 269-89 (1996).

51. See, e.g., J-Ellen Asbury, *African-American Women in Violent Relationships: An Exploration of Cultural Differences*, in VIOLENCE AND THE BLACK FAMILY 89 (Robert L. Hampton ed., 1987); Soraya M. Coley & Joyce O. Beckett, *Black Battered Women: A Review of Empirical Literature*, 66 J. COUNSELING & DEV. 266 (1988); Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 234-38 (1994); Karin Wang, Comment, *Battered Asian American Women: Community Responses from the Battered Women’s Movement and the Asian American Community*, 3 ASIAN L.J. 151, 160-63 (1996).

52. See, e.g., Patricia O’Campo et al., *Surviving Physical and Sexual Abuse: What Helps Low Income Women*, 46 PATIENT EDUC. & COUNSELING No. 3, 205-12 (2002).

53. See *infra* at app. B (listing the ten most helpful strategies for battered women).

54. *Id.*

55. Interestingly, we found that women’s account of what happened in court and what was recorded in the court records was often inconsistent. A full exploration of the gap between women’s perceptions and court records is beyond the scope of this paper but the existence of this gap suggests, among other things, that the court proceedings leave many women confused about both the court process and the results of court hearings.

56. See *infra* at app. C (detailing the attrition of women in CPO court). Obtaining a civil protection order is typically a two part process. The first stage involves an *ex parte* hearing in which the court may give limited, short term relief without notice or an appearance by the opposing party or respondent. The second stage, usually one to two weeks later, requires notice to the respondent by service of the petition and *ex parte* order and results in a more long term order with broader relief (“full” protection order). Klein & Orloff, *supra* note 16.

order.⁵⁷ A substantial number of women (30%) did not go back for the CPO hearing, and the law enforcement agency charged with serving the *ex parte* order on the batterer failed to serve the order in 50% of the cases.⁵⁸

2. *Implications of the Data*

What does this data tell us about the impact of a strategy that places great emphasis on civil protection orders to improve the safety and well-being of battered women? The good news is that women are aware of the availability of CPOs and are seeking these orders in great numbers as a strategy in response to violence.⁵⁹ Furthermore, a substantial sample considered “filing for a protective order” a helpful strategy.⁶⁰ How can this remedy have been helpful when so many did not receive the full protective order? To answer this question, one must fully explore the reasons why full orders are not obtained in many cases. One explanation—the answer most judges and many lawyers would give you—is that battered women don’t “follow through.” In our study, the court records indicate that 30% of the women who received *ex parte* orders did not appear at the second stage protective order hearing.⁶¹ This perception of “victim dropout”—a woman’s “decision” not to follow through on the process of obtaining a CPO—is part of a larger discussion that responds to the question “why do women stay?” This issue has been of interest to domestic violence scholars and advocates for some time.⁶² What has changed as a result of state funding is that rates of “victim dropout” have also become, indirectly, the subject of state scrutiny.⁶³ If a program is designed to assist women in getting CPOs, the number of orders obtained helps define the success of the program for purposes of continued governmental funding.⁶⁴ When

57. See *infra* at app. C.

58. *Id.*

59. See Klein & Orloff, *supra* note 16; see also *infra* at app. A (noting that 72.8% of the study participants filed protection orders).

60. See *infra* at app. B (noting that 68.4% of the study participants listed “filed for a protection order” as helpful).

61. *Id.*

62. See, e.g., Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 2-4 (1991); JAMES PTACEK, *BATTERED WOMEN IN THE COURTROOM* 136-67 (1999) (describing women’s experiences seeking restraining orders).

63. See VAWA II, 42 U.S.C. § 3796gg-6 (describing eligibility of grants and appropriations of funds authorized by the Legal Assistance for Victims Grant Program); 28 C.F.R. § 90.24 (2002).

