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Violence Against Women: Synthesis of Research for Judges

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Social and legal responses to violence against women have undergone significant changes over the past three decades. Policymakers have reviewed and revised laws that historically have undermined women's testimony, trivialized their experiences, and justified their victimizations at the hands of men, and local practitioners have reconsidered traditional criminal and civil justice practices that limited women's access to law enforcement and the courts. Although these changes have not occurred at the same pace, or in the same ways, everywhere, they share four common themes:

- Criminalization of violent acts that previously were omitted from or expressly justified in penal codes.
- Increasing understanding of the nature of violence against women: its prevalence, the fact that legally distinct acts (such as spouse abuse and rape) co-occur and most violence against women is perpetrated by acquaintances and partners.[1]
- Increased emphasis on holding offenders accountable for violence.
- Greater attention to the needs of victims who previously have found few sources of support and protection in many communities.

It has only been since the late 1990s that reformers have focused on the courts. Therefore, we know less about the impact of new policies and practices in the legal system than we do about innovations in social services, victim services, and law enforcement. New policies and programs in the courts have proved both promising and controversial. They sometimes call into question longstanding assumptions about the roles and responsibilities of complainants, and they sometimes challenge traditional notions about judicial roles and the legal process. Although courthouse professionals—judges and administrators—are now expected to adapt their practices to these changing objectives, they have few opportunities to learn about the problems and needs that prompted calls for reform, the effectiveness of reforms, and their unintended consequences.

This report synthesizes research findings on topics of concern to judges and court administrators who are faced with changing expectations about their courts' responses to violence against women. The report is organized around the following topics:

- A brief outline of the historical antecedents to contemporary court policies and practices addressing violence against women, focusing on domestic violence, sexual assault, and stalking.
- A summary of what researchers have learned about the population of victims and defendants who reach the courts, contrasting these profiles with conventional wisdom and stereotypes about the women who are the victims of violent crimes and the behavior of the men who commit them.

- A review of research findings on the objectives, impacts, and unintended consequences of law reforms, most adopted by State legislatures.
- A review of research findings on the objectives, impacts, and unintended consequences of courthouse practices in cases involving violence against women.
- A discussion of innovations and recommendations, highlighting the areas in which more research and evaluation are needed.

Legal History: Domestic Violence, Sexual Assault, and Stalking

Contemporary policy discussions focus on three types of violence against women—sexual assault, domestic violence, and stalking—but historically the acts that constitute these offenses sometimes have been legally indistinct and sometimes have not been considered legal offenses at all.[2] While acts of violence committed by strangers have always been viewed with outrage in American society, violence committed against women by acquaintances and especially by partners was for centuries considered a criminal matter only under extreme conditions. Sexual assault among acquaintances, spousal rape, spouse assault, and stalking have all existed at the margins of the legal system, usually well outside the scope of criminal law.

Sexual Assault

The history of the law of rape illustrates the suspicion with which women's allegations were viewed by the legal system. For centuries, under common law and State statutes, successful prosecution of rape charges required not only evidence of the act of forced intercourse with a nonconsenting victim but also evidence of criminal intent (Estrich, 1987). In practice, proving criminal intent required proving that the victim left no doubt in the suspect's mind about her unwillingness to have sex, and suspicion about women's unreliability was so high that in cases in which the parties were acquainted, prosecutors were expected to demonstrate that the woman reacted "with utmost resistance" (to the point of incapacitation and/or severe physical injury).[3] Likewise, testimony about victims' previous sexual experiences, with defendants or others, was considered relevant to the questions of both credibility and consent (or, more accurately, to defendants' perceptions of consent). Convictions were seldom obtained without corroboration (Estrich, 1987). Typically, State statutes specifically excluded forced sexual intercourse by husbands from the scope of rape laws (Denno, 1994; Ryan, 1996).

Significant reform of rape laws began in the 1970s, and today most States have revised laws to eliminate corroboration and utmost resistance requirements. Many have adopted some version of rape shield laws, which protect victims from defense questioning about previous sexual experiences (Horney and Spohn, 1991; Bachman and Paternoster, 1993). Most States have abandoned statutes that exempted husbands from allegations of rape. These reforms signal a shift away from the courts' preoccupation with protecting men from false accusations toward recognition of the prevalence of violent rape among acquaintances and partners, as well as

recognition of women's legal rights to be protected from victimization even in the context of marriage.

Domestic Violence

Physical abuse of wives was not illegal in most States during most of the Nation's history. Although by the 1800s a few States had adopted statutes that made wife-beating a crime, in fact, these statutes were seldom applied and courts were rarely presented with accusations of criminal assault.[4] Judges were probably more commonly called on to make judgments about whether beatings were sufficiently cruel or excessive to justify granting divorce; often, they decided that they were not (Hart, 1991). Judges' explanations for these decisions rested not only on evidence of the seriousness of injuries but also on assessments of whether or not the victim "deserved" the punishment she received (Pleck, 1987; Dobash and Dobash, 1979).

Criminal justice authorities only reluctantly assumed responsibility for treating spouse assault as a criminal matter. As recently as the 1970s, for example, police officers were trained to "mediate" domestic violence incidents and discouraged from arresting violent husbands lest they exacerbate marital conflicts (Bard and Zacker, 1971).[5] The only legal remedy available to battered women in most States was injunction, pursuant to divorce; most of these orders expired quickly, required filing fees, and provided for no criminal justice intervention in enforcement (Zorza, 1992). However, by the early 1980s, victims had successfully sued police departments for failure to provide equal protection after repeat calls for help did not result in arrest. About the same time, a widely publicized experimental study of the deterrent effect of arrest on repeat violence had been disseminated (Sherman and Berk, 1984; Binder and Meeker, 1992). These developments led to widespread adoption of local and State policies that promoted arrest in domestic incidents (Hart, 1996). As victim advocates successfully maintained that arrest was an appropriate (if not always the *only* appropriate) official reaction to partner violence, other criminal justice practitioners, including prosecutors, judges, and correctional officials, have been called on to rethink their responses to these cases as well.

