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Prosecutors and Domestic Violence: Local Leadership Makes a Difference

By Janet E. Findlater and Dawn Van Hoek

Domestic violence is criminal conduct,¹ not merely a "family matter." It is criminal conduct with devastating consequences, not only for the family involved, but for the entire community. In the state of Michigan, someone dies as a result of domestic violence every five days.² According to the Federal Bureau of Investigation (FBI), 30% of female homicide victims are killed by their husbands or boyfriends.³ The American Medical Association reports that domestic violence is the primary cause of injury to women in the United States, producing more injuries to women than rapes, muggings, and automobile accidents combined.⁴ Domestic violence also is a context in which child abuse often occurs.⁵

Historically, the criminal justice system treated domestic violence cases as family matters, rather than crimes. Police department policies provided that arrest was to be avoided if at all possible in domestic violence calls; mediation was considered the appropriate response.⁶ Prosecutors, to protect against what they perceived as wasting their time on victims who ultimately would decide not to go forward, developed policies and procedures they thought would identify those victims who were serious about proceeding. Unfortunately, the procedures often exacerbated, rather than remedied, the problem of "noncooperation." For example, a mandatory "cooling-off" period, a delay of days or weeks before any official action would be taken, just to be sure the

abused woman did not change her mind, only provided the assailant (and his family) more time to pressure her. The policy that charges would automatically be dropped, if the abused woman so requested, played directly into the assailant's hand.

In the 1970s, survivors of domestic violence and their advocates began working to change the perception of and response to domestic violence. They spoke and wrote about the lives of battered women and established safe-home networks and shelters; they went to their legislatures; they filed lawsuits against police departments, seeking new department policy, money damages, or both.

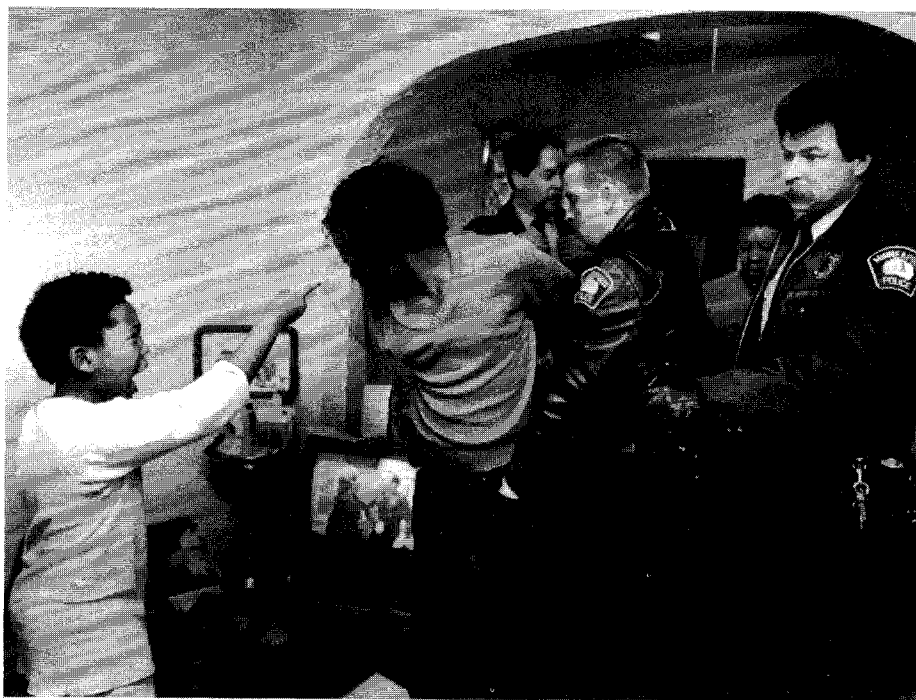
The criminal justice response to the crime of domestic violence must be coordinated with battered women's shelter programs and local human services agencies to provide a comprehensive community intervention in these cases.

One of the most publicized suits was that brought by Tracey Thurman in 1984 against the city of Torrington, Connecticut.⁷ A jury awarded Thurman, whose repeated requests for assistance from the police had been denied, \$2.3 million after she was al-

most killed by her husband. In the wake of the *Thurman* decision, many police departments, concerned about liability for failure to respond to domestic violence calls, adopted policies providing that domestic violence is a crime and arrest is the appropriate response.