64. Interview with Dorothy J. Lennig, Director, House of Ruth Domestic Violence

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obtaining full protection orders for all women becomes a priority for domestic violence programs and law clinics across the country, much of the human and financial capital in the domestic violence community focus on achieving that goal.⁶⁵

The study offers some new insights into (1) whether “victim dropout” fully explains the substantial number of cases in which women do not obtain full orders and (2) whether counting the number of civil protection orders obtained is always an appropriate measure of “success” in designing and funding programs to meet the needs of battered women. First, with regard to the reasons for “victim dropout,” we learned that, at least in the jurisdiction studied, significant institutional barriers limit women’s ability to obtain the full protection order. Law enforcement failure or inability to serve the petition and ex parte order on the respondent to give him the notice required by the statute⁶⁶ delayed or made impossible the issuance of a protective order in a large number (50%) of cases.⁶⁷ Extensions of the ex parte order to allow for more time for service are permitted under most CPO statutes.⁶⁸ A look at the demographics of our sample, however, demonstrates the difficulty many women may experience in returning to court a second, third, and even a fourth time to get the civil protection order.⁶⁹ Although all of our sample came from an urban area and was predominantly African-American, their characteristics illustrate the range of individual, interpersonal and community-level factors that impact how difficult pursuing this process to conclusion may be for many women.⁷⁰ For example, a significant majority (67.1%) of the CPO sample was employed and had at least one child (92%). The vast

Legal Clinic, in Baltimore, Md. (June 6, 2002) (transcript on file with author) (describing pressure by state funders in Maryland to increase the number of protection orders obtained in state-funded courthouse assistance projects).

65. *Id.*

66. *See, e.g.*, MD. FAM. L. CODE ANN. § 4-505(b) (2001) (providing that law enforcement officers shall immediately serve temporary ex parte orders on alleged abusers).

67. *See infra* at app. C (illustrating that service of ex parte orders was completed in only 50% of the cases studied).

68. *See, e.g.*, MD. FAM. L. CODE ANN. § 4-505(c) (2001) (establishing that a court may extend a temporary ex parte order for up to thirty days in order to provide protection or for other “good cause”).

69. *See infra* at apps. D-E (showing that many of the women in the survey are working, lack a formal education, and have children, all of which contribute to the difficulty of returning to court multiple times).

70. *See id.* (illustrating factors that can be applied to all races). *But see* Miriam H. Ruttenberg, *A Feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy*, 2 AM. U. J. GENDER & L. 171, 187-90 (1994) (discussing how race and class can impact domestic violence policy and enforcement).

majority of women (85.6%) had an income of less than \$25,000.⁷¹ At a minimum, the demands of employment, the need for childcare, and low income are barriers to a woman's ability to attend the multiple court appearances that are often needed to obtain the full order.⁷²

We also found that most women did not have attorneys representing them in their civil protection order court hearings. Of the 142 women in this sample, only thirty-six had legal representation for the protective order court hearing.⁷³ A VAWA-funded legal clinic⁷⁴ is housed in the courthouse in which the women were recruited but many women either chose not to use the clinic legal representation or were unable to be served by this office.⁷⁵ The lack of legal representation in CPO proceedings makes it difficult for litigants to understand and complete the process and learn about the existence of other services.⁷⁶ In this study, we found that having an attorney substantially increased the rate of success in obtaining a protection order.⁷⁷ In the small sample of women who had an

71. See *infra* at apps. D-E.

72. See, e.g., Jody Raphael, *Battering Through the Lens of Class*, 11 AM. U. J. GENDER SOC. POL'Y & L. 367 (2003) (examining the impact that class differentials have on domestic violence).

73. See *infra* at app. F.

74. House of Ruth operates the Protection Order Advocacy and Representation Project ("POARP") in the District Court of Maryland. HOUSE OF RUTH, ANNUAL REPORT (2002), available at www.houseofruth.org/artwork/2002artwork/ar/report.pdf. POARP, which is funded through the State of Maryland's VAWA STOP grant, was started to represent people who have been abused by an intimate partner in proceedings to obtain, enforce and modify protective orders.

75. In FY 2001 there were 3475 domestic abuse hearings filed in the District Court in Baltimore City. Of those, POARP provided legal advice in 606 of the cases and represented 210 litigants in hearings. The reasons for the relatively small percentage of women served by POARP are not completely clear. Part of the reason is that the services are not readily available to all individuals seeking a protective order. While the POARP office is only open from 8:30-4:30, Monday-Friday, staff is limited and not able to represent every individual seeking assistance. Even when the office is open and lawyers are available, some women choose not to obtain representation or are confused about the role attorneys play in the court bureaucracy. This conclusion is based on my ten years' experience as a director of a law school clinical program with a program to represent battered women in civil protection orders based in the District Court in Maryland. Women regularly refuse the law school clinic's offers of legal representation telling us they "don't have time," "already saw the clerk," or, for other reasons, do not want legal representation.