Stalking

Legally and socially, stalking is understood to be a series or pattern of acts designed to frighten, annoy, or intimidate the victim.[6] The behaviors that constitute stalking, including surveillance, threats, and unwanted personal, mail, or electronic contact, have only recently been included in criminal law (Graham et al., 1996). Although many stalking statutes were initiated following highly publicized cases of celebrities stalked by obsessive fans, research confirms that most cases of stalking involve acquaintances of victims and are particularly common among men and women who had previously dated or been involved in more lasting relationships (Violence Against Women Grants Office, 1998).

Challenges to Implementing Effective Reforms

Most legal redefinitions of violence against women have come about as the result of victim advocacy and lobbying, in the context of social redefinition of women's rights and roles in society. However, reformers confront challenges in implementing these laws. First, most of these

victimizations are not reported to authorities, and surveys suggest that women who seek help from the criminal justice system often do so only as a last resort, when they have exhausted other possibilities. Second, and perhaps relatedly, women who seek help still encounter skeptical and even hostile and suspicious attitudes on the part of practitioners (Saunders, 1995; Crowley, Sigler, and Johnson, 1990; Johnson, Sigler, and Crowley, 1994). Despite reforms aimed at focusing responsibility for violence on perpetrators rather than victims, research suggests that some frontline law enforcement officers, lawyers, and prosecutors still subscribe to "rape myths" (Gylys and McNamara, 1996), and attribute spousal abuse to women's failings and provocations (Johnson and Sigler, 1995).

Third, the adversarial criminal court process imposes high standards for proof and strong protections for defendants. This adversarial process imposes stiff expectations for the participation of victims, and it judges blameworthiness according to concrete evidence about specific events. These expectations may be played out in the courtroom in ways that are intimidating, even coercive, and therefore these requirements are at odds with concerns about victims' safety and privacy. In particular, perhaps because the courts are designed to respond to cases in which parties are strangers, antagonistic, and confrontational, they are not accustomed to complainants who have (and sometimes wish to sustain, and sometimes must maintain) family relationships with perpetrators.

Victims and Defendants of Violence Against Women: Conventional Wisdom and Research Profiles

Although victimization surveys have provided researchers with considerable data about the prevalence of violence against women and suggest that victims are a socioeconomically diverse subset of the population (Carlson et al., 2000; Bachman, 2000), the victims and defendants who reach the criminal justice system and the courts are not necessarily typical of the population of domestic violence cases.

Victims of Violence Against Women in the Legal System

Regardless of the measures used, research on victims of violence tells us that most women—perhaps 75 percent—do not report victimizations to the police (Tjaden and Thoennes, 2000). This is true in cases of rape (Koss, 1993; Kilpatrick, Edmunds, and Seymour, 1992; Bachman, 1998), in part because victims fear being blamed for their own victimizations (Bachman, 2000), and true in stalking cases as well (Fremouw, Westrup, and Pennypacker, 1997; Tjaden and Thoennes, 1998). It is also true of domestic violence (Dutton, 1988; Abel and Suh, 1987; Bachman and Saltzman, 1995). Despite the fact that almost all States have now authorized warrantless arrest in misdemeanor cases, some research suggests that police remain less likely to arrest in cases in which the complainant is the female partner of a perpetrator (Fyfe, Klinger, and Flavin, 1997; but see Dutton, 1988). Furthermore, in typical communities, 95 percent of allegations that come to the attention of the police are classified as misdemeanors, if they result in charges filed at all (see, for example, Worden, 2000a).

Therefore, the composite portrait of victims encountered by court officials may vary across communities, shaped by the local screening practices of police and prosecutors. Most of what we know about complainants in domestic cases in the courts comes from studies of petitioners seeking orders of protection,[7] which are most commonly issued by civil, not criminal, courts. Data collected from diverse jurisdictions suggest some commonalities as well as disparities:[8] 30 to 65 percent of petitioners share a residence with the defendant (Gondolf et al., 1994; Carlson and Nidey, 1995), and an even larger percentage had previously cohabited (Harrell, Smith, and Newmark, 1993). About half of petitioners are married to their alleged abusers (Fischer and Rose, 1995; Fernandez, Iwamoto, and Muscat, 1997), although the percentage is higher in rural areas (Websdale and Johnson, 1997). About half of complainants have children living with them (Gondolf et al., 1994; Martin, 1997), although in highly urbanized as well as rural areas the percentage may be much higher—more than 80 percent (Fischer and Rose, 1995; Fernandez, Iwamoto, and Muscat, 1997; Websdale and Johnson, 1997).

Consistent with evidence that victims cope with abuse in many ways before they seek official help, research on women who contact legal authorities indicates that complainants are on average in their early 30s and have been in relationships lasting several years (Fischer and Rose, 1995). Many of them, when asked, report histories of violence that began well before the incident that precipitated their court appearance. Those who have children commonly report that both they and their children were subject to assault or risk (Gondolf et al., 1994).

In short, women who seek legal relief are likely to be married to the perpetrator or to have children with him; to share a residence; to have had a fairly long (and violent) relationship history; and to feel that not only they, but also their children, are at risk. Many have been physically assaulted, although the precipitating incident may involve threats, property damage, harassment, or attempted assaults. Yet most victims of partner assault, like most victims of stalking and sexual assault by partners or former partners, are reluctant to contact legal authorities. Research on victims' motivations has revealed much more than was once known about why women not only hesitate to contact police, but also frequently are reluctant about prosecution.

Although victims are sometimes labeled as "uncooperative witnesses" when they express ambivalence about making court appearances or testifying, and they are sometimes characterized as indecisive, overly committed to abusive men, and even manipulative, practitioners' stereotypes about women's motives for withdrawing from legal proceedings find little empirical support in research.

♦ A minority of women who contact authorities reconcile with abusive partners. Although ending an abusive relationship is difficult for practical and economic reasons, as well as legal and emotional reasons, the women who seek protection and help from the courts and social services are likely to have taken that step (Snyder and Scheer, 1981; Giles-Sims, 1983; Harrell, Smith, and Newmark, 1993; Horton, Simonidis, and Simonidis, 1987); likewise, women who access shelters are more likely than not to ultimately terminate their relationships (Sullivan et al., 1992). Those who remain with violent partners may have

fewer financial and social options than those who do not (Fernandez, Iwamoto, and Muscat, 1997; Sullivan et al., 1992).

