

In Their Own Words:
Victims of Battering
Talk About Being Arrested and
Convicted

by
Melissa Scaia

May 2017

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NATIONAL CLEARINGHOUSE FOR
THE DEFENSE OF BATTERED WOMEN
Working for justice for victims of battering charged with crimes

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for the
National Clearinghouse for the
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Introduction

Most victims of battering are not passive when being physically, psychologically, or sexually attacked. Instead, as part of their efforts to cope and survive, many victims of battering resist their assailants by fighting back. Sometimes this resistance involves the use of violence; sometimes that violence is legal and sometimes it is not. As one woman in a focus group for women who had been arrested for using violence against their partners said about her use of force, “I just was trying to get myself and my kids through what was becoming an intolerable situation.”

Criminal justice interventions designed to address the domestic violence often produce unintended consequences when the defendant is a victim of battering. The issue of women’s violence against their intimate partners came to the forefront of the battered women’s movement nearly three decades ago when states and localities passed mandatory arrest laws and policies. Almost immediately after those mandatory arrest laws and policies went into effect, increasing numbers of victims of battering began getting arrested, charged and convicted for domestic violence- related offenses. Our criminal justice interventions need to ensure that victims of battering are not in more danger or in compromising situations as a result of the policies and protocols that were developed to increase safety for victims.

Battered women’s organizations have had varied responses to the problem of victims of battering getting arrested in their community or state. Some organizations were willing to work with individual women who were arrested while others determined they could not work with any “defendants” (even if they were victims of battering). Other domestic violence organizations worked to address the core systemic issues that brought victims of battering to be arrested, prosecuted, and convicted. For example, some domestic violence organizations have challenged police arrests of victims of battering who used violence to defend themselves (arguing that people who act in self-defense should not be arrested), while others challenged the arrest of those who used minor violence against their abusers (arguing that batterers don’t get arrested for this kind of violence and/or that these arrest increase danger for the victims). Advocates also pushed against prosecutors’ efforts to convict battered women arrested for assaulting their abusers as “domestic violence offenders,” especially when they received the same or more severe punishments than men who batter. Justice is achieved when the criminal justice system develops interventions that recognize the context of a victim’s use of force against their abusive partner and does not hand the abuser more power over them.

In most communities, there are meetings and/or coordination happening to address the overall problem of domestic violence. Members of the criminal justice system regularly meet as part of coordinating councils, multi-disciplinary teams, or coordinated community responses (CCRs). Criminal justice interventions designed by CCRs are successful when they account for: 1) the abuser; 2) the victim of battering; 3) those who are in relationships with the abuser and/or the victim (children, brothers, sisters, parents, friends); and 4) the outside intervener. When the

facts of a case before the criminal justice system are clear — and practitioners agree on who did what to whom with what intent and with what effects — what interventions are appropriate should be clear. But when victims of battering use force against their batterers — either in self-defense or for other reasons — CCR members often disagree about what interventions are appropriate or fair. CCR members need a better understanding of the impact that arrest, prosecution and conviction have on victims of battering in order to develop criminal justice interventions that are just and enhance safety in the lives of victims of battering.

UNDERSTANDING BATTERING

Differentiating between a woman who batters and a woman who is being battered and responds with violence is a crucial step in the intervention process. To work with a victim of battering who is using violence to cope with her situation as if she were a batterer is to align oneself with the batterer. Giving batterers more power over his partner is not what outside interveners intend to do, but is too often the result of their interventions.

Men's use of violence in their intimate relationships is a social problem of immense magnitude. Women's violence against men is not. This is not because women never hit men but because in general, women do not tend to use violence as a form of relentless, dehumanizing control over men. If most women ended their violence against their male partners, it would spare many men injury, pain, decrease some men's escalating violence, and surely save some men's lives. However, the social consequences would be much less negligible than if men's widespread violence against women decreased significantly.

DOMESTIC VIOLENCE: 3 DIFFERENT TYPES AND INTENTS OF VIOLENCE

There is an increasing agreement that intervening agencies and professionals must be able to distinguish between kinds of domestic violence, scope of domestic violence, severity of the violence, patterns of the violence, function and purpose of the violence, and the predominant perpetrator of the violence. For the purposes of this paper, these distinctions are especially important. When victim defendants receive the same criminal justice response as does those who batter them, their safety will be further compromised. Therefore, in order to begin to address the needs of victims of battering who are defendants, communities need to develop assessments and mechanisms that distinguish between these different types of domestic violence.