76. See SCHNEIDER, *supra* note 6, at 95-96 (discussing the legal and social obstacles facing battered women in search of alternate remedies); see also Peter Margulies, *Representation of Domestic Violence Survivors as a New Paradigm of Poverty Law: In Search of Access, Connection, and Voice*, 63 GEO. WASH. L. REV. 1071, 1071 (1995) (arguing that there is a dichotomy between domestic violence law and poverty law that ignores the connection between the two).

77. See *infra* at app. G (illustrating that those clients represented by attorneys obtained orders more than twice as frequently as those without attorneys); see also SCHNEIDER, *supra* note 6, at 95-96 (reporting the difficulties that many domestic violence victims have in finding, retaining, and paying well-trained lawyers).

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attorney, most (83%) were successful in getting the protective order while only 32% of women without an attorney got the order.⁷⁸

In addition to the structural barriers to getting the full protection order, including the lack of legal representation and law enforcement delay or failure to serve *ex parte* orders, the demographic characteristics of our sample provide some interesting insight into why some women may *choose* not to return for the full order. The standard provisions of the full CPO, which last up to a year and prohibit contact between the parties, might not respond to the needs of some women. Many of the women in our CPO sample were planning either to continue an intimate relationship with their batterer (17.3%)⁷⁹ or at least remain in contact with their abusers in the future (39.3%).⁸⁰ In addition, the right to obtain use and possession of the home may not be important for as many women as advocates have assumed. Nearly three quarters of the CPO sample were living with their abuser at the time of the violent incident that brought them to the attention of the court⁸¹ but most (66.7%) were living in places that the woman or her family rented or owned.⁸²

The fact of motherhood also limits and complicates a battered woman's range of choices in response to abuse.⁸³ As noted, almost all (92%) of the women from the CPO sample had children and most (78%) had children living with them.⁸⁴ It has long been recognized that seeking a CPO may put a battered woman and her children at greater risk of abuse from the batterer⁸⁵ or trigger state involvement in the care of her children.⁸⁶

Qualitative data from the study also provide support for the

78. See *infra* at app. G.

79. See *infra* at app. E.

80. *Id.*

81. *Id.*

82. *Id.*

83. See generally SCHNEIDER, *supra* note 6, at 148-78 (describing the unique circumstances of battered women who are pregnant or who have children).

84. See *infra* at app. E.

85. See Mahoney, *supra* note 62, at 20-21 (asserting that battered mothers cannot act with only themselves in mind because they are inextricably bound to their children and their children's interests). *But see* Belamaric, *supra* note 35 (analyzing data from this study and finding that, although family structure did not seem to affect rates or severity of reabuse, having children in common with the abuser did contribute to battered women's subjective fears of reabuse).

86. See Jane Murphy, *Legal Images of Motherhood: Conflicting Definitions from Welfare "Reform," Family, and Criminal Law*, 83 CORNELL L. REV. 688, 745 (1998) (asserting that some battered mothers may not seek the protections of the court system because they fear prosecution for failure to protect their children or a custody battle with the abuser).

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proposition that some women may choose not to return for the full protection order because obtaining an ex parte order was sufficient to meet their goals. At the second interview, three months after recruitment, women were asked: "Have you gotten what you hoped for from filing for an ex parte or peace order 3 months ago?" The comments from the women who got the ex parte but not the full protection order included:

- Motivated him—wake up call. Felt supported.
- He now knows she's serious.
- Sent message to him.
- Ex parte was enough time for her to get her own place.
- Gave her insight on herself, methods & ways to deal with abuse.
- Got what she wanted, he stayed away.
- He's out of her life.
- Just the paperwork was helpful.
- Got him to straighten up.
- Good because cops check on him.
- Everything went the way she wanted & he's staying away.
- Didn't get PO, but house in her name only & it got him out.
- Yes, keeping him away.
- Satisfied. Not violent. Everyone helpful.
- Knows if he does it again he'll be locked up.
- Dropped. Maybe could be reconciliation.⁸⁷

