

# TRANSFORMING AGGRESSIVE PROSECUTION POLICIES: PRIORITIZING VICTIMS' LONG-TERM SAFETY IN THE PROSECUTION OF DOMESTIC VIOLENCE CASES

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#### I. THE NEED TO REFORM AGGRESSIVE PROSECUTION POLICIES

Until fairly recently, prosecutors' offices around the country ignored domestic violence cases, failing to press charges in the vast majority of situations and dropping charges prior to conviction in many others. In the 1980s and 1990s, however, the battered women's movement made significant efforts to improve the criminal justice system's response. One way that this effort has met with substantial success is that many prosecutors' offices now have adopted aggressive "no-drop" policies for domestic violence cases.<sup>1</sup> In these jurisdictions, cases proceed regardless of the victim's preferences about prosecution, even if she recants her original story and testifies for the defense.

No-drop prosecution has resulted in substantial improvements for domestic violence victims. Victim access to the criminal justice system has increased dramatically as have conviction rates of batterers. Such policies send a strong symbolic message that the community will not tolerate domestic violence.

Although no-drop prosecution constitutes a dramatic break with a long history of government non-responsiveness, it is hardly a radical approach to criminal justice. Such policies fall squarely within prosecutorial tradition, thus inheriting at least two problematic features. First, the primary emphasis of these policies is to ensure offender accountability, a goal consistent with the prosecutor's responsibility to "seek justice."<sup>2</sup> Because prosecutors view crimes as

1. See LINDA G. MILLS, *THE HEART OF INTIMATE ABUSE* 46 (1998) (reporting that forty states have mandatory or pro-arrest policies).

2. MODEL CODE OF PROF'L RESPONSIBILITY EC 7-13 (1981) ("The responsibility of a public prosecutor differs from that of the usual advocate; it is to seek justice, not

violations of the social contract, and thus offenses against the state, the potential impact of the prosecution on the victim is not considered particularly relevant.

Second, prosecutors typically approach cases with a short-term focus: How should the government respond to the perpetrator's most recent violation of the criminal law? Rarely do prosecutors consider adding charges dealing with the history of violence against the same victim. Almost never do they consider how most effectively to prevent a subsequent recurrence of violence, other than by the traditional means of incarceration as punishment for the crime at hand.<sup>3</sup>

In most criminal cases, this short-term focus on offender accountability makes sense. In a robbery case, for example, it is unlikely that the victim will ever interact with the perpetrator or the criminal courts again. Thus, it is fairly safe to assume that sending the perpetrator to prison is consistent with promoting the victim's physical safety and her sense of trust in the justice system.

The same may be true for some subset of domestic violence victims. Certainly, some victims' safety interests are best served when their batterers are imprisoned following a particular abusive incident. Serving time, even for a short period, may cause some batterers to stop all future violence. And, when given time away from the perpetrator, a victim may be able to take steps to increase her safety, conceal her whereabouts, or begin a new, independent life.

But, in most domestic violence cases, the situation is very different. For many battered women, prosecution of their batterers actually creates a *greater* long-term risk of harm.<sup>4</sup> Because the victim and

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merely to convict.").

3. The one important exception is the common tendency to request that a perpetrator be ordered into a batterer treatment program. Indeed, many courts have used batterer treatment as the primary response to domestic violence offenses, either as a condition of probation or a component of pretrial diversion. KERRY HEALEY ET AL., NAT'L INST. OF JUST., BATTERER INTERVENTION: PROGRAM APPROACHES AND CRIMINAL JUSTICE STRATEGIES xi (1998), available at <http://www.ncjrs.org/pdffiles/168638.pdf>. But the evidence regarding the positive impact of such programs, even in the short term, is mixed. *Id.* at 8; see also Neville Robertson, *Stopping Violence Programmes: Enhancing the Safety of Battered Women or Producing Better-Educated Batterers?*, 28 N.Z. J. OF PSYCHOL. 68, 72 (1999). Few experimental studies have been conducted, and those that exist do not yet provide compelling evidence for treatment effectiveness. HEALEY ET AL., *supra* note 3, at 8. At the same time, research shows that women whose partners are mandated to batterer treatment feel safer and are more likely to resume their relationship with the batterer. See Edward W. Gondolf, *The Effect of Batterer Counseling on Shelter Outcome*, 3 J. INTERPERSONAL VIOLENCE 275, 285 (1988). This potentially false feeling of security may itself be a risk factor, as it may lead some women to become less vigilant about promoting their own safety. See Edward W. Gondolf, *The Victims of Court-Ordered Batterers: Their Victimization, Helpseeking, and Perceptions*, 4 VIOLENCE AGAINST WOMEN 659, 669-70 (1998).

4. One study showed that 25% of men arrested pursuant to a victim complaint

perpetrator have been involved in a relationship, their contact may well continue beyond the perpetrator's incarceration. Indeed, domestic violence offenders typically receive shorter sentences than do defendants prosecuted for violence against a stranger,<sup>5</sup> increasing even further the risk that a batterer will sustain a connection to the victim during his imprisonment and attempt to resume the relationship upon his release. Even if the relationship does not resume, the violence is likely to worsen, as the natural course of violent partnerships is often one of escalation, both in terms of the severity and frequency of abuse.<sup>6</sup> Finally, the possibility of long-term, repeat abuse in domestic violence cases is heightened by the fact that many batterers blame the victim for their incarceration and seek retribution by committing further violence.<sup>7</sup>

As a result, the short-term, narrow focus typically taken by prosecutors simply is not enough to assure a victim's long-term protection from abuse. The traditional approach fails to consider how a given prosecution might be affected by the larger context in which the violence occurs.

In addition, because many women fear the consequences that a prosecution might bring, they decline to cooperate with the government or request that the criminal charges against their

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committed repeat violence against their partner even before the criminal case was resolved in court. David A. Ford, *Preventing and Provoking Wife Battery Through Criminal Sanctioning: A Look at the Risks*, in ABUSED AND BATTERED 191, 198 (Dean D. Knudsen & JoAnn L. Miller eds., 1991). Another showed a 22% reassault rate within three months of arrest. Lisa A. Goodman et al., *Predicting Repeat Abuse Among Arrested Batterers: Use of the Danger Assessment Scale in the Criminal Justice System*, 15 J. INTERPERSONAL VIOLENCE 63, 69-70 (2000).

5. This observation is based on the first author's personal experience in working with hundreds of clients in litigating domestic violence cases. See also Cheryl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1508 (1998) (noting the "unwillingness of judges to sentence domestic violence offenders to incarceration"); Kathleen J. Ferraro & Tascha Boychuk, *The Court's Response to Interpersonal Violence: A Comparison of Intimate and Nonintimate Assault*, in DOMESTIC VIOLENCE: THE CHANGING CRIMINAL JUSTICE RESPONSE 219 (Eve S. Buzawa & Carl G. Buzawa eds., 1992) (studying cases filed in Maricopa County, Arizona and concluding that people prosecuted for crimes of violence, whether against an intimate or nonintimate, are treated relatively leniently).