The intention for distinguishing between different types of domestic violence is not to create "typologies" for psychological profiling. Creating these types of distinctions is important so that prosecutors, the court, and probation in particular, can develop criminal justice interventions that create "justice" in the lives that are impacted by how they are processed through the court system.

For the purposes of this paper, we categorize domestic violence into three groups with the intention of developing criminal justice interventions that address these three broad categories:

1. **Battering or coercive controlling domestic violence**, is an ongoing patterned use of intimidation, coercion, and violence, as well as other tactics of control to establish and maintain a relationship of dominance over an intimate partner. Battering is a systematic way utilizing various tactics to restrict an intimate partner's autonomy. This type of domestic violence is often best represented on the Power and Control Wheel developed by Domestic Abuse Intervention Programs in Duluth, MN.
2. **Resistive violence**, includes both legal and illegal use of violence, which is used by victims of battering in response to their abusers' use of coercive and controlling tactics against them or in reaction to other men's violence against them as women.
3. **Non-battering violence**, which is violence used by one intimate partner or household member against the other that is neither an ongoing attempt to exert control through coercion or battering, nor a response to that coercion. A distinction of this type of domestic violence is that neither of the intimate partners or household members live in on-going fear of each other because the person who perpetrated the violence does not believe that they are entitled to dominate and abuse them. This type of domestic violence also encompasses all other acts of intimate partner violence, which can again be subdivided into some general sub-categories for the purposes of creating criminal justice interventions:
 - a. **Pathological domestic violence** in which ending or controlling the pathology would end the violence. Examples of this include perpetrators who have a severe and persistent mental illness, a traumatic brain injury and/or drug and alcohol addiction. It is important to distinguish that some perpetrators of the first two categories listed above, 1) battering or 2) resistive violence, may also have a mental illness, traumatic brain injury or drug or alcohol addiction. However, the distinction in this category is that the domestic violence has no pattern of coercion, battering and entrapment of the intimate partner and that if the pathology was addressed the violence would subside because the violence is not justified by the entitlement thinking and beliefs of the batterer or in response to the battering;
 - b. **Anomie** is violence associated with a breakdown in social order. Examples include the increase in rape and abuse of women by their partners in desperate social conditions, such as those experienced during war, natural disasters such as hurricanes or earthquakes and/or in refugee camps. In such violence, women are often targets because of underlying gender asymmetry in the society, but the elements of attempting to control and assert entitlement in a personal relationship are not necessarily present; and

- c. **Aituational violence**, in which one or both intimate partner has used violence, but it is not part of an ongoing pattern of coercion and intimidation. Also, there is no element of entrapment in the relationship and the beliefs of one or both of the partner's does not include entitled thinking to justify the violence. An example of this type of domestic violence can be illustrated by the story of Bill and Susie below:

CASE EXAMPLE FOR NON-BATTERING DOMESTIC VIOLENCE

Bill's mother Carol had developed Alzheimer's disease and was now living in the home with Bill and Susie. Bill worked outside of the home and Susie did not. Bill had come home from work one day and Susie grabbed the car keys from Bill and said, "I have had a very difficult day with your mom today. I am leaving to get out of the house for a while. I will be back later." Bill then tried to explain to Susie that he had told her yesterday that his men's softball league started that night and he was just stopping at home quick to pick up his gear and then was leaving again. Susie exclaimed, "No way am I staying at home tonight with your mom. She is your mom and your responsibility!" Susie began to walk out of the house. As she walking towards the car outside Bill came up behind and surprised her and grabbed the keys out of her hand. Bill's first attempt to get the keys away was not successful. Susie ended up elbowing Bill in the face while attempting to hold onto the keys. Once Bill got the keys from her, Susie was very angry at Bill for this and literally jumped on Bill's back. Bill then motioned and Susie flung off his back onto the ground. Bill then held her down for a few short moments and told her to "Calm down. Let's figure this out." Their next door neighbor had been outside mowing the grass. He did not hear the words that were exchanged but had witnessed Bill holding down Susie on the ground and he assessed that Bill was yelling at her. He stopped mowing the grass and went in the house and called the police to report domestic violence by Bill against Susie. He later told the police that Susie appeared scared.

In the history of Susie and Bill's relationship nothing like this had ever happened before. In addition, Susie has never been in fear of Bill and reported to the police that he is not "one of those abusers." Susie said that what the neighbor had described as a "scared look on her face" was not that at all. Susie said it was a look of "shock." She said that she had realized in that moment that the situation and stresses of taking care of Bill's elderly, sick and dying mom had really changed and affected her and the dynamics in their home. Because Bill has not used a pattern of violence or coercion against Susie he is not a man who has committed battering or coercive controlling domestic violence. Bill's act of violence was also not in response to Susie battering him. While it was an illegal act of domestic violence that he was arrested for, would it be justice to treat him the same way as a man who has terrorized his wife for years with physical and sexual violence and coercion?