Thus, for many women, not following through with the proceeding to get the final order was, to some extent, a choice. Getting the ex parte order alone helped them achieve some of their goals – getting the abuser to stay away, stopping the violence, or making a reconciliation possible.⁸⁸ This data underscores an important message for advocates and state funders. When women file for a CPO, they are pursuing this legal remedy as one strategy among many others—both legal and non-legal, public and private, formal and informal—to achieve their goals. They do not frame their goals in terms of the legal remedies available—for instance “to get a protective order.” Rather, their goals depend upon their particular context and stage in their relationship: “to stop the violence, to get him counseling, to keep him away from the kids.”⁸⁹ If the legal remedy,

87. DUTTON ET AL., *supra* note 30. The finding that, for some women the ex parte order alone provides the protection or intervention they were seeking, is consistent with other studies measuring the effectiveness of protective orders. KEILITZ ET AL., *supra* note 23; Chaudhuri & Daly, *supra* note 27.

88. DUTTON ET AL., *supra* note 30.

89. *Id.*

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whether it is an ex parte or a civil protection order, gets them closer to that goal, it is viewed as helpful. This is not to suggest that counseling designed to encourage women to complete the legal process for a full protection order is always inappropriate. However, it is also important to allow battered women to identify their goals, and to listen carefully when they do. We need to recognize that women use multiple strategies, and to understand that a case ending without a protective order does not always mean the advocate has failed or the woman has been passive in the face of abuse.

CONCLUSION

Returning to a society in which violence in families is dealt with “privately” is not in the best interests of battered women. Making batterers accountable in criminal court and providing civil remedies for battered women can be important tools for women responding to abuse. The civil protection order has an important place in the broad range of strategies women use in response to abuse from their intimate partners. Therefore, we need to remove the barriers that prevent women who desire the full protection of this remedy from getting these orders. At the same time, understanding where legal remedies fit into the spectrum of strategies that battered women use is important for both advocates and government funders. Direct services and support for battered women, including shelter, counseling, employment opportunities, childcare, and mental health supports, remain critical tools for many battered women at some stage of their experience of abuse. These services should not be ignored in the pressure to meet statistical goals for grant funding.⁹⁰ Similarly, as advocates create alliances with government officials, including police, prosecutors, judges and elected officials, we must maintain our autonomy, independence and critical perspective. In this way, we remain most flexible and responsive to the needs of battered women.

90. Shelters and other non-legal services for battered women may also suffer from “dependency, autonomy loss, . . . cooptation, . . . and bureaucracy” from over reliance on government funding. Weiner, *supra* note 24, at 186.

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APPENDIX A

TOP 10 MOST COMMONLY USED STRATEGIES FOR
BATTERED WOMEN⁹¹

<u>STRATEGY</u>	<u>Prevalence</u>
1. Ended the relationship.	86.9%
2. Refused to do what he said.	86.5%
3. Called police.	85.2%
4. Fought back physically.	82.0%
5. Slept separately.	80.4%
6. Left home to get away from him.	78.7%
7. Filed for protection order.	72.8%
8. Tried to keep things quiet for him.	70.0%
9. Tried not to cry.	69.6%
10. Talked to family members about how to protect myself.	69.0%

91. "Most Commonly Used" is defined as a strategy used by 69% or more of the study participants.

Data Source: DUTTON ET AL., *supra* note 30.

APPENDIX B

TOP 10 MOST HELPFUL STRATEGIES FOR BATTERED WOMEN⁹²

<u>Strategy</u>	<u>% Finding Strategy Helpful</u>
1. Talked to someone at a domestic violence program.	78.9
2. Kept important phone numbers you could use to get help.	78.3
3. Hid important papers.	
4. Talked to family members about how to protect yourself.	74.8
5. Called police.	74.8
6. Sent the kids to stay with relatives or friends.	73.5
7. Stayed with family or friends.	70.2
8. Hid money/valuables.	68.9
9. Filed for protection order.	68.4
10. Worked out an escape plan.	68.1

92. Endorsed by 68% or more of study participants as helpful, quite helpful or an extremely helpful strategy.

Data Source: DUTTON ET AL., *supra* note 30.