6. See, e.g., ANGELA BROWNE, WHEN BATTERED WOMEN KILL 68-69 (1987) (reporting that women who eventually killed their partners often experienced an increasing severity of abuse); LENORE E. WALKER, THE BATTERED WOMAN 43-44 (1979) (explaining that without intervention, violent relationships can escalate to homicidal and suicidal levels).

7. See Edna Erez & Joanne Belknap, *In their Own Words: Battered Women's Assessment of the Criminal Processing System's Responses*, 13 VIOLENCE & VICTIMS 251, 252 (1998) ("Many battered women who attempt to use the system face a significant threat of retaliation.").

batterer be dropped.<sup>8</sup> In a no-drop jurisdiction, a victim making such a request is likely to be refused, and may even be subpoenaed and forced to testify.<sup>9</sup>

The resulting harm in such a case is twofold: the prosecution may have failed to make the victim safe from future attacks and, in addition, by coercing the victim's participation the state may have taught her to distrust the system.<sup>10</sup> Such a victim may be far less likely to contact police or prosecutors in the future, leaving her more trapped than ever in her violent home.<sup>11</sup> This notion is supported by empirical evidence suggesting that victims frequently avoid and subvert community interventions that fail to acknowledge the realities and intricacies of their lives.<sup>12</sup> It receives further support from a study of victims who were reassaulted in the aftermath of a prosecution which found that 67% of those victims who wished to speak to prosecutors about the original case but were unable to do so failed to report the subsequent assault.<sup>13</sup>

Finally, extensive data, obtained in a wide variety of contexts, demonstrates a strong link between a person's perceptions of fair treatment and her sense of the overall legitimacy of governmental authority. The more she feels heard, understood, and treated with fairness and respect, the more likely it is that she will seek government assistance in the future.<sup>14</sup>

Given the likelihood that a battered woman will be re-victimized in the aftermath of any particular prosecution, it is crucial to focus on how to help her establish a strong relationship with system actors from the outset. Such a relationship could be an important factor in

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8. See *id.* at 254 (explaining that research indicates that the principal reason women do not pursue prosecution of their batterers is fear of reprisal).

9. See generally Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1850-51 (1996) [hereinafter Hanna, *No Right to Choose*].

10. See *id.* at 1865 (explaining that the use of state power revictimizes the woman by subjecting her to a process over which she has no control).

11. See *id.*

12. See generally Phyllis L. Baker, *And I Went Back: Battered Women's Negotiation of Choice*, 26 J. CONTEMP. ETHNOGRAPHY 55, 67-70 (1997) (citing instances in which women claimed police ineffectiveness and rudeness—not money, children, or emotional connection with the batterer—as the basis for their decisions not to call police in response to subsequent incidents of violence).

13. See Gerald T. Hotaling & Eve Buzawa, *The Response to Victim Preferences by the Criminal Justice System and the Reporting of Re-victimization*, Address at the 7th International Family Violence Research Conference (July 25, 2001) (transcript on file with authors).

14. For an extensive review of the procedural justice literature as it applies in the domestic violence context, see Deborah Epstein, *Procedural Justice: Tempering the State's Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843 (2002).

persuading a woman to participate in the criminal justice system once again when subsequent assaults occur. This is essential, given that such participation has been shown to increase her physical safety.<sup>15</sup> To accomplish this goal, the government needs to expand its methods and vision of seeking justice in the area of intimate partner abuse. The state can only hope to effectively eradicate domestic violence crimes by reconceptualizing the victim's long-term well-being as a prosecutorial goal that is equally central as is offender accountability. If a district attorney can understand what a particular victim needs to achieve long-term safety, he or she can tailor the prosecution to best fit these needs, or at a minimum provide her with additional, complementary resources to help meet her needs.

An added benefit is that this focus on the victim in and of itself constitutes an intervention that may enhance her long-term safety by promoting her sense of autonomy and self-reliance, as well as her sense that others are on her side. This may ultimately prove important in helping her take steps to address the violence in her life and to recover from her abusive experiences.<sup>16</sup> Her autonomy also may be important in other ways. For example, one study found that victims who followed through with prosecution were less likely to experience subsequent violence, but only if they made the personal choice to participate.<sup>17</sup> This finding is supported by data demonstrating that interventions targeted to an individual's own perceptions of her relationship and her situation are more successful in eventually effecting change.<sup>18</sup>

The potential conflict between immediate offender accountability and long-term victim safety has led a handful of advocates and scholars to suggest that prosecutors should always cede decisional control over whether to proceed in a particular case to the victim.<sup>19</sup> But this approach would be deeply problematic at this particular

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15. See David A. Ford & Mary Jean Regoli, *The Preventive Impacts of Policies for Prosecuting Wife Batters*, in DOMESTIC VIOLENCE: THE CHANGING CRIMINAL JUSTICE RESPONSE 181, 204 (Eve S. Buzawa & Carl G. Buzawa eds., 1992).

16. See JUDITH L. HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE 133 (1992) (arguing that an intervention that takes power away from the victim hinders recovery, no matter how much the intervention appears to be in the victim's best interest).

17. See Ford & Regoli, *supra* note 15, at 194.

18. See generally Bess H. Marcus et al., *Using the Stages of Change Model to Increase the Adoption of Physical Activity Among Community Participants*, 6 AM. J. HEALTH PROMOTION 424, 426-28 (1992); James O. Prochaska et al., *Standardized, Individualized, Interactive, and Personalized Self-Help Programs for Smoking Cessation*, 12 HEALTH PSYCHOL. 399, 400 (1993).

19. See, e.g., Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 611-12 (1999).

moment in history.<sup>20</sup> While a decision to refrain from prosecution might best serve the victim's interests in some individual cases, domestic violence victims as a group cannot afford to return to a policy where prosecutors automatically drop cases at the victim's discretion. Such a policy cedes to perpetrators an enormous degree of control over the criminal justice process. All a batterer needs to do is coerce his victim—through violence or threats of violence—into asking the prosecutor to drop the charges against him. Once she does so, any risk of incarceration vanishes. At a time when victims still cannot rely on sufficient sources of assistance beyond the criminal justice system to help address the violence, aggressive prosecution, flawed as it is, remains the best and most practical option for many women.

There may come a time when options outside the criminal justice system become a more viable means of ending the violence in a victim's relationship. This could potentially be a point when the battered women's movement should choose to shift away from its growing dependence on the criminal justice system.