By using these three categories of domestic violence — 1) battering or coercive control, 2) resistive violence, and 3) non-battering violence, interveners can

differentiate among the cases coming into the system and develop subsequent criminal justice interventions appropriate for each case.

Practitioners in all arenas (e.g. criminal justice system, child protection agency, supervised visitation centers, mental health center) need to uncover the pattern of abuse, its severity, and the context in which each adult intimate partner is using violence and experiencing in order to figure out the appropriate intervention.

When abusers live with their victims, they exert their control in an intimate setting. When a victim of battering leaves the relationship, those abusers who are driven to continue their abuse shift the battleground from the privacy of the bedroom, the kitchen, and the living room to the criminal courtroom, the child protection agency, and the church. Many abusers rely on our collective inability to distinguish among the various types of violence to exploit the very reform efforts instituted to protect battered women and their children. In such cases, our actions become their weapons of post-separation control and punishment. Ensuring that an abuser's victim is labeled as an offender is often the abuser's most powerful means of protection from community intervention.

The Focus Groups

We were interested in learning from victims of battering who had been arrested, prosecuted, and convicted about the impact of the criminal justice system on their lives, well-being, and safety so we convened six focus groups and conducted some individual interviews.

Through our focus groups with heterosexual women who have been victims of battering and who used violence against their intimate partners, we have reaffirmed our previous understanding that the arrest and conviction of victims of battering often adversely affects their safety. We have also increased our depth of understanding of the problems faced by victims of battering who are arrested and, as a result, we have uncovered new themes about the realities that victims of battering face. Many victims of battering who had used violence against their partners often took responsibility for their violence when talking with the police and in court. Rarely do practitioners see men who batter take responsibility for their actions. Victims of battering rarely justify their use of violence with entitlement, especially in court.

FOCUS GROUP DESIGN AND PROCESS

Focus groups and one-on-one interviews were utilized to deepen our understanding of the impact of arrest, prosecution, and conviction on their overall well-being and safety. The original intention was to only use focus groups. However, two victims of battering in particular wanted to participate but were unable to during the times scheduled for the focus groups. All

of the participants were from Minnesota and Wisconsin. They were recruited from community organizations, battered women's shelters, and probation officers.

Design: The qualitative research method of semi-structured focus groups and individual interviews was used. Six focus groups consisting 4 to 10 women and two individual interviews were conducted. Focus groups and individual interviews were conducted in northern Minnesota and St. Paul, MN. Open ended questions were used in the focus groups and individual interviews to encourage discussion and sharing of their lived experience.

Participants: The participants were female adults age 18 and over who had been arrested, prosecuted, and convicted for domestic violence related crimes against their intimate partners. Forty-three women with histories of being arrested for crimes against their abuser participated. The convictions of the participants included misdemeanor, gross misdemeanor and felony level domestic violence related crimes.

Description of Participants: In order to protect privacy, detailed demographics will not be provided. Participants were varied in their ages, races, ethnicities, income levels, and experience. Most women were between the ages of 20 – 55 years of age. Over 50% of the participants identified as Caucasian/White, 30% were Native American/Indian, 15% were African-American, and 5% identified as Mixed Race. All of the women but one had children.

Type of Data Collected and Questions Used: With focus groups and individual interviews, the data collected consists entirely of the comments, observations, and opinions shared by the participants during the focus groups and individual interviews, and is qualitative in nature. We relied on audio and video recordings and notes to reconstruct the content of the discussions. The two individual interviews were videotaped. The two women who agreed to be videotaped did so on a voluntary basis. One of the women has agreed to allow her edited video to be used for training purposes. The raw data from the video and audio recordings were then listened to and documents were created to highlight themes from the discussions.

Findings and Themes

The differences in all of our lives are constructed by differences in class, age, race and ethnicity, immigration status, sexual orientation, history, privilege, religious affiliations, and many other aspects. As a result, we do not all experience battering in the same way or the impact of criminal justice interventions that are designed to increase safety. Effective domestic violence interventions account for the realities of peoples' unique circumstances and social standing. For example, our intervention strategies must consider and address the relationship between violence, poverty, homelessness, gender, immigration status and race. Our coordinated community responses (CCRs) must reduce, rather than emphasize the disparity between groups of people with different circumstances.