Domestic violence is a pattern of learned behavior. The failure to treat it as a crime condones and reinforces the assailant's use of violence to gain and maintain control over his partner. Just as it is learned, domestic violence can be unlearned, provided the assailant has sufficient motivation for change. Criminal justice intervention that treats domestic violence as a crime provides that motivation. An appropriate police response to domestic violence is critical. The message that domestic violence is a crime and it will not be tolerated cannot effectively be delivered by the police alone. All components of the criminal justice system must treat domestic violence as a crime. The criminal justice response to the crime of domestic violence must be coordinated with battered women's shelter programs and local human services agencies to provide a comprehensive community intervention in these cases.

A coordinated, consistent criminal justice system response can be achieved through written policies and procedures and training on how to handle domestic violence cases. These cases can be difficult. But with an understanding of the nature of domestic violence, including the behaviors engaged in by both the assailant and the victim, solutions to the problems presented can be found, and justice can be served.



© 1991 Donna Ferrato/Domestic Abuse Awareness Project, NYC, from the book "Living With the Enemy" (Aperture)

A NATIONAL MOVEMENT

Prosecutors, the gatekeepers to the criminal justice system, are playing an increasingly important role in society's response to domestic violence. A "movement" is clearly underway on a national level, with several well-known and effective spokespersons spreading the word about the impact of progressive prosecution policies. Sarah M. Buel⁸ and Casey G. Gwinn traverse the country, providing concrete guidance on when and how to prosecute, as well as on attitudinal changes which they consider crucial to effective intervention.

Casey Gwinn, supervisor of the San Diego City Attorney's Domestic Violence Unit and a national lecturer on domestic violence, has identified several national trends in prosecution:⁹

- Prosecutors have largely overcome their traditional reluctance to take a leadership role in local community efforts which involve both policy makers and "grass roots" groups;
- Aggressive misdemeanor prosecution can, by providing early intervention, prevent the violence from escalating into felonies and homicides;

- Taking the decision to prosecute out of the victim's hands, and placing it in the prosecutor's, deprives the batterer of control over the case and avoids further endangering victims;

- Victim-blaming policies, such as arrest or detention of victims reluctant to testify, are counterproductive (by returning control to the batterer), insensitive, and slowly disappearing from practice; and

- Long-term accountability and treatment of the batterer, combined with arrest and jailing, is increasingly used as the criminal justice system response to domestic violence.

THE MICHIGAN RESPONSE

Against that national backdrop, where does Michigan stand? To measure our progress, it is helpful to start with the benchmark report of the Michigan Supreme Court's Task Force on Gender Issues in the Courts, released in December of 1989 following an intensive surveying and reporting effort.¹⁰ Noting that the most serious problem for prosecutors was the frequency with which victims dropped charges, the Task Force found that the criminal justice

system exacerbated the problem by failing to:

- Hold assailants accountable for their conduct;
- Protect victims and treat them with respect;
- Encourage and support effective and appropriate response to domestic violence by law enforcement agencies; or
- Let assailants and the community know that battering is criminal conduct that will not be tolerated.

The Task Force then specifically urged the state's prosecutors to adopt written policies that encourage aggressive prosecution of domestic violence cases, including use of appropriately serious charges, elimination of the requirement that the victim sign the complaint or have the option of dropping charges, and elimination of "cooling-off" periods and peace bonds. The Task Force also recommended the creation of special prosecution units for domestic violence cases, prosecution of injunction violations, and better information

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and referrals for victims. Finally, the Prosecuting Attorneys Association of Michigan and the Prosecuting Attorneys Coordinating Council were encouraged to better train prosecutors, collect data, and develop model policies.

Five years after release of the Task Force report, the State Bar of Michigan's newly-created Committee on Domestic Violence decided that one of its first projects would be to assess progress toward the goal of more effective criminal prosecution. Surveys were sent out in late 1993 to Michigan's 83 elected prosecutors, asking for information which correlated with the Task Force recommendations. One early sign of greater

interest in the issue appeared in the form of a higher response rate than was experienced with the 1989 survey: 78% of the offices returned completed surveys in 1993, versus 30% in 1989. Substantive findings of the new survey included the following:

- About one-third of those offices responding (22 of 65) have written policies on prosecution of domestic violence cases;¹¹
- Two-thirds (40 of 65) offer special victim services or referrals;
- More than half (35 of 65) prosecute injunction violations; and
- About half (31 of 65) of those offices responding have domestic violence task forces in their local communities.