Given the current political climate, however, aggressive prosecution policies represent a valuable opportunity for meaningful change. Although the debate thus far has been framed in terms of choosing between no-drop prosecution policies as they have typically been implemented or returning to the laissez-faire prosecution philosophy of the past, both approaches are problematic. In an effort to avoid this polarization, this paper focuses on how aggressive prosecution policies might be reshaped to better serve the twin goals of long-term victim safety and offender accountability. The first of these goals requires an increased emphasis on the victim's personal context, both to tailor the justice system's response to meet her safety needs and also, when possible, to facilitate her cooperation with the prosecution. Both of these approaches have been shown to increase her physical safety.<sup>21</sup> Overall, we hope to help the government become more classically feminist in its approach to domestic violence, by bringing into acute focus the importance of considering the particular circumstances of individual women's lives.

Although promoting long-term victim safety to the status of a central prosecutorial goal is a fairly radical notion, we suggest a

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20. For an insightful discussion of no-drop prosecution policies within a framework of feminist theory, see generally Hanna, *No Right to Choose*, *supra* note 9.

21. See Ford & Regoli, *supra* note 15, at 201 (“[V]ictims who are permitted to drop but follow through with prosecution have less than a 10% chance of being battered again within six months of settlement.”).

package of relatively modest reforms that could substantially improve the conventional approach. Together, these reforms may be thought of as a system of tools to promote “prosecution-in-context”—ways in which the government can respond more flexibly to an individual victim based on a comprehensive understanding of the psychological, relational, and socio-cultural contexts in which she is operating. To this end, the next section considers several contextual factors that often influence battered women’s experiences of, and decisions about, the violence in their lives.

## II. INTIMATE PARTNER VIOLENCE AND THE CONTEXT OF WOMEN’S LIVES

Victims of intimate partner violence use a wide variety of strategies to stop or escape from the violence, ranging from attempts to reason with an abuser to fighting back, calling the police, seeking help from a shelter, or cooperating with a criminal prosecution.<sup>22</sup> Battered women’s strategies—including their actions and wishes with respect to the criminal justice system—are likely to shift over time as other factors in their life situation change.

This range of factors is best explored through an ecological or contextual lens that considers the multiple contexts that influence women’s thinking and behavior. These contexts can be understood as a series of concentric circles, starting from the tightest circle around the woman and then moving outward. That first circle represents the individual level (*e.g.*, the woman’s mental and physical health); the second represents the relational level (*e.g.*, her relationship with her partner, family members, and friends); the third circle represents the community level (*e.g.*, religious, work-related, ethnic, and neighborhood communities); the fourth represents the institutional level (*e.g.*, the woman’s perceptions of the police, the court, and other potential help sources); and the outermost circle represents cultural identification and beliefs (*e.g.*, religion and ethnic identity).<sup>23</sup> Factors at each of these levels influence women’s desire and ability to cooperate with the criminal prosecution of their abusive partners.

A “prosecution-in-context” approach would require prosecutors to incorporate these aspects into their work with victims of domestic

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22. Lisa A. Goodman et al., *The Intimate Partner Violence Strategies Index: Development and Application*, in 9 VIOLENCE AGAINST WOMEN 163, 163-64 (2003).

23. Mary Ann Dutton, *Battered Women’s Strategic Response to Violence: The Role of Context*, in FUTURE INTERVENTIONS WITH BATTERED WOMEN AND THEIR FAMILIES 105, 111-12 (Jeffrey L. Edleson & Zvi C. Eisikovits eds., 1996). Although Dutton places socioeconomic status and resources in the outermost circle, we see it as cutting across the levels, integrally a part of each.

violence. By acknowledging and addressing the broad scope of victims' concerns, rather than focusing narrowly on obtaining a conviction as rapidly as possible, prosecutors may be in a better position to facilitate victims' long-term safety. To do so, they must develop methods for learning about victim concerns at each ecological level, as well as techniques for responding to these concerns in ways that increase women's engagement with the system. Otherwise, prosecutors risk exacerbating victims' sense of isolation and alienation, losing their trust, and, in the long run, failing to assist them in stopping the violence. Several of these essential victim concerns are reviewed below.

### A. *Individual Factors*

#### 1. *Physical Health*

Abused women suffer a wide range of injuries, ranging from bruises, cuts and scrapes to sprains, burns, broken teeth and bones, dislocations, internal injuries, wounds from knives or guns, and permanent disfigurement or brain damage.<sup>24</sup> These types of injuries can have a tremendous impact upon a victim's willingness and ability to participate in a prosecution. For example, the physical demands of making frequent trips to court or of even leaving the house may be difficult or impossible for some injured women to manage. Permanent damage resulting from the abuse also serves as a constant reminder of the violence, often increasing any fear of retribution for justice system involvement. Women injured in intimate physical areas understandably may have difficulty discussing these injuries with prosecutors, judges, or in front of a courtroom audience; they also may be reluctant to permit the collection of photographs or other documentary evidence. Women who do manage to allow such personal intrusions may find that their openness comes back to haunt them with shame and embarrassment later if, for example, they apply for certain credentials (such as becoming a child care provider) which require extensive background checks and surveys of criminal

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24. See Martina J. Acevedo, *Battered Immigrant Mexican Women's Perspectives Regarding Abuse and Help-Seeking*, 8 J. MULTICULTURAL SOC. WORK 243, 257 (2000) (stating that women reported being slapped, having their hair pulled, being hit with objects, being punched in the stomach, having their heads slammed into the floor and walls, being choked, being beaten so severely that their vision was impaired, and being whipped with a butcher's knife); see also Sandra K. Burge, *Violence Against Women as a Health Care Issue*, 21 FAM. MED. 368, 370 (1989) (noting that the result of physical abuse ranges from minor bruises to death); Helene Jackson et al., *Traumatic Brain Injury: A Hidden Consequence for Battered Women*, 33 PROF'L PSYCHOL. RES. & PRAC. 39, 43 (2002).

documents in the public record.<sup>25</sup>

Thus, the injuries an abuse victim sustains, and the impact they have on her physical mobility, could substantially influence her decision about whether to pursue a conviction.

## 2. *Mental Health*

Victims of domestic violence often suffer a broad range of psychological difficulties including depression, post-traumatic stress disorder ("PTSD"), extreme anxiety, and substance abuse.<sup>26</sup> For example, one study of victims involved in prosecutions of their abusive partners found that nearly 80% suffered from clinically diagnosable depression.<sup>27</sup> Given that depressive symptoms include a generalized sense of hopelessness, low levels of energy, interest and motivation, and even thoughts of suicide,<sup>28</sup> prosecutors must consider that a number of their clients may have difficulty mustering and maintaining the energy, focus, and enthusiasm necessary for a long court process. Furthermore, many depressed victims may feel that the court system has little to offer them, given their own sense of helplessness about their situation.