It is easy for practitioners to cite cases where practitioners were well intended and followed the protocol designed, yet the outcome of the case was neither just nor protective of the victim. Effective interventions cannot be a “one-size fits all” response. By understanding the themes and findings from these focus groups and individual interviews we can easily see that we need to adjust for the impact of mandatory arrest and prosecution policies that don’t address the circumstances in the lives of victims of battering who commit illegal acts of violence against their intimate partners.

Although the scope of this project was narrowly focused on a small sampling of 43 women in Minnesota and Wisconsin, what we learned from the participants is relevant to others developing criminal justice interventions nationwide.

Victims of battering who participated in these focus groups and individual interviews were very enthusiastic, thoughtful and engaged and seemed to appreciate the opportunity to share their experiences and perspectives. Their discussions were varied and rich with narrative detail and insight.

Overall, the following themes developed from the focus groups and individual interviews:

1. There was a significant decrease in the level of safety for women and an increase in their partners’ coercive control once the women were convicted.
2. A conviction increased the battered defendant’s financial dependency on her abuser and, in particular, made it difficult for her to obtain and maintain housing.
3. “Even though I was fighting back, the “system” doesn’t help, and even though I am not a “threat to the public,” I am treated that way.”
4. No one in the criminal justice system took the time to understand the circumstances of the women’s lives and did not understand the implications that the conviction would have on their safety and well-being. Once convicted, probation officers were the only criminal justice interveners who worked to address the women’s safety and well-being.
5. The criminal justice system generally has a “one-size fits all” for domestic violence-related crimes which limits available plea options for cases of battered defendants.
6. Group process that addressed the women’s victimization as well as their use of violence provided the support, connection, and time for reflection that the women needed and wanted.

Focus group participants expressed deep concern about the limitations of criminal justice interventions and about our society’s failure to consistently condemn domestic violence. At the same time, they also advocated for healing for all those affected by abuse. Additionally, they expressed deep concerns about being forever labeled as “criminals,” even though they believed that they were defending themselves and their children.

Theme 1: There was a significant decrease in the level of safety for women and an increase in his coercive control once the woman was convicted.

Most of the women described the nature of their intimate partner relationship after being convicted as having decreased their level of safety and well-being because their partner's ability to coercively control them was enhanced. As one woman stated,

I wasn't even doing anything at all, let alone something wrong. At least before I knew if I was doing something that he didn't like he would let me know. Now he constantly is threatening to have me thrown back in jail or calling the police for doing nothing at all. Before he was always afraid that I would leave him and that he would lose me. Now he knows that I am more dependent on him and can't leave him as easily. It was like jail weakened me.

Many women talked about losing their autonomy and their ability to speak up with their partners. Women explained that their partners seemed to increase coercive control tactics against them after their conviction. Many victims of battering try to resist the violence and oppression in their lives. As a facilitator of women's groups for over 15 years, I would hear women explain the many ways in which they would resist their partners' oppression. Often the women talked about doing less overt actions as an effort to "maintain their dignity." One example was one woman who said, "I would wash all of his socks together. I would never put laundry detergent in the washing machine. I would just use the rinse cycle. I know it sounds stupid, but every time I hit the start button on that washer and did not put in detergent I honestly felt like I was getting back at him and it made me smile." In the focus groups, many women spoke extensively and in detail about how they rarely resisted the abuse after their arrest and conviction. The risk of going back to jail and the impact that has on them and their children causes most women to resist the abuse less than before their conviction. One of the women described how her abuser showed up at court during one of her pre-trial hearings. One of her conditions of release stated, "No same or similar acts of violence or creating fear in another person." She described how any time after that she would get upset with her partner and began to raise her voice even a little bit he would say, "You are creating fear in me by raising your voice. I should tell the judge that."

Four other women stated:

He harasses me constantly. I talk on the phone with a man and he questions me. He won't let it go. Because I am on probation, I feel like now I can't even get mad or raise my voice at all because he threatens to call the police or my probation officer and I know he will do it. If I end up in jail then my kids are alone with him and I cannot have that. Because I am on probation here, I feel stuck here. I have no one here but him and his family. I am not from here and neither is my family.

He also knows that he has this all over me. So now he is even asking me to do things sexually that I do not want to do. I feel like I am selling myself in a way because I don't want to do those things he asked me to do but I also know that I drank last week with him when I was not supposed to and I know he will tell probation.

I am still with this guy. He is a little bit more controlling. If somebody calls me and it is a man and even though it is my son, he says, 'Who is calling?' If I am at a friend's home he will come over there until I leave. It is embarrassing.

He contacted me first when I got out of jail. He called me right away saying, 'Are you ready to come home? Are you still mad at me?' The second I got out of jail he started texting me, too. After I got out he was calling me hundreds of times a day. I couldn't do anything without hearing from him. It was hundreds of text messages a day.