- Victims do not see the legal system as a reliable source of help and protection; for example, those who contact police do not rate them highly compared with other service providers (Gordon, 1996).

- Victims frequently discover that protective laws do not apply to them, or that perpetrators are not kept in custody.[9]

- In many jurisdictions, victims of domestic violence and other misdemeanors are required to make peremptory and frequent appearances, to continue to demonstrate their interest in having the case kept alive; failure to do so results in dismissal.

In short, women who reach the courts are likely to do so only because they have exhausted other options but nonetheless remain uncertain about whether the legal system can help them.

Interviews with women who allege partner violence reveal that they, like many crime victims, have diverse, practical, and rational objectives for seeking help from the law, but these objectives do not necessarily involve conviction and punishment. Ford (1991) reports that women pursue charges to find out what prosecutors can do to help them, as well as to establish legal confirmation of their partners' abusive behavior. However, women who withdraw from prosecution explain those decisions in terms of fear of retaliation (Erez and Belknap, 1998), or satisfaction that their objectives—removing a violent husband from the household or getting him to agree to a treatment program, for example—had been achieved (Quarm and Schwartz, 1985; Ford, 1991).

Defendants in the Legal System

Even though it is true that some men behave violently only once, or rarely, the men who come to the attention of the court typically have established records of criminal and violent behavior, and furthermore, have a high probability of committing additional violent acts in the future. Research across many communities reveals that about 66 percent of men who come to the attention of police because of partner violence have arrest records that often involve violence against family members (Sherman et al., 1992). A recent Federal report indicates that 20 percent of offenders incarcerated for partner violence had been on probation at the time of the offense (Greenfeld et al., 1998).

Not surprisingly, therefore, this group of defendants is likely to reoffend.[10] Estimates of the proportion of men who recidivate against their partners within 6 months to 1 year range from 40 percent (Syers and Edleson, 1992; Shepard, 1992) to 80 percent (Garner, Fagan, and Maxwell, 1995; Giles-Sims, 1983). Even using conservative official measures, 25 percent of suspects are rearrested within 1 year (Murphy, Musser, and Maton, 1998; Steinman, 1988).

Therefore, although some offenders cease violence over time, for reasons that remain largely unresearched (Fagan, 1989), it is clear that many do not. Given the high odds for future violence,

courts would benefit from knowing what predicts continued or severe violence, and what legal responses can reduce the probability of recidivism. At the present time, no reliable checklist of attributes or behaviors exists to distinguish between likely recidivists and others. Research has confirmed that, in general, alcohol and substance abuse are correlated with domestic violence, and alcohol is often involved in acquaintance rapes. But it is important to note that researchers have not concluded that alcohol use *causes* men to be violent toward partners, and substance abuse is not generally seen as a mitigating factor in criminal cases (Carlson et al., 2000). Although violent men do not share a single personality profile (Saunders, 1992; Holtzworth-Munroe and Stuart, 1994) and few men who are arraigned on domestic violence charges have a history of mental illness (Langan and Dawson, 1995), many men who abuse their partners exhibit emotional dependency and exaggerated jealousy (Carlson, 2000). Despite popular stereotypes of the deranged rapist, research reveals that a propensity for sexual assault is not rare among men; for example, a study of college students revealed that as many as 40 percent of men could consider engaging in nonconsensual sex if they were certain they would not be found out or punished (Burkhart and Stanton, 1988; Williams and Hawkins, 1992).

To summarize, male suspects in incidents involving partners are more likely than not to have had previous contact with police and the courts, and a significant number of them will recidivate against that same partner within 1 year. Aside from their knowledge of previous incidents, judges typically have access to little information about characteristics that predict future behavior.

Objectives and Impacts of Statutory Legal Reforms

Reforms of laws addressing violence against women have had diverse objectives. In some States, new categories of domestic assault misdemeanors were created to facilitate prosecution (e.g., Quarm and Schwartz, 1985). In many States, tougher penalties have been attached to violations of orders of protection, presumably to increase the deterrent effect of those orders. By 1996, almost all States had authorized warrantless arrests in misdemeanor cases, and one in three States had adopted mandatory arrest statutes, which typically are expected to deter perpetrators, remove the burden of signing complaints from reluctant victims, and increase the number of convictions resulting from arrests (Burt et al., 1996). Likewise, sexual assault statutory reform and the widespread passage of antistalking laws were intended to increase victim reporting of these crimes, reduce the costs to victims of testifying, and facilitate prosecution and conviction of perpetrators.

In the case of sexual assault, research suggests that victim reporting did not increase substantially following legislative reforms (Marsh, Geist, and Caplan, 1982; Horney and Spohn, 1991), although in some States, criminal justice agencies responded by increasing rates of arrests, convictions, and use of incarceration (Polk, 1985; Bachman and Paternoster, 1993). Domestic violence reforms have had the effect of increasing caseloads, as predicted: Mandatory arrest has resulted in higher rates of arrest (Martin, 1997; Murphy, Musser, and Maton, 1998), and therefore higher caseloads for prosecutors (Rebovich, 1996). These reforms have also produced some unexpected consequences, however. For example, although in most jurisdictions no more than 10 percent of arrestees in domestic incidents are female, following adoption of mandatory

arrest in Connecticut, almost 25 percent of arrestees in domestic incidents were women; most were named in cross-complaints by arrested partners (Martin, 1997). The designation of new domestic offenses does not appear to change the number of cases and dispositions of courts, although little recent research addresses this question (Quarm and Schwartz, 1985). However, mandatory arrest increases the number and percentage of reluctant complainants in the courts (Davis, Smith, and Nickles, 1998). A recent study of comprehensive community criminal justice reform revealed that the combination of mandatory arrest and mandatory sentencing, in the form of short jail terms and batterer intervention programs, resulted in higher rates of acquittal and dismissal and increased numbers of trials (Carlson and Nidey, 1995).