Symptoms of PTSD are also common. One study of victims involved in the criminal court system found that almost 40% met formal diagnostic criteria for PTSD.<sup>29</sup> Victims experiencing PTSD may have extreme difficulty concentrating, feel constantly on guard or jumpy, and experience unpredictable outbursts of rage.<sup>30</sup> Also, when confronted with reminders of the abuse, battered women with

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25. Interview with Lorraine Chase, Supervisor of Victim/Witness Advocates Program, in Washington, D.C. (May 16, 2002).

26. See Diane Follingstad et al., *Factors Moderating Physical and Psychological Symptoms of Battered Women*, 6 J. FAM. VIOLENCE 81, 92 (1991) (noting that psychological affects of abuse, such as stress and anxiety, may be present whether or not a woman suffers physical injuries); see also Nadine J. Kaslow et al., *Factors that Moderate the Link Between Partner Abuse and Suicidal Behavior in African American Women*, 66 J. CONSULTING & CLINICAL PSYCHOL. 533, 537 (1998) (reporting that domestic abuse is often associated with high levels of distress, hopelessness, and alcohol and drug use); Lisa Goodman et al., *Obstacles to Victims' Cooperation With the Criminal Prosecution of Their Abusers: The Role of Social Support*, 14 VIOLENCE & VICTIMS 427, 428 (1999) [hereinafter Goodman, *Obstacles to Victims' Cooperation*]; Anita Kemp et al., *Post Traumatic Stress Disorder (PTSD) in Battered Women: A Shelter Example*, 4 J. TRAUMATIC STRESS STUD. 137, 143-44 (1991).

27. Goodman, *Obstacles to Victims' Cooperation*, *supra* note 26, at 435.

28. See generally AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 327 (4th ed. 2002) [hereinafter DSM IV] (describing symptoms of depression).

29. Mary Ann Dutton et al., *Court-Involved Battered Women's Responses to Violence: The Role of Psychological, Physical, and Sexual Abuse*, 14 VIOLENCE & VICTIMS 89, 97 (1999).

30. DSM IV, *supra* note 28, at 428.

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PTSD often experience flashbacks that make them feel as though they are actually reliving the trauma.<sup>31</sup> In the moment, these flashbacks are extremely overwhelming and frightening. They may also be accompanied by night terrors or repeated, disturbing memories, thoughts, or images of traumatic incidents.<sup>32</sup> In reaction, victims typically go to great lengths to avoid situations that remind them of the abuse.

It is no wonder, then, that going through the criminal court process may exacerbate these symptoms. Repeatedly coming to court or having to discuss the abuse to attorneys and others may be very difficult for a victim who is trying to avoid thinking about the brutality she has experienced. Similarly, seeing her abuser, particularly if she has to testify in front of him, may be enough to trigger frightening flashbacks. One woman described her experiences as follows:

That little stretch of hallway [to the courtroom] is like a long two- or three-mile walk, because the closer you get to the courtroom that you're going to, you have shortness of breath . . . You're going to have to relive that incident, that abuse . . . You're going to have to tell it. You're going to have to see the abuser. It's a big mental and physical setback to go, and you have to have the courage to do it . . . I was very afraid. There were times I went through anger, intense anger . . . there [were] times I sat there and I cried.<sup>33</sup>

As psychiatrist Judith Herman comments, “[i]f one set out by design to devise a system for provoking intrusive post-traumatic symptoms, one could not do better than a court of law.”<sup>34</sup>

Many battered women with PTSD also experience an emotional numbness, that is, a distancing from their feelings. This may make it easier to handle confrontations with reminders of the abuse, but it also can make victims appear unconcerned in court. Sometimes, victims can even “check out.”<sup>35</sup> Without even realizing it, they can dissociate from what is happening and become unresponsive. As one

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31. See Kemp et al., *supra* note 26, at 138 (reviewing studies of battered women with PTSD showing that victims psychologically reexperience the trauma).

32. DSM IV, *supra* note 28, at 428.

33. Arlene N. Weisz, *Legal Advocacy for Domestic Violence Survivors: The Power of an Informative Relationship*, 80 FAMS. IN SOC'Y 138, 144 (1999) [hereinafter Weisz, *Legal Advocacy*].

34. HERMAN, *supra* note 16, at 72.

35. See Karla Fischer & Mary Rose, *When “Enough is Enough”: Battered Women’s Decision Making Around Court Orders of Protection*, 41 CRIME & DELINQ. 414, 419 (1995) (remarking that the court experience is so devastating that it can produce a “traumatic dissociative reaction”).

woman described it: "I really didn't know if I was going to be able to handle it . . . . When I walked in there and I sat down, that was me physically in there, but that was not me . . . . I was not there that day . . . . I was scared to death."<sup>36</sup> In these ways, PTSD interferes with women's desire to cooperate with the prosecution, as well as their ability to do so.

## B. Relational Factors

### 1. Potential for Physical Retaliation by the Batterer

A substantial number of women express fear that their batterer will retaliate with more violence if they continue with prosecution.<sup>37</sup> In one study, participants rated "fear of the batterer" as the number one reason they were unwilling to cooperate with the government.<sup>38</sup> For many victims, the safety of children, family, or friends also may be an overriding concern.<sup>39</sup>

These concerns are not unfounded. Battered women are most likely to be killed while taking steps to end the relationship with the abuser or while seeking help from the legal system<sup>40</sup> and at least 30% of all battered women who pursue legal action are reassaulted during the process of prosecution.<sup>41</sup> Many batterers have kidnapped their victims and seriously injured or even killed them to prevent them from testifying in court<sup>42</sup>—a graphic reminder that the justice system often is unable to protect victims from harm. Even perpetrator incarceration may be insufficient to remove this risk, because in some instances, an abuser's friends or family may seek revenge for his

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36. *Id.*

37. See Barbara Hart, *Battered Women and the Criminal Justice System*, in *DO ARRESTS AND RESTRAINING ORDERS WORK?* 98, 99 (Eve S. Buzawa & Carl G. Buzawa eds., 1996); see also Erez & Belknap, *supra* note 7, at 259 (reporting one study in which nearly half of victims dropped their complaint against their abuser, most commonly because of fear for their safety).

38. Erez & Belknap, *supra* note 7, at 260.

39. See BROWNE, *supra* note 6, at 66 (explaining that often, an abuser not only threatens the victim, but also the people she might go to for help, such as relatives or friends).

40. See *id.* at 114 (stating that the abuser's violence often increases after separation); see also Geraldine Butts Stahly, *Battered Women: Why Don't They Just Leave?*, in *LECTURES ON THE PSYCHOLOGY OF WOMEN* 289, 301 (Joan C. Chrisler et al. eds, 2d ed. 2000) [hereinafter Stahly, *Battered Women*] (relaying that the U.S. Department of Justice found that 70% of violence occurred when the women had already ended the relationship).