In addition, however, the surveys revealed that:

- A significant number of offices retained practices which commonly discourage prosecution, such as:
 - Requiring the victim to sign the complaint (13 of 65),
 - Requiring a “cooling-off” period (7 of 65),
 - Requiring corroboration of the victim’s account (10 of 65), and
 - Issuing peace bonds (4 of 65);
- Few offices (13 of 65) had “special units” devoted to prosecution of domestic violence cases, and some lacking such units prosecuted a significant number of domestic violence cases (as many as 896 in a year); and
- Less than half (26 of 65) of those offices responding have received domestic violence training.

What do the findings reveal about trends in Michigan? While many prosecutors’ offices have written policies, more need to take this first step toward an effective and consistent response to domestic violence. In counties of any size, prosecutors can decide to avoid practices that discourage reporting and prosecution by placing control over the case in the hands of the victim (and batterer). Nothing in the law prevents elimination of cooling-off periods, or corroboration of victims’ accounts. Keeping them can be dangerous.

Like many crimes that lack a traditional “victim,” many domestic violence assaults are capable of prosecution through 911 tapes, police testimony, medical records and other witness accounts, without the victim’s participation. Placing the responsibility on the system, rather than the victim, is one of

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Casey Gwinn’s principal messages. He has demonstrated that it actually works—batterer-perpetrated domestic violence homicides in San Diego have fallen from 35 killings in 1985 to six in 1993.

Prosecutors’ offices in a number of counties throughout Michigan, including Kalamazoo, Grand Traverse, Livingston and Washtenaw Counties, to name a few, have written policies that adopt this new approach to domestic violence. Their experiences are reflected in the success of Marquette County, where a special unit prosecuted 146 domestic violence assault cases in the first ten months of 1993. Under policies that place primary responsibility for the progress of the case on the prosecution, the unit has seen a significant increase in the conviction rate for domestic assault cases.¹²

The move toward adoption of appropriate written policies has gained statewide momentum. In June of 1994, the Prosecuting Attorneys Association of Michigan’s Board of Directors (PAAM) endorsed a model policy for prosecutorial response to domestic violence which will be presented to PAAM membership. The time is right. Earlier this year, the Legislature passed a 14-bill package that strengthens the law enforcement response to domestic violence:

- Penalties for domestic assaults have been increased;¹³
- Police agencies are required to develop preferred arrest policies for domestic assault cases;¹⁴
- Magistrates are required to accept domestic assault complaints on information and belief;¹⁵ and,
- Prosecutors are required to prosecute domestic violence injunction violations.¹⁶

Just as size of the prosecutor’s office is no barrier to adoption of written policies, a small number of domestic violence cases is no barrier to designation of a “special unit.” Survey respondents included several offices handling as few as 12 cases in the first six months of 1993 that designated a prosecutor as a “specialist” on the subject. Vertical representation of such cases by a prosecutor sensitive to and trained on the issues

can be done at little expense. Of course, larger offices facing many demands on staff and resources may take the approach of the Wayne County Prosecutor; grants totaling nearly \$700,000 will fund a nine-lawyer/six-advocate Family Violence Unit in 1994-95.

Training of prosecutors and their victim advocates is a goal easily attainable in Michigan, and is essential to effective implementation of new written policies. PAAM and the Prosecuting Attorneys Coordinating Council have presented

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of the Women Lawyers Association of Michigan, and 1992-93 chairperson of the Bar’s Representative Assembly. Ms. Van Hoek testified before the Michigan Supreme Court’s Task Force on Gender Issues in the Courts, making numerous domestic violence proposals also recommended by the Task Force in its 1989 report.

annual statewide events, including one in March of 1994 which focused on the trial of domestic assault cases. Bringing prosecutors together to share information and experiences unquestionably has an impact: The Bar Committee's 1993 survey revealed a very high correlation between training and the adoption of written policies.¹⁷ Finally, a program of "cross-professional" training and planning is underway in the Upper Peninsula, under the guidance of the Marquette County Prosecutor's Office, for the purpose of achieving a comprehensive, coordinated community response to domestic violence.