In summary, statutory reforms that have been evaluated systematically suggest that to some extent they may succeed in increasing the numbers of cases identified by and retained in the legal system, but those cases do not routinely result in convictions. One interpretation of this pattern is that aggressive enforcement casts a wider net, bringing into the system more reluctant victims as well as more resistant suspects. The implications for future reform are not simple, however. Important outcome variables remain almost completely unexamined. For example, are victims deterred from seeking help by mandatory arrest and sentencing statutes or by the prospect of being arrested themselves? Alternatively, are victims empowered by aggressive enforcement? A long-term consequence of these legal reforms may be shifts in social and practitioner attitudes about the acceptability of violence against women.

Objectives and Impacts of Courthouse Practices

One of the challenges in evaluating the effectiveness of court responses to violence against women is the simple fact that legal interventions and sanctions are imposed infrequently on nonrandom groups of defendants. Early studies of criminal court handling of domestic violence cases reveals extraordinarily high rates of dropped charges and dismissals, typically between 60 and 80 percent (Quarm and Schwartz, 1985; Lerman, 1981; McLeod, 1983), attributable in some jurisdictions to requirements that victims make continued court appearances to keep cases alive or to prosecutors' predictions about the likelihood of victims' continued involvement (Davis and Smith, 1982; Schmidt and Steury, 1989; Elliott, 1989). Little is known about the legal outcomes of cases that result in warrants when the offender has fled the scene (which account for about half of all domestic incidents). Early studies suggest that many warrants expire before they are executed (Dunford, 1990), although a more recent study suggests that ultimately arrests are made on warrants in about as many offender-absent cases as on-scene cases (Worden, 2000).

Despite widespread reforms aimed at reducing demands on victims in the legal process, more recent studies continue to reveal rates of prosecution well under 50 percent in these cases (Garner, Fagan, and Maxwell, 1995; Martin, 1997; Davis, Smith, and Nickles, 1998; Mignon and Holmes, 1995). Not surprisingly, restrictions and sanctions are rare, although the rates at which judges issue them vary considerably. For example, a recent study of New York State communities found that in arraigned cases, orders of protection were issued in fewer than 10 percent of cases in one city but in more than 80 percent in a similar community (Worden, 2000a). Little is known about how frequently judges impose court-ordered counseling, and of what sorts,

although even in an established program in a highly coordinated community, fewer than one in three perpetrators were ordered into treatment (Syers and Edleson, 1992). Furthermore, researchers have seldom examined pretrial decisions such as pretrial release and supervision, pretrial diversion, and provisions attached to conditional dismissals.

The imposition of legal restrictions and penalties may be justified by multiple objectives: securing the immediate safety of the alleged victim and contributing to a longer term strategy for keeping the victim safe (both of which may involve incapacitating or closely monitoring defendants), reducing the likelihood of future violence through punishment sufficient to deter, and imposing counseling or treatment to reduce the proclivity to commit violent acts. Competing with these concerns is the need to respond to suspects with procedural fairness and substantive equity.[11] Whether objectives are achieved, or achieved at a satisfactory level, is a question for empirical research.

Most empirical research on legal responses has focused on recidivism and been directed at assessing whether individuals who are subjected to a particular sanction have different rates of recidivism from those who are not. Recognizing that the explanations for partner violence are deep seated and complex, judges may not be surprised to learn that the most commonly imposed legal restrictions and sanctions do not appear to affect recidivism rates. Although policymakers were optimistic about the findings of early experimental research on the deterrent effect of arrest (compared with other on-scene police responses, such as separation and mediation), subsequent replications did not confirm the conclusion that arrest makes a difference in the probability of recidivism (Sherman et al., 1992; Garner, Fagan, and Maxwell, 1995).

Little is known about the effects of low-visibility discretionary decisions, such as pretrial release, conditional dismissal of charges, and issuing of warrants (Ford and Breall, 2000). Judges typically must make these decisions on the basis of little information, knowing that they affect the legal status and liberty of defendants but may also affect the safety of defendants' family members. Two experimental studies suggest that brief postarrest detention as well as the issuing of arrest warrants (independent of execution) may reduce the probability of reoffending in the short term (Sherman et al., 1992; Dunford, Huizinga, and Elliot, 1990). However, more research is needed to provide practical guidance to judges and prosecutors about whether and how these decisions affect victims' safety.

Postconviction sanctions are relatively rare in partner and acquaintance violence cases; a recent multicommunity study revealed that no more than 9 percent of all arraigned cases were sentenced to probation, and between 8 and 20 percent of arraigned cases resulted in short (typically 1 week) jail terms in domestic violence cases (Worden, 2000a). Likewise, the limited experimental research available on the impact of pretrial diversion (compared with conviction) and probation status indicates that these responses are not associated with different odds of recidivism (Ford and Regoli, 1993). Nonexperimental research comparing recidivism rates of offenders who were placed on probation, fined, or sent to counseling reveal no significant differences (Steinman, 1988). However, a recent study concluded that jail terms were associated with lower recidivism rates as measured by rearrest (Thistlethwaite, Wooldredge, and Gibbs, 1998), but it could not

exclude the possibility that partners of jailed perpetrators were less likely to report subsequent violence. Perhaps the most promising finding on legal responses to domestic violence is a recent study that found that rates of recidivism were correlated with the number of steps taken in the legal process. Defendants who experienced more stages of intervention and supervision (arrest, arraignment, conviction, postconviction supervision) recidivated at lower rates than those who experienced fewer, suggesting that future research as well as interagency coordination should be less concerned with single decisions (such as arrest or jail), but rather with the cumulative effects of the justice system (Murphy, Musser, and Maton, 1998).

Two sanctions that are aimed directly at reducing recidivism have received increasing attention: orders of protection and batterer intervention programs. Civil court orders of protection are by far more commonly used than criminal court orders, and the sanction for violating an order is most commonly civil contempt, not criminal contempt (although the latter is available in 30 States) (Zlotnick, 1995).[12] To date, research on protection orders does not support the hope that they forestall future violence.[13] Rates of recidivism against women who petition for orders are high, as high as those reported by the broader population of women who report to authorities. For example, one of the most thorough studies of the subject revealed that 60 percent of women who received orders were reabused within 1 year, half of them subjected to severe violence; more than 50 percent received unwanted contact from the perpetrator within 3 months (Harrell, Smith, and Newmark, 1993).