41. Ford & Regoli, *supra* note 15, at 195 (asserting that according to research conducted, allowing the victims to drop prosecutions resulted in the lowest rate of pre-settlement violence).

42. See Hart, *supra* note 37, at 100-01.

arrest or attempt to prevent a victim from testifying.<sup>43</sup>

Despite their fears of retaliatory abuse, however, many women wish to have their abusive partners convicted precisely because of the level of violence. For example, an unpublished study of battered women involved in the prosecution of their batterers found that the more severe the physical abuse and the greater the victim's perception of future risk to herself, her children, or her significant others, the more likely it was that she would desire a conviction.<sup>44</sup> Another study also found that the severity of physical abuse predicted victims' cooperation and follow-through with prosecution.<sup>45</sup>

These findings suggest that victims are aware of the potential help the court system can provide. It appears, however, that their inclination to use the justice system is appropriately tempered by their sense of what actions would be most helpful and least risky given their own particular situation.

## 2. *Dependency on Batterer for Resources*

Victims may be vulnerable to batterer retaliation through a variety of means beyond physical violence. For instance, a victim may be dependent upon her partner for money, health care, childcare, transportation, or housing.<sup>46</sup> A study of women seeking civil protection orders in Washington, D.C., found that 28% were dependent on their partner for help with child care, 26% for food or clothing, 18% for transportation, 15% for a place to live or money for rent, and 5% for medical insurance.<sup>47</sup>

A victim who takes overt steps to address the violence runs the risk that her partner will cut off financial support or remove her or the children from his health care policy.<sup>48</sup> Even when ordered to provide

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43. Interview with Lorraine Chase, Supervisor of Victim/Witness Advocates Program, D.C. U.S. Attorney's Office, in Washington, D.C. (Sept. 26, 2001).

44. See Margret E. Bell et al., *Understanding Domestic Violence Victims' Decision-making in the Justice System: Predicting Desire for a Criminal Conviction* 15 (2003) (unpublished manuscript, on file with authors).

45. See Richard J. Gelles, *Abused Wives: Why do they Stay?*, 38 J. MARRIAGE & FAM. 659, 661-62 (1976).

46. See *id.* at 663-64.

47. Margret E. Bell & Lisa A. Goodman, Unpublished Data: *Supporting Battered Women Involved With the Court System: An Evaluation of a Law School-Based Advocacy Intervention* (2001) [hereinafter Bell & Goodman, Unpublished Data] (on file with authors); see also generally Margret E. Bell & Lisa A. Goodman, *Supporting Battered Women Involved with the Court System: An Evaluation of a Law School-Based Advocacy Intervention*, 7 VIOLENCE AGAINST WOMEN 1377 (2001) [hereinafter Bell & Goodman, *Supporting Battered Women*].

48. See Rachel Rodriguez, *Perception of Health Needs by Battered Women*, 12 RESPONSE TO THE VICTIMIZATION OF WOMEN AND CHILDREN 22, 23 (1989); see generally Geraldine

spousal or child support by the court, many batterers refuse to make payments or delay doing so for long periods of time.<sup>49</sup> Other perpetrators refuse to assist with childcare or to provide access to transportation, intentionally interfering with the victim's ability to maintain employment or interpersonal relationships.<sup>50</sup> Still others force the victim to move out of the house or apartment they share, leaving her homeless.<sup>51</sup> Such difficulties may be even more likely to arise if the relationship terminates or the batterer is imprisoned, both possible consequences of court involvement.

Immigrant women may be particularly vulnerable to retribution, as their residency status may depend on their relationship with the batterer. Her partner's conviction for a domestic violence offense may make him subject to deportation, thus leaving her own petition for legal residency in jeopardy<sup>52</sup> or, in retaliation for court involvement, he may decline to sponsor the victim for citizenship or threaten to inform immigration authorities of her illegal status, thereby increasing her own risk of deportation.<sup>53</sup> For example, one woman described how her husband "would say that [law enforcement] would take me back to Mexico and not give me help because I didn't have papers. I would get scared. Life with him and

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Butts Stahly, *Women with Children in Violent Relationships: The Choice of Leaving may Bring the Consequence of Custodial Challenge*, 2 J. AGGRESSION, MALTREATMENT & TRAUMA 239, 240 (1999) [hereinafter Stahly, *Women with Children in Violent Relationships*] (asserting that when the woman leaves the relationship, the man's fear of loss of control and diminished power are acute, thus leading to an escalation of violence and harassment).

49. This observation is based on the first author's personal experience in working with hundreds of clients litigating domestic violence cases. See also Sarah M. Buel, *Domestic Violence and the Law: An Impassioned Exploration for Family Peace*, 33 FAM. L.Q. 719, 743 (1999) (noting that batterers often use nonpayment of child support as a means of harassing the victim and forcing her to return because of a lack of financial resources); Anna Marie Smith, *The Sexual Regulation Dimension of Contemporary Welfare Law: A Fifty State Overview*, 8 MICH. J. GENDER & L. 121, 155-56 (2002) (reporting that where an absent father does assist financially, he is also more likely to demand an increased role in the child's life—a harmful occurrence if the father is abusive).

50. See generally Ola W. Barnett, *Why Battered Women do not Leave, Part 2: External Inhibiting Factors — Social Support and Internal Inhibiting Factors*, 2 TRAUMA, VIOLENCE & ABUSE 3, 5 (2001) (noting that batterers tend to isolate their victims from common sources of social support); Linda E. Rose et al., *The Role of Social Support and Family Relationships in Women's Responses to Battering*, 21 HEALTH CARE FOR WOMEN INT'L 27, 34 (2000) (describing abusers' methods of isolating their victims from others, such as erasing phone messages).

51. Bell & Goodman, Unpublished Data, *supra* note 47.

52. See Tien-Li Loke, Note, *Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women*, 6 B.U. PUB. INT. L.J. 589, 615-16 (1997) (noting that although the Violence Against Women Act has reduced the scope of this problem, it has not been eliminated entirely).

53. See Acevedo, *supra* note 24, at 264.

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the abuse was better than my life in Mexico, the better of two hells.”<sup>54</sup> Faced with the risk of losing these and other important resources, many battered women may feel that a criminal prosecution of their batterer is not in their best interests.

### 3. *Emotional Connection to Batterer*

For many battered women, one of the most confusing elements of their abusive relationships is their continued emotional connection to the batterer. Some of these feelings may be due to what Karen Landenburger describes as the “entrapment” which occurs during the “binding” and “enduring” phases of the relationship.<sup>55</sup> That is, a victim may come to tolerate or rationalize the abuse out of a sense that she is too invested in the relationship to consider leaving it. The batterer’s own denial about the seriousness of the abuse and his promises that it will never happen again also may exert considerable influence, particularly if he has isolated her from others who might challenge this perspective.