If women had a history of substance use or abuse it was another way in which their abuser leveraged additional control over them. The combination of her history of substance use or addiction, his coercive control of her, and her being on probation significantly increased his control over her life.

A significant number of women described how their partners knew that they had a "no drinking" probationary restriction, but their partners bought alcohol for them anyways, encouraged them to drink together, and then would threaten or actually report their drinking to their probation officer.

He buys me the beer and we start to argue and he threatens to call probation. I struggle with alcohol and I am a recovering drug addict. He knows that and uses it to make me weaker.

I got the [probation] violation a month after my arrest. That was a total power trip for him. He picked up the phone when I was drinking. I had been jealous of the way he was acting with another woman and he got mad at me for getting jealous and said, 'You are going to jail.'

If we are drinking together he will get mean and will call my probation officer. One time we were in the car together and he said he would call on me. I said, 'Go ahead!' I wasn't afraid of him because I wasn't drinking that time anyways.

My husband got really violent one night. He was drinking and broke my jaw bone. I called the police that night. I got taken to jail just for the fact I was on parole and drinking. In my mug shot I look all beat up.

After being battered and living in fear, women lose some level of autonomy and the ability to speak freely. What we have learned from victims of battering in these focus groups is that their arrest and conviction even further decreased their level of autonomy and ability to speak freely even more. When this happens they become further isolated and marginalized.

His violence hurt me emotionally and physically. I even couldn't think anymore. I became like a shell. When I used violence against him and got arrested for it, I became a 'hardened' shell because I knew if I didn't I would literally break. I

remember asking myself while I was sitting in jail, 'What is left of me at this point? Now I have become just like him and I hate him for what he did to me.' He destroyed me before and now when I was violent I helped him destroy myself.

Theme 2: A conviction increased the battered defendant's financial dependency on her abuser and, in particular, made it difficult to obtain and maintain housing.

Most women interviewed said that they were financially dependent on their abuser before their arrest and conviction. Many of the women discussed how their financial dependency on their abuser significantly increased after their conviction. Many women were living in subsidized housing prior to their conviction and were either evicted after their conviction or spent a significant amount of time working to maintain the subsidized housing that they had prior to their conviction. As one woman stated,

After my conviction, I had to fight for my Section 8 housing. It took me three months to get that done. I spent so much time working with Legal Aid, jumping through hoops that they want you to go through. I even had to get letters of recommendation.

Other women described losing their subsidized housing after their arrest and conviction and then not having enough money to pay for rent. As one woman stated,

If it wasn't for him, the man who had abused me for years, I could not pay for anything for me and my kids. That is why I stay with him. Since my conviction I lost my job, and have not found another one. At one point, I did file for divorce but then had to go back to him because I could not find somewhere to live.

Many women also described the process of looking for housing as "self-defeating." In one focus group the women talked with anger about landlords doing "background checks." One woman said,

I would just cringe as soon as I would hear the landlord say the word 'background.' I am so sick of that word. I even had one landlord come back and look me in the face and say, 'Yah, you even look violent.' Part of me understands why they do the backgrounds checks but the problem is that this is what holds me down. I have never been violent to anyone but him and he has been violent to every woman he has ever been with yet, he still keeps his apartment and I am the threat?

A number of women also worked in professions that required licensing and after their conviction they lost their jobs because they could not renew the license they needed for their job.

I am a bus driver with a commercial driver's license. I have to renew my license in two years and I may lose my job. My conviction was for misdemeanor fifth degree domestic assault. My employ[er] knows [about my conviction], but when I go to renew [my license] it will be flagged, and I will have to appeal it.

I got a domestic assault in September of last year and since then I pretty much haven't been able to work. People don't care what your story is — they just see the conviction.

One of the biggest employers in our area is the casino. Everyone knows that you can't even apply to work at the casino if you have a pending court case. They have so many people that apply that they don't have to deal with people who have to miss work for court.

I had applied to work in the cafeteria at our local hospital. I was set up for orientation and I had written down all of my charges on the application. A guy came up and said things came back on my background check. I didn't get the job because it [my case] was pending. He said he would call, but I haven't heard back.

I now work at a local grocery store. I wanted to go into the health care field. I was a personal care assistant and I was going to go to college to start the whole nursing program. Now I can't. It is out of the question. It is completely, 100 percent done. I can't do it.