CONCLUSION

Michigan's prosecutors have clearly come a long way from the days of victim-blaming which resulted in few prosecutions and continued abuse. Much has been done throughout the state to respond to domestic violence as the criminal conduct it is. But more remains to be done. Adoption of good written policies must be statewide, and training must be more than an early-90s phenomenon. Once prosecutors have set their own policies and established regular training programs for themselves, they must reach out to police, medical and hos-

pital personnel, shelter and social workers, and other lawyers in their communities, combining criminal with civil and social remedies. Elected as leaders, prosecutors must rise to the challenge of leadership by creating an environment in which domestic violence is prosecuted as the crime it is, and ultimately prevented. ■

PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN STATEMENT OF PRINCIPLES REGARDING DOMESTIC/FAMILY VIOLENCE

The Prosecuting Attorneys Association of Michigan, in continuing its historical commitment to the prevention of domestic/family violence, provides the following statement of principles for Prosecuting Attorneys.

Prosecuting Attorneys are encouraged to:

1. Maintain a leadership role in promoting a coordinated community approach to address the issue of domestic/family violence through the development of a county coordinating council. The council should include representatives from the criminal justice system, law enforcement, judges, private attorneys, the medical profession, schools, clergy, social service providers, and domestic/family violence professionals.
2. Assist police agencies in the development and implementation of their written domestic/family violence policies, including assistance in developing an appropriate training program.
3. Assist in the development of a countywide investigative protocol which accounts for the dynamics of domestic/family violence, ensures the safety of the victim, and enables effective prosecutions.
4. Develop or refine policies and procedures which are designed to:
 - a. Treat domestic/family assaults as serious crimes;
 - b. Hold the offender accountable for his or her actions;
 - c. Provide services for the victims;
 - d. Ultimately reduce the incidence of domestic/family violence.
5. Ensure that all Victim Rights informational materials accurately reflect the resources available to the victims in the community.
6. Continue to provide education to their staff regarding the specialized issues of domestic/family violence.
7. Ensure that sufficient information is made available to the court in order to allow the judge to make an informed decision regarding bonds and sentencing, with particular emphasis on the safety of the victim.
8. Develop the necessary interagency cooperation to coordinate the civil injunctive process and criminal procedures.
9. Maintain adequate records to determine the level of domestic/family violence in the community.
10. Promote the development and coordination of treatment and education programs for offenders.
11. Participate in public education regarding the issues concerning domestic/family violence.

Adopted by the Board of Directors of the Prosecuting Attorneys Association of Michigan on June 16, 1994.

Footnotes

1. Michigan, unlike some other states (such as California; see Pen C Sec. 273.5) has no crime of "domestic violence." "Domestic violence" is a pattern of conduct that can include a number of crimes.
2. UCR, dv bd., PACC/PAAM Family Violence-Homicide Prevention Seminar, March 2-4, 1993.
3. U.S. Dept. of Justice, Uniform Crime Reports 1985 (Washington, D.C., FBI 1986), p. 11.
4. Teri Randall, *Domestic Violence Intervention Calls for More Than Treating Injuries*, 264 JAMA 939, 939 (1990).
5. Maria Roy, *Children in the Crossfire* 20 (1988).
6. Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence 1970-1990*, 83 J. Crim. L. & Criminology 46, 48-49 (1992).
7. 595 F. Supp. 1521 (Dist. Conn. 1984).
8. Currently a Fellow in Law for the Bunting Institute, Ms. Buel previously supervised the Boston District Attorney's Domestic Violence Unit, and served in a wide variety of advocacy roles.
9. The trends were the subject of a feature article in the November/December issue of *The Prosecutor*, published by the National District Attorneys Association.
10. The full report is available from the DMB Publications Department, Office Services Division, State Secondary Complex, 7461 Crowner Drive, Lansing, MI 48913, at a cost of \$7. Send a check or money order made out to the "State of Michigan."
11. In 1989, 14% of those responding to the Task Force survey reported that they had written policies.
12. The annual conviction rate for domestic assault cases has increased from 64 percent in 1989 to 85 percent in 1992.
13. 1994 PA 64-65 (eff. 7-1-94).
14. 1994 PA 69 (eff. 7-1-94).
15. 1994 PA 70 (eff. 7-1-94).
16. 1994 PA 62 (eff. 7-1-94).
17. Twelve of thirteen respondents indicating that they required a victim to sign the complaint, had no training provided to assistant prosecutors; and ten of eleven requiring corroboration were untrained. All of those requiring a cooling-off period (seven of seven) or a peace bond (four of four) lacked any exposure to a training event.