The same study explored the factors that distinguished recidivists from others among those against whom orders were issued. The authors concluded that the most important predictors of future violence were aspects of the defendant's behavior: The more resistant the defendant was to having the order issued, the more likely he would subsequently commit severe violence, serious threats, or property damage. The authors measured resistance in terms of actions or expressions directed toward the judge or court: denying abuse, trying to talk the judge out of issuing an order, trying to obtain custody of children, objecting to visitation schedules incorporated into orders, and attempting to talk the judge into letting him remain in the residence. Defendants were no less likely to violate permanent than temporary orders (Harrell, Smith, and Newmark, 1993).

Interestingly, interviews with victims indicate that most are not optimistic about the effect of protection orders on their partners' likely desistance. Fewer than half of women who received orders believed that their partners or ex-partners would feel bound by them (Harrell, Smith, and Newmark, 1993; Fischer and Rose, 1995). If men who are subjected to orders are no less likely to recidivate than others, and if women do not expect that orders will deter future violence, then it becomes important to ask why women seek them in the first place and whether or not they are beneficial in other, more subtle ways. Research indicates that most women seeking protective orders received little or no encouragement from family and friends, and only about half were encouraged by police; for 75 percent of victims, an order of protection was a last resort, after many other strategies for seeking safety had been tried (Fischer and Rose, 1995). Most sought protection orders as a way of documenting abuse and sending a message to partners that they were seeking help from the legal system (Harrell, Smith, and Newmark, 1993). Most women

believed that although the defendant was likely to violate the order, police could be relied on to respond to violations (Fischer and Rose, 1995).

In short, the women who come to the courts seeking orders of protection are pragmatic and realistic about their benefits and limitations. Many, and according to some studies, most women who petition for and are granted temporary orders do not receive permanent orders, and this appears to hold true even where courts have attempted to streamline the filing procedure and to eliminate obstacles (such as filing fees and requirements that the petitioner has filed for divorce) (Kaci, 1992; Gondolf et al., 1994). However, women report diverse reasons for this. One study indicates that almost one-third are not satisfied with the original order's terms on difficult issues such as visitation arrangements; another third feared retaliation by the perpetrator; others reported that the temporary civil order could not be served on the respondent, blocking the legal possibility of a permanent order (Harrell, Smith, and Newmark, 1993). A small minority of women reported that they saw no need for making the order permanent because it had achieved its intended purpose of persuading the partner to stay away.[14]

Despite the fact that offender treatment has been the subject of considerable research, there is no easy answer to the question of "what works." Court-mandated counseling or treatment programs for domestic violence and sexual assault offenders include an array of approaches, and many use a combination of strategies aimed at changing offenders' attitudes as well as behavior. A thorough review of research on these interventions concludes the following:

♦ Most offenders do not seek treatment voluntarily, so court-ordered programs may be the only way to promote their use.

♦ One of the key problems faced by program administrators is compliance and attendance, and in most communities there are few legal consequences for noncompliance.

♦ Where courts do require compliance and establish review mechanisms, attrition is reduced (Saunders and Hamill, 2003).

Research on intervention programs for batterers reveals an inconsistent pattern in reducing recidivism: Studies that uncover lower recidivism rates among program participants also typically find that they are more open to change than nonparticipants in important ways that may account for behavioral differences. The same pattern appears to hold true for other victim-reported outcomes, such as psychological abuse. However, experts seem to agree that as more is learned about the diverse causes of partner violence, and if appropriately diverse programs are established, courts may more effectively identify offenders who are amenable to treatment and sentence them to treatments that are likely to be effective, just as judges now make parallel decisions about the outcomes of cases involving substance abuse (Gondolf, 1997).

A topic of concern to many judges is the duration of programs. For example, many batterer programs are designed around 26-week curriculums, a length of time that may exceed courts' (or at least, defense attorneys') expectations about sentencing in misdemeanor cases. However, so

far, research seems to suggest that longer term programs—20 to 26 weeks rather than 8 to 10—are associated with lower rearrest rates, over the same followup periods (Saunders and Hamill, 2003). Offenders' propensity to recidivate does not seem to be influenced by the intensity of treatment, however; compressing more sessions into a brief period of time does not improve recidivism rates (Edleson and Syers, 1991).

Sex offender treatment programs have yielded evidence of success in suppressing future offenses (Saunders and Hamill, 2003). However, sex offender treatment programs are designed to change the behavior of men who repeatedly victimize women or children, but not necessarily intimate partners. It may be that the root causes of sexual violence within partner relationships differ from those of stranger assaults.

Neither practitioners nor researchers know enough about the impact of adjudication decisions on either victim safety or offender behavior. Cumulatively, studies conducted in various jurisdictions suggest the following:

- Low-visibility decisions, such as issuing warrants and pretrial release, may be associated with recidivism, for reasons that are still the subject of speculation.

- More visible decisions, such as arrest and incarceration, are not clearly associated with future violence.

- Orders of protection do not appear to deter offenders (although it may be that the victims who seek orders do so precisely because they are realistic about their danger and risk). However, women who seek orders of protection do so for practical and legitimate reasons and are realistic about their limitations.

- Despite a large number of studies with much speculation, treatment programs for offenders remain underevaluated. One of the biggest problems with this sentencing option is compliance, which remains the responsibility of the courts or probation officers. Research should be directed toward identifying offenders who are amenable to behavioral changes.