Another woman wanted to work with kids who needed help and care said:

I was a personal care assistant and worked at a hospital for 10 years and worked in assisted living and long-term care for young adults. I liked my job there. I liked the difference I could make in people's lives and the time by went really fast. It was a really nice job. But since I got the conviction on my record I can't go back there now. It was kind of strange. I just got a letter in the mail from the Department of Human Services saying they informed my employer about the charges. I am not sure if I could have fought it.

Over the years, a great deal of research and policy work has focused on criminal records and barriers to housing and employment for men exiting prison and the criminal justice system. The impact of criminal records and convictions has not had as much focus on women. Many women who have been convicted of domestic violence related offenses are the sole economic providers for themselves and their children. Even minor misdemeanor criminal convictions can create major obstacles for lasting economic independence.

The lack of affordable and safe housing is a major barrier to women's long-term safety. Many women end up returning back to their abusive partners because they have no other options. For victim defendants who also have a drug-related conviction, they are essentially barred from

living in federally funded public housing. Most jurisdictions also have implemented criminal record checks for people applying for subsidized housing. As was apparent with the women interviewed for this project, women can appeal being denied for public housing, but it is a lengthy and extensive process.

Theme 3: “Even though I was fighting back, the “system” doesn’t help, and even though I am not a “threat to the public,” I am treated that way.”

Each woman was specifically asked about their interactions with the responding police and whether or not they would rely on the criminal justice system in the future for help. Nearly 75% of the women specifically stated they will not call the police again in the future, even when they needed help for themselves, because of their experience with their own arrest, prosecution and conviction. The perception of most of the women was that they were treated worse by the police than their abusive partner and that they received harsher sentences than their abusive partners did. Therefore, because of their own experiences with their arrest — coupled with their understanding that their abusers were not held accountable — the women did not foresee themselves calling the criminal justice system for help in the future. They did not consider the criminal justice system a resource to help keep them safe.

A number of women in the focus groups had been arrested for felony-level domestic assault because they had used a weapon against their abuser. It was the women’s perception that when the police saw or confirmed that the women had used a weapon and had committed what they perceived as a felony-level crime, that their credibility, as well as what they told the police their abuser had done to them, became irrelevant to the police. Many of the women stated that the police would not listen to them when they described their own injuries. When asked why they used a weapon, many women described the use of weapon as an “equalizer.”

One woman stated,

He is 262 pounds and 6 foot 2 inches. I wanted to leave from my mom’s house but I grabbed a knife so I could leave. He is so much bigger and stronger than me. I could not leave unless I used that knife. I cut him in the arm and he got 5 stitches. He called the cops on me and they didn’t hear the whole story. Red marks on my neck and I had a black eye from him. They know he got cut by a knife. I got a felony first degree assault. He knew I was going to leave him so he was out of control and wanted to keep me at home. People that were around me when I caught the charge were trying to tell the police it was self-defense. I could have died when he choked me. They [the police] didn’t put him in jail for that.

In addition, when women had a criminal history of any type, most of them described at least one experience in which they were not believed by the police when they needed help.

One woman told a focus group,

I feel like they don't look at the history of him abusing me. They looked at my past. You know they are focusing on something I did years ago when I was drinking and drugging. I don't drink, I don't drug anymore. I have been sober three years.

The overall sentiment amongst many women was that their "criminal background" got used against them so often that they had often lost hope that they could ever get their life back on the right track. One woman summarized her thoughts in this way:

When I was sitting in jail that was when it all really bothered me. I felt so degraded as a woman [and as] a person. This is not how I pictured myself. When you have self-confidence and you feel good about who you are and what you are doing in your life and who you are as a woman, you don't end up in these situations or these relationships. It is easier to leave that sort of relationship then when you are feeling good about yourself. But that is what abuse does to you. He makes you feel that way about yourself so that you don't feel good about yourself so that you will stay trapped there. So, something like going to jail makes me that much weaker to be able to hold my head up high and say I can move on from this.

Theme 4: No one in the criminal justice system took the time to understand the circumstances of the women's lives and did not understand the implications that the conviction would have on their safety and well-being. Once convicted, probation officers were the only criminal justice interveners who worked to address the women's safety and well-being.

Every woman we spoke with had been represented by a public defender because they qualified due to their income. Overwhelmingly, the women discussed how they had very little time to talk with their public defender about the circumstances of their lives. A number of the women talked about how, when they looked back on their legal cases, they remembered just telling their attorneys to "get it over with — I'm guilty anyways." Most women said that if they did have time to talk to their public defender it was only about the incident that got them arrested and not the circumstances of the violence they had experienced. When asked if anyone had informed them about the implications of having a domestic assault on their criminal record, the women overwhelmingly stated "no."