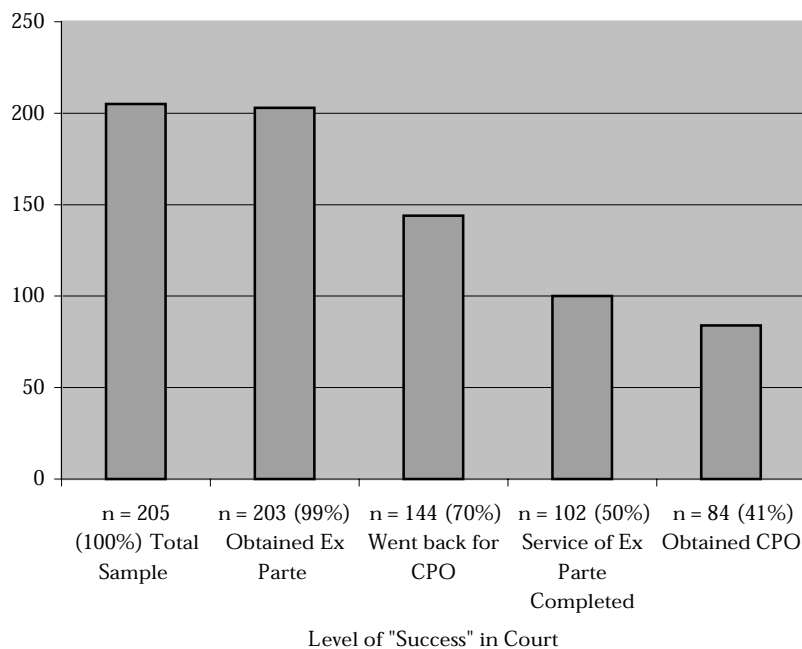
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APPENDIX C

ATTRITION OF WOMEN IN CIVIL PROTECTION ORDER (“CPO”) COURT⁹³



93. Data Source: DUTTON ET AL., *supra* note 30.

APPENDIX D

DEMOGRAPHICS: CIVIL PROTECTION ORDER (“CPO”)
SAMPLE⁹⁴

RACE:	African American	81.4%
	Anglo	14.9%
	Other	3.7%
AGE:	Mean	33.2
	Std. Deviation	8.76
	Minimum	17
	Maximum	63
EMPLOYMENT:	Not Employed	32.9%
	Employed	67.1%
SCHOOL:	11th Grade or Lower	21.5%
	12th Grade	28.3%
	Trade School or Some College	41.6%
	AA and Higher	8.7%
INCOME:	\$25,000 and Below	85.6%
	Above \$25,000	14.4%