Innovations, Recommendations, and Areas for Future Research

Most legal reforms and innovations involving violence against women have revolved around traditional criminal justice goals: obtaining convictions on the basis of evidence; deterrence through punitive sanctions (primarily arrest); and, most recently, rehabilitation (offender treatment). Balanced against these law enforcement objectives is the court's traditional obligation to ensure fairness and due process for defendants. Research on the impacts of these interventions points to the conclusion that no single step in the criminal justice process is likely to deter offenders and reduce their likelihood of becoming violent again, and that many—and perhaps most—will recidivate. Research on rehabilitation suggests that a one-size-fits-all intervention program is unlikely to be effective, but judges may soon be able to take advantage of what

research about violent men reveals to tailor sentences to individuals, as they have traditionally done in many sorts of cases. Victims' advocates have argued persuasively that these goals must be combined with prioritizing victim safety, well-being, and legal protection, a debate that is also taking place among court professionals.[15] This may require that courthouse practitioners develop a better understanding of victims' needs, constraints, and motivations.

The result has been rising expectations about what courts can and should accomplish and a proliferation of recommendations for reforms. Although some of these reforms are promising, most have not been thoroughly evaluated, and some have not been researched at all. They include court-based victim advocacy programs; consideration of histories of violence in civil court matters, such as divorce, custody, and visitation; evidence-based prosecution; and assessments of danger and risk in pretrial and sentencing decisions. Reforms such as these are intended to include more information about, and concern for, victims' experiences and preferences at various stages of the legal process. Other reforms are intended to reorient the roles of judges and court administrators, often through more explicit efforts to engage them in enforcement-oriented practices. These include coordinated community responses, judicial training, and specialized courts and court procedures, especially in domestic violence cases.

Court-Based Victim Advocacy Programs

Unlike many other crime victims, women who are victimized by partners face legal questions when they seek protection from the criminal justice system: They may share children with their abusive partner, as well as a lease or mortgage, bank accounts, debts, and property. Surveys of prosecutors in metropolitan areas reveal that although most employ victim assistance personnel, they are not necessarily trained to deal with the problems presented by sexual assault and domestic violence cases (Rebovich, 1996). Although courthouse-based advocates are supposed to supply legal advice and information, as well as support and encouragement, to victims, they are sometimes expected to facilitate prosecution goals (Rebovich, 1996) and to adjust victims' expectations to match routine court practices (Davis and Smith, 1982). Little is known about the effectiveness of court-based advocacy programs and whether or not their functions can be performed equally well by community-based lay advocates or law school-based student advocacy services.

Histories of Violence and Civil Court Decisions

Researchers, practitioners, and policymakers express increasing concern about how, and how much, the courts should consider evidence of violent histories in making decisions about family law and other civil law issues, an issue that frequently arises in domestic violence cases. By 1995, 44 States had stipulated that judges should consider histories of violence in making such decisions, but they offered little guidance about how to do so.

Research reveals that women who seek temporary protection orders (most commonly from civil courts) overwhelmingly request primary custody of children, which is typically granted; however, judges report that arriving at fair decisions about custody before allegations of violence are proved in court is troublesome (Harrell, Smith, and Newmark, 1993). Moreover, only 25 percent

of such cases result in sole custody, so no-contact orders are virtually impossible to issue and enforce (Gondolf et al., 1994).

Just as judges face competing substantive claims in balancing parental rights with concerns about women's and children's safety and well-being, they also face dilemmas over appropriate procedures for reaching resolutions in marital cases. Following allegations of abuse or violence, judges in the past often recommended marriage counseling, but there is good reason to believe that couples counseling tends to focus on the dynamics of relationships, not on the unacceptability of violence, and may perpetuate abusive patterns of behavior (Saunders and Hamill, 2003). In fact, most States have adopted standards for batterer intervention programs, and three out of four expressly exclude the use of couples counseling as inappropriate and dangerous in these cases (Austin and Dankwort, 1999).

In making decisions about ongoing as well as terminating marriages, the courts have been strongly inclined in the past to recommend or require mediation to resolve unsettled issues. In principle, mediation allows for a more careful review of facts and competing claims, and when successful, allows both parties ownership of the decision, increasing its legitimacy. In fact, progressive reforms in Minnesota in the late 1970s included recommendations for structured mediation supervised by the courts (Fritz, 1986). However, some commentators have observed that relationships that involve violence typically entail power imbalances and coercion, violating a core assumption of mediation that parties enter into agreements freely, voluntarily, and on equal footing (Mills, 1999; Lerman, 1981). Although mediation may seem constructive in many sorts of disputes, including family disputes, few would advocate imposing mediation when the parties are a perpetrator and his victim.

Finally, some observers have expressed concerns that women victims may be deterred from seeking help through fear of legal consequences for themselves and their children. They may fear having their fitness as a parent judged when it is revealed that they have been assaulted and may worry that child protective workers will blame them, not their abusive partners, for exposing children to risk (Hart, n.d.). In mandatory arrest jurisdictions, they may fear that the perpetrator will file a cross-complaint, thereby subjecting them to arrest as well. In some communities, women whose immigration status is based on their marriage to an American citizen may fear deportation if they take steps to separate from an abusive husband (Hagen and Postmus, 2000).

Evidence-Based Prosecution

Acknowledging that many women victims are reluctant to actively participate in partner violence as well as sexual assault cases, victim advocates as well as some prosecutors have endorsed evidence-based (sometimes labeled "victimless") prosecution. Because most such cases have no witnesses other than the complainant and do not always yield unambiguous physical evidence, police and prosecutors have been encouraged to adopt strategies that rely on other sorts of evidence and on more assiduous documentation of evidence.

In domestic violence cases, this might include 911 tapes, photographs of injuries as well as "excited utterances" recorded by officers at the scene, and sworn statements rather than court-

room testimony. However, the most common manifestation of the concern to prosecute has been the adoption of no-drop policies, which deny victims the option of withdrawing charges. A survey of district attorneys revealed that two-thirds of prosecutors in large jurisdictions (populations greater than 250,000) had adopted various no-drop policies by 1996, and most respondents believed that more than half of all domestic violence complainants were inclined to withdraw charges (Rebovich, 1996). However, when asked what steps they take to secure convictions when victims were reluctant, they most commonly reported that they subpoenaed victim testimony; other strategies were seldom mentioned. This has led to reasonable fears that prosecutors use these policies not to better protect victims or to hold offenders accountable, but rather to advance their own office priorities: culling out “weak” cases. Not surprisingly, recent research has found that victims are less satisfied with the prosecution process when this sort of aggressive policy is practiced (Davis, Smith, and Nickles, 1998).