Other victims feel that there are or were genuinely good aspects of their relationships with their partners, despite the violent episodes.<sup>56</sup> As one victim expressed it: “He’s all I’ve got. My dad’s gone, and my mother disowned me when I married him. And he’s really special. He understands me, and I understand him. Nobody could take his place.”<sup>57</sup>

A woman’s emotional attachment to her partner may also lead to concerns that he could be harmed through his involvement in the criminal justice system.<sup>58</sup> This may be particularly true when the batterer (or his family and friends) explicitly makes this connection, by pleading: “If you loved me, you wouldn’t be doing this.” Women who want the violence, but not the relationship, to end, may well decide that an ongoing criminal prosecution would destroy the relationship and that therefore it is the wrong strategy.

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54. *Id.*

55. Karen M. Landenburger, *Exploration of Women’s Identity: Clinical Approaches with Abused Women*, in *EMPOWERING SURVIVORS OF ABUSE: HEALTH CARE FOR BATTERED WOMEN AND THEIR CHILDREN* 61, 63-64 (Jacquelyn C. Campbell ed., 1998).

56. *See id.* at 66.

57. Kathleen J. Ferraro & John M. Johnson, *How Women Experience Battering: The Process of Victimization*, 30 *SOC. PROBS.* 325, 330 (1983).

58. *See* Lauren Bennett et al., *Systemic Obstacles to the Criminal Prosecution of a Battering Partner: A Victim Perspective*, 14 *J. INTERPERS. VIOLENCE* 761, 769 (1999) [hereinafter Bennett, *Systemic Obstacles to Criminal Prosecution*].

#### 4. *Fear of Loss of or Harm to Children*

Many battered women fear that contact with the court system or the end of their relationship might lead to the loss of their children. This fear is justified for two reasons. First, in their role as government officials, court personnel may be required to report instances of suspected child abuse to the local department of social services. Adult-on-adult violence in the home, regardless of whether a child is physically harmed, often falls within these reporting requirements.<sup>59</sup> Fear of social service involvement, particularly for women who have had previous contact with the agency, may entail an unacceptable level of risk.<sup>60</sup>

Second, many women fear that their partners may abduct their children, physically harm them, or initiate a custody battle in retaliation for their cooperation with a prosecution.<sup>61</sup> In estranged relationships, threats against the children often become “tools of terrorism”<sup>62</sup> with which the abuser continues the intimidation, manipulation, and control of his former partner. Concern for their children’s safety may lead women to rule out prosecution as a viable option with which to address the abuse. As one woman stated, “I will lie to keep him out of jail if that’s what it takes to keep my kids safe.”<sup>63</sup>

#### 5. *Availability of Social Support*

The availability of emotional and tangible support also influences a victim’s decision to participate in a prosecution. In general, most battered women report that the abuser’s controlling behavior disrupts their social lives and relationships with others.<sup>64</sup> Studies show that battered women report having fewer people with whom they can talk about personal problems or ask for tangible support,<sup>65</sup> as well as

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59. See Patricia K. Kerig & Anne E. Fedorowicz, *Assessing Maltreatment of Children of Battered Women: Methodological and Ethical Considerations*, 4 CHILD MALTREATMENT 103, 103 (1999).

60. See Randy H. Magen, *In the Best Interests of Battered Women: Reconceptualizing Allegations of Failure to Protect*, 4 CHILD MALTREATMENT 127, 128 (1999).

61. See Stahly, *Battered Women*, *supra* note 40, at 301-02 (highlighting a study of over 100,000 women who had initially reported their abusive husbands). In the study, 34% of the husbands had threatened kidnapping, and 11% had actually kidnapped the child. See *id.*

62. Stahly, *Women With Children in Violent Relationships*, *supra* note 48, at 243.

63. Bennett, *Systemic Obstacles to Criminal Prosecution*, *supra* note 58, at 769.

64. See Rose et al., *supra* note 50, at 34.

65. See Roger E. Mitchell & Christine A. Hodson, *Coping with Domestic Violence: Social Support and Psychological Health Among Battered Women*, 11 AM. J. COMMUNITY PSYCHOL. 629, 645-47 (1983).

less supportive responses from the family and friends they do have.<sup>66</sup>

Emotional support, such as having others who can listen, be trusted, and provide reassurance, encouragement, and companionship, has been shown to buffer the damaging consequences of stress.<sup>67</sup> Such a buffer may be particularly important for battered women who are pursuing a criminal prosecution of their abusive partners. The court process itself is often extremely emotionally draining, as victims are forced to tell their stories again and again, participate in lengthy, repetitive, and confusing proceedings, repeatedly face or confront their abuser, and give up even the semblance of privacy.<sup>68</sup> In addition, these women have to face a series of difficult decisions, such as whether to end their relationship, seek jail time for their partner, or permit visitation with the children. Each of these decisions can result in significant life changes. Victims who lack the emotional support to help them weather these challenges may feel unable to pursue a conviction.

Many victims also lack access to tangible support—the time, money, transportation, or other concrete resources to invest in prosecution.<sup>69</sup> Some women find it difficult or impossible to take time away from work or arrange for childcare. Indeed, one study of low-income victims found that access to sources of tangible support was a major predictor of whether a victim wished to continue with the prosecution.<sup>70</sup>

This finding is further supported by other research suggesting that a victim's degree of access to social support affects her strategic responses to violence. For example, in one study, women with greater access to social support engaged in a greater number of help-seeking efforts than did other women.<sup>71</sup> It appears, then, that the

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66. See *id.* at 647 (noting that some family and friends might be reluctant to involve themselves in a marital relationship that has a high level of violence); see also Cheribeth Tan et al., *The Role of Social Support in the Lives of Women Exiting Domestic Violence Shelters*, 10 J. INTERPERS. VIOLENCE 437, 443 (1995) (reporting that most women, 79% of those surveyed, identify social support systems as an area of their lives they seek to improve).

67. See Raymond B. Flannery, Jr., *Social Support and Psychological Trauma: A Methodological Review*, 3 J. TRAUMATIC STRESS 593, 596 (1990).

68. See Bennett et al., *Systemic Obstacles to Criminal Prosecution*, *supra* note 58, at 767.

69. See Goodman et al., *Obstacles to Victims' Cooperation*, *supra* note 26, at 439; see also Bell & Goodman, *Supporting Battered Women*, *supra* note 47, at 1379-82.

70. See Goodman et al., *Obstacles to Victims' Cooperation*, *supra* note 26, at 439 (finding that those who reported a higher level of help, such as someone to help with daily chores or someone to provide an emergency loan, were about twice as likely to cooperate with the prosecution).