94. Data Source: DUTTON ET AL., *supra* note 30.

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APPENDIX E

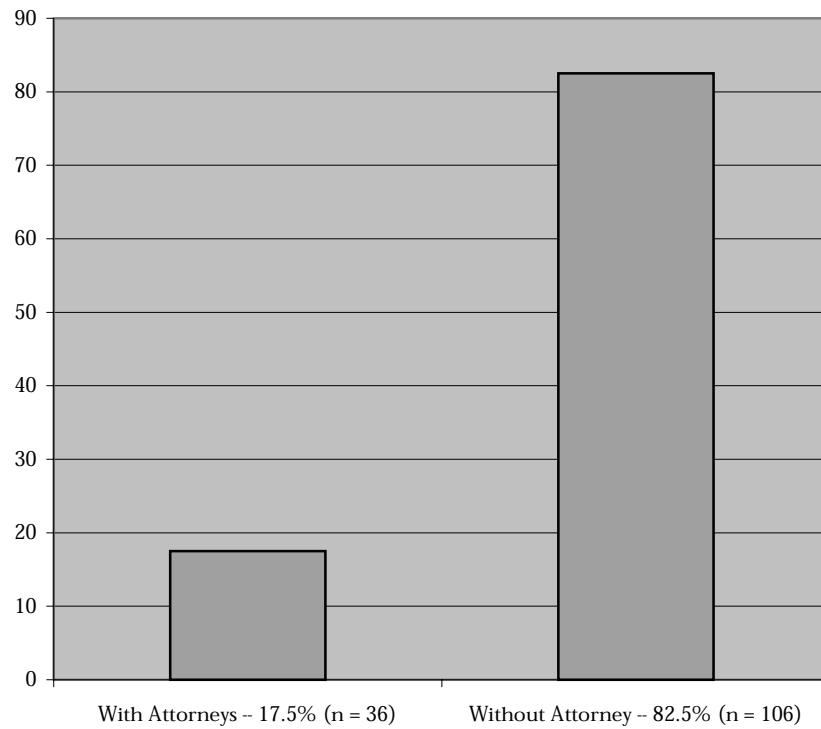
CIVIL PROTECTION ORDER STUDY PARTICIPANTS:
RELATIONSHIPS⁹⁵

RELATIONSHIP WITH BATTERERS	Married Boyfriend Currently Estranged Relationship Expect to Continue Relationship Expect to Have Contact	42.1% 57.9% 81.5% 17.3% 39.3%
LIVING ARRANGEMENT	Living Together Not Living Together	67.1% 32.9%
WHERE LIVING	Mine or My Family His or His Family Mine and His	66.7% 7.5% 25.8%
CHILDREN YES/NO	Children No Children	91.3% 8.7%
CHILDREN WITH BATTERER YES/NO	Children with Batterer No Children with Batterer Children at Home	47.5% 52.5% 78.0%
NUMBER OF CHILDREN LIVING WITH HER	Mean Minimum Maximum N	1.61 0 5 218
PROTECTIVE SERVICES INVOLVEMENT	Children Removed From Home for any Reason If Removed–Due to Abuser’s Violence	8.9% 25.0%

95. Data Source: DUTTON ET AL., *supra* note 30.

APPENDIX F

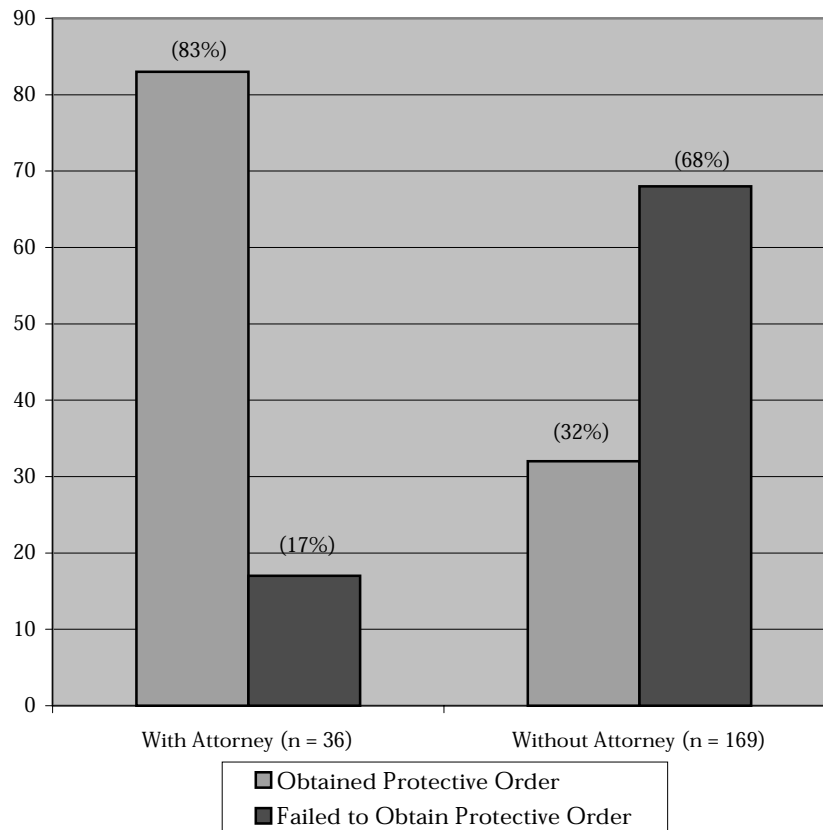
PERCENTAGE OF WOMEN SEEKING CPO WHO HAD LEGAL REPRESENTATION⁹⁶



96. Data Source: DUTTON ET AL., *supra* note 30.

APPENDIX G

STUDY SAMPLE SEEKING CIVIL PROTECTION ORDERS: THE IMPACT OF LEGAL REPRESENTATION⁹⁷



97. Data Source: DUTTON ET AL., *supra* note 30.