In contrast, in sexual assault cases, legislative reforms have been directed toward making testifying less intimidating and invasive, and resources have been invested in programs designed to support victims while improving the quality of evidence, particularly evidence gathered by health care professionals. Sexual assault response teams (SARTs) and sexual assault nurse examiners (SANEs) involve specially trained personnel who work across agency lines to protect and support victims while maximizing the likelihood of successful prosecution in these challenging cases (Campbell and Boyd, 2000).

Risk Assessments in Pretrial and Sentencing Decisions

Increasingly, police express interest in developing risk assessment tools for use with violent offenders; correctional officials have long used such tools. The emphasis in the development of these tools is often on predicting severe or lethal violence and imposing effective restraints on high-risk offenders (although research suggests that the factors that predict homicide may not be the same as those that predict severe violence; see Saunders and Hamill, 2003). In the areas of domestic violence and stalking, court officials confront at least two points in the legal process at which such tools might be helpful: pretrial release and disposition conditions. Research suggests that few offenders charged with partner violence are detained after arraignment, despite the fact that many of them, once released, will return to the household of their victim. Offenders seldom are sentenced to probation supervision, and half of those on probation commit violations (Corbett et al., 1999). Coupled with the fact that experts recommend intensive supervision in domestic violence cases, including special training for officers handling them, judges might benefit from research-based guidance on who should be placed under supervision, who might not recidivate without it, and who represents too much risk even for that option.

Coordinated Community Responses

Recognizing the limitations of traditional criminal justice responses, practitioners in many communities have attempted to coordinate responses to violence across agency lines. Programs like SART exemplify this trend in sexual assault cases. In the area of domestic violence, such efforts are often, although not always, initiated by victim advocates working with a police department or prosecutor, and increasingly they include representation from health care providers, schools, and the courts. Although there have not yet been any scientifically based outcome

evaluations of coordinated community responses (Chalk and King, 1998), some research suggests that concerted efforts can bring about higher arrest and conviction rates. Whether communities that have such strategies experience less domestic violence than others is unknown, nor is it known whether offenders are less likely to recidivate, and victims more likely to feel safe, in such environments (Worden, 2000b).

Process evaluations show that initiating and sustaining coordination efforts can be challenging and sometimes disappointing (Berk, Berk, and Rauma, 1980; Worden, 2000a). Judges may resist participating in task forces aimed at these problems out of fear that it compromises their image of impartiality. However, some research suggests that the judicial role may be crucial: In at least two well-established coordinated community projects, judges' agreements to order pretrial sentences, to consider a variety of sentencing options, to use community resources for education and counseling, and to reliably oversee monitoring of probation conditions were considered critical to the success of other agents in the system (Pence, 1983; Gamache, Edleson, and Schock, 1988).

Judicial Training

The growing emphasis on practitioner training has only recently begun to reach judges. Little is known about judicial training and its impacts, aside from the following:

- Training is not always available, although it is typically available to judges in areas with coordinated community responses (Keilitz et al., 2000).
- Training is not required in most places (Keilitz et al., 2000).
- Judges whose attitudes are most incompatible with current law and policy on violence against women appear to be the least likely to participate (Burt et al., 1996).

Specialized Courts and Court Procedures

From police departments on up, many experiments have devoted specialized resources to managing violence against women, although sexual assault and domestic violence have proceeded on somewhat different tracks. Increasingly, courts have been expected to innovate as well. Keilitz et al. (2000) report that more than 200 courts nationwide now have some sort of specialized structures, procedures, or practices for domestic violence cases, but most would not qualify as specialized domestic violence courts. A survey of more than 100 such courts found that these innovations involved calendars, case coordination across courts, judicial staffing, and screening, but that few jurisdictions used more than one or two of these strategies, and most reported that using resources more efficiently was as important as improving the use of courts for victims.[16] Although two out of three had legal advocacy services available for victims, they were not necessarily services designed specifically for partner violence victims.

Although in principle it might appear that specialized courts would better serve victim needs, experts suggest there may be drawbacks: Judges and other staff dedicated to such courts might suffer higher rates of burnout, might be inclined to adopt an assembly-line approach, or might be

too quick to divert batterers into available but unproven programs (Keilitz et al., 2000). In short, a steady docket of domestic violence might lead to the sort of denigration of these types of cases that recent reformers have attempted to reverse, which raises important questions for researchers and practitioners to explore. What little research there is on this issue is not altogether promising. A careful case study of a Milwaukee domestic violence court found that although the new practices and personnel succeeded in halving the time to disposition and raising the conviction rate substantially, these apparent benefits were eventually canceled out by the prosecutors' growing caseload and the dissatisfaction of victims with the new no-drop policy (Davis, Smith, and Nickles, 1998).

Conclusions

Historically, court practices in response to violence against women developed against a backdrop of legal tolerance for most incidents of rape and spouse assault. As laws have been changed to criminalize these acts and as police and prosecutors have gradually adopted more enforcement-oriented practices, courts have been challenged to join these efforts. Judges' and court administrators' responses to this challenge will best serve the interests of victims, defendants, and justice if they are informed by research-based knowledge.

Legal and historical research reveals that the social forces that legitimized many forms of violence against women included cultural beliefs about the appropriate status of women within families, as well as exaggerated due process concerns about defendants' vulnerability to false accusations. In most States, legislators have corrected statutes to reduce or eliminate these sexist assumptions from the law. However, empirical research suggests that the courts still see only a small fraction of defendants and victims, and who is (and is not) included in that fraction depends not only on victim reporting but also on law enforcement and prosecution decisions about which cases are worthy of adjudication.

In cases of domestic violence and stalking, research shows that the women who seek help from the courts typically have endured multiple incidents of abuse and may have exhausted other avenues for protection and relief; they approach the legal system with some trepidation. Their needs are more complex than those of most crime victims. Suspects in these cases typically have had experience with the criminal justice system and are likely to reoffend; they are not easily deterred. Not surprisingly, therefore, research suggests that simple solutions have a limited effect on their behavior.