As one woman stated,

No, she [the public defender] never mentioned anything like that (answering the question if they explained implications of domestic assault convictions). I just told her that I was working and that I really needed this job. It feels like she didn't really do much. She just told me to plead guilty to all of the charges. I tried to speak up to my public defender. I always talked to her about my job and that I was still young and that I wanted to go to college. I wanted to be something. Now it's like I can't get a job because of the conviction.

Another woman, who worked at a major employer in the area in northern Minnesota, explained the pressures from her job to “get the case over with”:

I worked there [at the major employer when I was arrested] and so they suspended me from work and told me that I needed to be done with court and get sentenced within 30 days. Yeah, everything needed to be done [really quickly]. . . .Yeah, I kept telling my public defender that. She only brought it [my tight time frame] up once to the judge and that was it, even though I kept telling her and telling her. I kept getting bugged from work about my court case. I lost my job. So that was my main concern of losing my job because they had suspended me. They gave me until the end of June to get [all the court stuff] all figured out. I would tell them when my next hearing was and stuff like that. I ended up losing my job anyways. Even after, it’s now a hassle trying to get a job with them or anyone again.

A number of women said that her public defender tried, but they just kept telling her attorney to “get it over with”:

I felt she [my public defender] was trying to fight for me. I didn’t get a whole lot of time. I went to her office. I don’t feel like she made me take a plea or go to trial. She went over my options and I had to take a plea deal that I didn’t real understand because it felt like what I had to do to survive.

So, because I hate jail so much — and my probation officer said the same thing — that often women just pled guilty just to get out of jail to get back to their kids and life. That is what I did.

Many women described their experiences of going to court as very dehumanizing.

To me they treat it like a job that they don’t like. You are a criminal in their eyes, not a human. To them, it is just another day in the courthouse. Do they even realize the way they look at us and how it affects us?

The one group of criminal justice practitioners that the women overwhelmingly had an overall positive experience with was their probation officers. They often were critical in providing on-going safety referrals and resources for the women.

I hated probation in the beginning. I think it is good for a certain amount of time for people who need recovery anyways. I needed her to help keep me sober. I am grateful for my probation officer.

He (probation officer) went into court often and talked about how the violence I experienced in the past affected me. He will speak up for women that have charges against them. He will try to learn about the history on the abuse and not just the charge itself. He was the only one who did that.

I don't mind being on probation. I have been sober and cooperative on it the whole time because they treat me like a human. I like meeting with them once a month. I need to be accountable to someone like that once a month. It helps me. When I first met her she wanted to actually hear my side of the story and not just what the police wrote in the police report. I told her everything and I felt like she listened and was there for me.

Theme 5: The criminal justice system generally has a “one-size fits all” for domestic violence-related crimes which limits available plea options for cases of battered defendants.

When we discussed their conversations with their lawyers the women overwhelmingly stated that there did not seem to be any options for them to choose from. They said that basically they were given one plea option, there was little to no negotiating back and forth or the other option was to go to trial. As one woman stated, “My attorney said this is what the prosecutors offer in all of these domestic cases. Yours is no different.” When the focus group members discussed this amongst one other, they quickly realized that there were many similarities between their plea deals and that there did not seem to be many options for plea offers and that they all seemed nearly the same.

None of the women interviewed or in the focus groups had been contacted by a confidential domestic violence advocate at any point after their arrest. Each woman was asked to think back to when they were arrested and when they were in jail and their state of mind at that time. The women were asked “If an advocate, a person you had never met before, had come to the jail to meet with you, would you have wanted to meet with them?” Once the women understood that the advocate would keep their confidentiality, that changed women's answers. Once they understood that their information would be confidential, every single woman asked this question stated that having an informed advocate who understood the criminal justice system — and would maintain confidentiality — would have been very helpful for them.

Theme 6: Group process that addressed the women's victimization as well as their use of violence provided the support, connection, and time for reflection that the women needed and wanted.

Most of the women had attended either a voluntary support group or a court-ordered women's non-violence program. Providing for a group process where women can address their struggles with their experience and use of violence can be critical for women. As one woman stated,

At first I resented that I had to go to a group for women who were violent. However, I started to really look forward to it. It was the only two hours of my week where he cannot bug me and I get to just talk with other women.

Other women stated:

The facilitators really helped me. One time I came to group with bruises on my arm. They noticed it and helped me. I never went home after that group ever again.

One time during group the facilitator said, ‘What is that revving noise outside? Do you hear that?’ I was so embarrassed. I knew exactly who and what that was. It was my boyfriend in his car outside revving his engine on purpose. My boyfriend John had told me that he would be right outside (of the building where group was being held). You better not say anything about me in there. I will be sticking around to remind you that I am right here.