71. See Mitchell & Hodson, *supra* note 65, at 651-52.

social support available to a victim contributes to her ability to take steps to end the violence, including her ability to participate in a criminal prosecution of her abusive partner.

#### 6. *Loss of Community or Family*

Some victims are concerned that they will lose community or familial support if they involve their partner with the criminal justice system. This loss of support could range from neighbors refusing to talk to her, to community members extruding her from their communities.<sup>72</sup> Many families and communities believe that abuse is a private matter, to be handled outside the scope of the courts. Many victims thus fear that their involvement with the justice system, particularly if it leads to the end of their marriage, will lead to censure or loss of support from family members.<sup>73</sup>

### C. *Institutional Factors*

#### 1. *Negative perceptions of the justice system*

Many women, particularly those from minority racial or ethnic groups, distrust the criminal justice system and assume that their involvement in it will be unpleasant and possibly damaging.<sup>74</sup> Their own prior experiences with the system, or those of their friends, may have made them wary of losing control of the process, experiencing racism, encountering victim-blaming attitudes, or even facing criminal charges themselves.<sup>75</sup>

Other victims believe (often correctly) that a conviction or other court intervention will not prevent further violence. In one study, participants were asked to assess the impact of various factors on their unwillingness to cooperate with a criminal prosecution against their batterer.<sup>76</sup> On average, they rated "ineffectiveness of the system" a

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72. See, e.g., Andrea Smith, *Keeping Safe: Native Women Mobilize Their Own Coalition Against Domestic Violence*, in *COLORLINES* 29, 29 (2002) (describing how women and their children in four Native American tribes were threatened, stalked, physically attacked and slandered for reporting their spouse's abuse).

73. Lois Wessel & Jacquelyn C. Campbell, *Providing Sanctuary for Battered Women: Nicaragua's Casas de la Mujer*, 18 *ISSUES IN MENTAL HEALTH NURSING* 455, 468 (1997) (explaining that many families are embarrassed by the violence and encourage women to stay with the abusing husbands).

74. Bennett et al., *Systemic Obstacles to Criminal Prosecution*, *supra* note 58, at 769 (finding that victims whose batterers are African American may be particularly hesitant to send their batterer to jail if they view the system as oppressive or racist).

75. See Erez & Belknap, *supra* note 7, at 258.

76. See *id.* at 260.

4.35 on a one to five scale.<sup>77</sup>

## 2. *Confusing and Frustrating Nature of the System*

The very nature and structure of the criminal justice process also influences victims' unwillingness to be involved in it.<sup>78</sup> The slow speed of the system and the length of the process, particularly the delay before the batterer experiences consequences for his behavior, often are significant deterrents for victims. One participant in a survey stated that she felt like she "was doing time instead of the defendant."<sup>79</sup>

Victims also are intimidated and confused by the complexity of the court process. Some women erroneously believe that they cannot be involved with their partner and simultaneously seek criminal or civil remedies.<sup>80</sup> Confusion of this sort often leads to serious consequences. For example:

One typical victim expected that her civil protection order hearing would be the place where her batterer would receive his punishment for assaulting her. When he did not receive any jail time, but instead received a piece of paper telling him to stay away from her, the victim was aghast. She was so disgusted with the mere "slap on the wrist" that the court gave him that she said she was unlikely to appear for any other court dates. This meant that she would not show for the criminal trial when the batterer actually could be punished for assaulting her.<sup>81</sup>

The frequent understaffing of court systems, leaving personnel too pressed for time to explain procedures or follow up with victims, exacerbates this situation.<sup>82</sup>

### D. *Cultural Identification and Beliefs*

#### 1. *Concern for Community*

Some victims are reluctant to turn to the justice system for help because they feel it would confirm negative stereotypes about their

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77. *Id.* Ineffectiveness of the system was the second most significant reason why victims were unwilling to cooperate, trailing only fear of the batterer which averaged a 4.51 on the scale. *Id.*

78. See Bennett et al., *Systemic Obstacles to Criminal Prosecution*, *supra* note 58, at 766-67.

79. *Id.* at 768.

80. This observation is based on the first author's personal experience in working with hundreds of clients in litigating domestic violence cases.

81. Bennett et al., *Systemic Obstacles to Criminal Prosecution*, *supra* note 58, at 767.

82. See *id.* at 768.

community. For example, same-sex couples may be concerned that having their partner arrested may reinforce the idea that their relationships are “deviant” or “abnormal.”<sup>83</sup> African-American women may be wary of racism in the system’s handling of their partners and may be concerned about bearing any responsibility for another Black man going to prison.<sup>84</sup>

## 2. *Specific Beliefs*

A whole host of religious and cultural beliefs serve as barriers to women’s use of the justice system. While a full discussion of these barriers is beyond the scope of this paper, they include beliefs that families must be preserved at all costs,<sup>85</sup> that men have legitimate authority over women,<sup>86</sup> that when women “screw up,” they deserve to be hurt,<sup>87</sup> and that domestic violence is a private matter—“dirty laundry” that should not be aired.<sup>88</sup> These and other cultural messages strongly influence women’s willingness to work with a prosecutor and can make the entire criminal process feel extremely shaming.

### E. *Women’s Perceptions of Contextual Factors: The Stage of Change Concept*

Alongside the range of contextual barriers described above, prosecutors must consider how battered women in their offices think about the violence in their lives. Women will be more or less willing to transcend internal and external obstacles and to accept the

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83. See Angela R. Bethea et al., *Violence in Lesbian Relationships: A Narrative Analysis 14* (Poster session presented at the annual meeting of the American Psychological Association, Boston, Mass. 1999) (transcript on file with authors).

84. See Bennett et al., *Systemic Obstacles to Criminal Prosecution*, *supra* note 58, at 769; see also Beth Richie, *Battered Black Women: A Challenge for the Black Community*, 16 BLACK SCHOLAR 40, 41 (1985) (asserting that it is a painful task for black women to call attention to violence in their community when there is already so much negative information existing about black families).

85. See Acevedo, *supra* note 24, at 262-63 (quoting women who felt it was their duty as wives and mothers to stay with the abuser to see if he would change).

86. See *id.* at 247 (reporting that Hispanic families tend to adhere to specific roles in marriage, in which the male is the head of the household and decision maker, and the female is self-sacrificing and submissive); see also Carl C. Bell & Jacqueline Mattis, *The Importance of Cultural Competence in Ministering to African American Victims of Domestic Violence*, 6 VIOLENCE AGAINST WOMEN 515, 521 (2000).

87. See Acevedo, *supra* note 24, at 260 (explaining the perception that women who accept the abuse are partially responsible); see also Doris Williams Campbell & Faye Annette Gary, *Providing Effective Interventions for African American Battered Women: Afrocentric Perspectives*, in EMPOWERING SURVIVORS OF ABUSE: HEALTH CARE FOR BATTERED WOMEN AND THEIR CHILDREN 229, 235 (Jacquelyn C. Campbell ed., 1998).