This is not to say, however, that reforms have been in vain or that courts have little reason to implement them. First, there may be benefits to victims as well as to communities in enforcing laws that unambiguously condemn violence against women. Judges play a critical role in affirming or denigrating victims and in sending messages of reproof or indifference to offenders in the courtroom (Goolkasian, 1986). Through their decisions on the bench, judges create the substance of local justice out of the abstractions of statutes. Second, most outcome-based studies have focused on recidivism, but as most judges know, it is not easy to deter or rehabilitate offenders, especially violent and persistent offenders, and the decisions of the courts are based on

justice as much as (or more than) proved effectiveness. The challenge to the courts is to take care in making pretrial decisions, safeguarding the rights of defendants but also using discretion to protect the safety of victims and the community. The challenge to researchers is to continue to learn about the impacts of these decisions and to ensure that their findings are communicated to the judges and court administrators who can put them to practical use.

Notes

1. Survey research reveals, for example, that more than half of all women are physically assaulted at some time in their lives (Tjaden and Thoennes, 1998), and about 22 out of 1,000 women are assaulted by partners or acquaintances each year (Bachman and Saltzman, 1995). At least three out of four sexual assaults on adult women are committed by current or former partners (Tjaden and Thoennes, 1998). One in 12 women experience stalking in their lifetimes (Tjaden and Thoennes, 1998), the majority of which are by someone they know (Fremouw, Westrup, and Pennypacker, 1997).

2. The term “violence against women” is used here to mean acts of physical violence or threat perpetrated by men against women; the primary focus of this commentary is on violence perpetrated by men who are partners, former partners, or otherwise known to their victims. Partner violence also occurs in same-sex couples, at approximately the same rate as that for heterosexual couples (Greenfeld et al., 1998), and not all violence among partners is perpetrated by men. However, experts agree that the most damaging assaults are overwhelmingly committed by men (Straus, 1993; Chalk and King, 1998).

3. This standard was repeated in case law throughout the 19th century and into the 20th; see, for example, *Reynolds* v. *State* 27 Nb. 90, 91, 42 N.W. 903, 904 (1889); *Moss* v. *State*, 208 Miss. 531, 536, 45 So.2d 125, 126 (1950); *People* v. *Dohring*, 59 N.Y. 374, 386 (1874), *King* v. *State*, 210 Tenn. 150, 158, 357 S.W. 2d 42, 45 (1962).

4. In many jurisdictions (although not all), the courts explicitly justified not treating wife assault as a criminal act, using the same reasoning that excused corporal punishment of children from criminal law: As heads of households, men were responsible for the moral behavior of their families (Friedman, 1985).

5. Some commentators perceive these motives in statutory changes as well. Minnesota laws have been characterized as attempts to recognize simultaneously the limits of law enforcement and the potential value of underutilized resources, such as counseling and mediation (Fritz, 1986).

6. The National Institute of Justice reports that a model antistalking code defines stalking as “a course of conduct directed at a specific person that involves *repeated* visual or physical proximity; nonconsensual communication; verbal, written, or implied threats; or a combination thereof that would cause fear in a reasonable person (with repeated meaning on two or more occasions)” (Tjaden and Thoennes, 1998: 13).

7. The terms “protection order,” “protective order,” and “restraining order” often are used interchangeably, although the States define and apply them differently. This report uses “protection order” and “order of protection.”

8. Disparities may be due in part to differences in State laws, differences in eligibility for relief (for example, unmarried victims may not be allowed to seek civil protections), and differences in formal and informal screening practices by police and courts officials.

9. For example, a recent study of five New York cities reports that rates of pretrial detention range from 5 to 22 percent, and up to 50 percent of all cases are disposed the day of arraignment (Worden, 2000a).

10. Early studies of women who had sought refuge in shelters (only some of whom had contacted police) indicate that reoffending occurs quite quickly: Between 10 and 20 percent of women who left the shelter were reabused within 10 weeks (Snyder and Scheer, 1981).

11. The potential importance of procedural fairness for victim safety is suggested in a study that found that, in a sample of arrested suspects, those who believed that the police had treated them fairly were somewhat less likely to recidivate than those who did not (Paternoster et al., 1997).

12. Experts continue to debate the relative merits of civil and criminal court orders, and of civil and criminal contempt as a sanction. Some maintain that civil court allows complainants more control over the process, and typically eliminates the need for prosecutors to intervene on their behalf (Zlotnick, 1995; Gondolf et al., 1994). Judges may be reluctant to impose criminal contempt for violations that do not involve injury or property damage. However, no research exists that directly compares these legal options. At the time of this writing, victims in some family offense matters in at least one State (New York) had the option of pursuing misdemeanor cases in family or criminal court, or both at once (concurrent jurisdiction); anecdotal reports suggest, however, that this arrangement can lead to conflicting protection orders issued by different judges, as well as excessive court appearances for both complainants and defendants.

13. More recent research, published after completion of this review, reveals more favorable findings about protection orders.

14. A survey of domestic violence victim advocates revealed additional problems in accessing the courts for protection among poor women and especially non-English-speaking women, including lack of knowledge about the legal process, difficulty in completing required paperwork, and the fact that in many jurisdictions judges would not or could not issue ex parte orders (Kinports and Fischer, 1993).

15. An illustration of this concern is the difference in priorities expressed by two agencies representing the courts. The National Council of Juvenile and Family Court Judges has recommended that prosecutors adopt practices that maximize the odds of conviction, in pursuit of justice and offender accountability, with or without victim participation or testimony (National Council of Juvenile and Family Court Judges, 1990), while the American Prosecutors Research Institute recommends that prosecutors adopt victim safety as a paramount goal, even if that

conflicts with pursuing conviction (American Prosecutors Research Institute, 1997) (cf.: Ford and Breall, 2000).

16. For example, more than half of these jurisdictions screen all domestic violence cases for other charges, which serves the interests of efficiency, but scarcely one in five had dedicated judges for these cases (Keilitz et al., 2000).

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