Before my court-ordered group I just thought when he punched in the face that was abuse. Now I see so many other things that have happened to me as abuse. In some ways that makes life harder for me.

Most curricula for domestic violence offenders are intended to be used with men who batter their partners through the use of a pattern of intimidation, coercion, control and violence. These programs are not appropriate for victims of battering. In the design of court-ordered groups for victim defendants, the goals and the objectives of the group should be to: 1) help women understand the violence in their lives; and 2) help women take concrete steps to end the violence in their lives, both the violence they are experiencing and the violence they are using. When done correctly, these programs can be very helpful to victim defendants.

Conclusion

A main goal of our criminal justice intervention in criminal cases with a defendant who is a victim of battering should be to increase safety for all — including victim defendants. Instead, in too many criminal cases with a victim defendant, our interventions have placed victims of battering in more danger or in compromising situations as a result of our criminal justice intervention. In addition, our intervention should be focused on preventing the victim/defendant from using force and violence against the abuser in the future.

Based on the information from the focus groups and interviews — as well as the author’s own experiences working with victim defendants — the following recommendations emerge:

- Develop law enforcement policies and protocols that contextual women’s use of violence when they are fighting back. Consider policies and protocols that require a self-defense determination test;
- Develop prosecution responses that address the motivation and intention of their use of violence to create long-term safety and justice in their lives. Consider adopting policies and protocols that allow for pre-trial diversion of cases, such as the: *At a Crossroads: Developing Duluth’s Prosecution Response to Battered Women Who Fight Back*, developed by the City of Duluth’s Attorney’s Office.

- Organize the advocacy community to coordinate with law enforcement and the local jail to meet with battered women who get arrested as soon as possible after their arrest;
- Develop and organize women's non-violence group process' that allow for women to reflect on the violence they have experienced and used.

Battering almost always includes some level of entrapment in the relationship. Because the criminal justice system tends to be an event- and incident-focused system, it is often difficult for the system to uncover and make visible the ongoing pattern of abuse that is occurring in the relationship. If that pattern is not uncovered, the criminal justice system intervention will probably be misguided. The criminal justice system plays a major role in how we as a society define events and actions. Contextualizing women's use of violence when they have also been battered is very important to ensuring the safety of all women as victims.

Additional Resources

1. Mary E. Asmus, *At a Crossroads: Developing Duluth's Prosecution Response to Battered Women Who Fight Back*, a monograph detailing the process that one community used to address this issue. Available as a download at bwjp.org and at dvturningpoints.com. Much of the material in this practice piece has been drawn from this monograph.
2. Jeffrey P. Greipp, Toolsi Gowin Meisner, & Douglas J. Miles, *Intimate Partner Violence Victims Charged with Crimes: Justice and Accountability for Victims of Battering Who Use Violence Against their Batterers*, (2010 by AEquitas: The Prosecutors' Resource on Violence Against Women) available at http://www.aequitasresource.org/Intimate_Partner_Violence.pdf
3. National Clearinghouse for the Defense of Battered Women, ncdbw.org.
4. Domestic Abuse Intervention Programs, theduluthmodel.org.
5. Battered Women's Justice Project, bwjp.org.
6. Praxis International, praxisinternational.org.
7. Domestic Violence Turning Points, dvturningpoints.com.

About The Author

Melissa Scaia is the Director of International Training for Global Rights for Women (GRW). She is a former executive director of Domestic Abuse Intervention Programs and was the executive director of Advocates for Family Peace for 17 years. She has lead and organized two coordinated community responses to address domestic violence in Minnesota. She has co-facilitated groups for men who batter and for women who use violence and is a consulting trainer to national organizations, including the Battered Women's Justice Project and the National Council of Juvenile and Family Court Judges. As a qualified expert in the state of Minnesota, she testifies as an expert witness on domestic violence in criminal court cases. She wrote her master's thesis on the effects of domestic violence on children and her doctoral dissertation proposal on supervised visitation, children, and domestic violence. She is the co-author of *Addressing Fatherhood with Men Who Batter* (with John Downing and Laura Connelly) and *Turning Points: A Nonviolence Curriculum for Women* (with Ellen Pence and Laura Connelly). She has been selected for numerous roundtable advisory discussion groups for the Office on Violence Against Women and the National Judicial Institute on Domestic Violence. She is a member of the National Consulting Group on Batterers Intervention Programs and a National Advisory Committee Member for the Joyful Heart Foundation (established by actress Mariska Hargitay to support survivor-based healing).