88. See J.L. Jasinski & L.M. Williams, *Introduction*, in PARTNER VIOLENCE: A COMPREHENSIVE REVIEW OF 20 YEARS OF RESEARCH ix, xii (J.L. Jasinski & L.M. Williams eds., 1998).

compromises and consequences of criminal prosecution depending on how they understand the abuse. The Transtheoretical Model of Behavior Change, or Stages of Change Model,<sup>89</sup> helps conceptualize victims' understanding of the violence and, consequently, what remedial actions they are willing to take, as a gradual process that occurs in stages.<sup>90</sup> Women move through these stages at different speeds, and sometimes cycle back through earlier stages before moving ahead.

In brief, the first stage of the transtheoretical model as adapted by Jody Brown for use with battered women is *precontemplation*, in which a woman who has been battered minimizes and denies the problem and has no intention of leaving her partner.<sup>91</sup> In the second stage, *contemplation*, a victim begins to think about the possibility of making changes; in the third stage, *preparation*, she begins actively planning to change; in the fourth stage, *action*, she actually begins to make changes; and in the fifth stage, *maintenance*, she tries to maintain her progress.<sup>92</sup> Overall, women in earlier stages of change are unlikely to initiate or cooperate with prosecution regardless of whether they have had to face many of the obstacles described above.<sup>93</sup> In contrast, women who have reached the later stages may be more ready to participate in a criminal prosecution even if it means overcoming some near-overwhelming obstacles.<sup>94</sup>

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89. The Transtheoretical Model of Behavior Change is one way of understanding the process individuals undergo in deciding to make changes in their lives. Researchers have previously used the Stages of Change framework to understand the process of making changes in psychotherapy, implementing an exercise program, modifying eating habits, and engaging in various health behaviors such as using condoms and applying sunscreen. See, e.g., James O. Prochaska & Carlo O. DiClemente, *Transtheoretical Therapy: Toward a More Integrative Model of Change*, 19 *PSYCHOTHERAPY: THEORY, RESEARCH, AND PRACTICE* 276, 277 (1982); see also Bess H. Marcus et al., *Self-Efficacy, Decision-Making, and Stages of Change: An Integrative Model of Physical Exercise*, 24 *J. APPLIED SOC. PSYCHOL.* 489, 502 (1994); Prochaska, *supra* note 18, at 400.

90. See Jody Brown, *Working Toward Freedom from Violence: The Process of Change in Battered Women*, 3 *VIOLENCE AGAINST WOMEN* 5, 7 (1997) (explaining that the process of change is not simple; complicating factors include lack of resources, availability of alternatives and pressures from family and society); see also Eileen A. McConaughy et al., *Stages of Change in Psychotherapy: Measurement and Sample Profiles*, 20 *PSYCHOTHERAPY: THEORY, RESEARCH, AND PRACTICE* 368, 369 (1983); L. Haggerty & Lisa A. Goodman, *Using Stage Based Interventions for Victims of Intimate Partner Violence in a Medical Setting*, *J. OBSTETRIC, GYNECOLOGIC & NEONATAL NURSING* 7 (forthcoming 2003).

91. See Brown, *supra* note 90, at 10.

92. *Id.* at 10-15.

93. See *id.* at 11.

94. See *id.* at 13.

## III. AN ALTERNATIVE MODEL: PROSECUTION-IN-CONTEXT

The above discussion demonstrates how profoundly a woman's particular psychosocial context shapes the goals, priorities, and concerns she brings to the criminal justice system. It also makes clear that addressing a victim's long-term safety often is far more complex than prosecutors traditionally have recognized. Yet, a prosecutor's success in fostering both an immediate alliance and long-term trusting relationship with the victim, and ultimately increasing her safety, likely depends upon his or her willingness to understand and work within this context. This vision of a "prosecution-in-context" requires attention to the victim's goals and priorities in order to enable the government to respond more flexibly to her safety concerns while simultaneously ensuring offender accountability.

What would "prosecution-in-context" look like? We suggest a package of reforms that, although modest, could significantly impact victim safety and trust in the justice system. In overview, we propose that prosecutors: (1) connect victims with intensive, ongoing *advocacy services*; (2) expand their range of responses to intimate partner crime to allow greater *flexibility* in response to victim needs; and (3) increase communication and *coordination* with private attorneys and advocates, community agencies, and other institutional sources of help for battered women.<sup>95</sup>

A. *Advocacy Services*

By helping with safety-planning, offering emotional support, and providing information about and access to community resources and the court process, advocates have enormous potential to help victims increase their long-term safety and overcome many of the obstacles to participation in prosecution.<sup>96</sup> But not all advocacy programs fulfill this promise.

For example, although an increasing number of prosecutors'

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95. It is important to note that some of the factors described earlier impact a victim's *desire* for a conviction, whereas others affect her *ability* to pursue a conviction. This distinction may affect the way a prosecutor chooses to respond to these concerns. For example, it would be a misplaced expenditure of time and energy if a prosecutor focused on acknowledging the victim's emotional connection to the batterer only to discover that what the victim really needs to participate in the prosecution is access to tangible resources, such as transportation or childcare. Similarly, the exact nature of a prosecutor's response should vary depending on the particular situation of the individual victim with whom he or she is working. For instance, some victims may need only an acknowledgement of their emotional concerns while others might need more ongoing, constant support. Accordingly, the following discussion is meant to be suggestive, not definitive or prescriptive.

96. See Bell & Goodman, *Supporting Battered Women*, *supra* note 47, at 1385.

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offices have developed in-house victim advocacy programs, the work of these advocates is limited by the fact that they are employed by, and therefore have an institutional loyalty to, the government. Victims leery of governmental intrusion in their lives are unlikely to easily establish a trusting, open relationship with a publicly employed advocate. And under certain circumstances, such suspicion is warranted. Government-employed advocates typically are required to share with the prosecutor, and in turn the defense attorney, information considered “exculpatory”—such as the victim’s substance use, mental health status or participation in therapy—that might tend to negate the defendant’s legal guilt in the eyes of a judge or jury. Government advocates may be required to report a victim to protective services if she indicates that the abuse in the home occurred in front of children.<sup>97</sup> Disclosures such as these can deeply undermine a victim’s ability to trust an advocate, regardless of the good intentions and commitment of the individual service provider. As a result, private advocates, including those from domestic violence shelters, coalitions or law school clinical programs are generally better suited to developing the kind of trusting relationship that is a necessary prerequisite for effective advocacy.

Like private advocates, private attorneys retained by the victim to assist with cases such as civil protection order suits are well positioned to help her explore the potential benefits and drawbacks of a criminal prosecution, including the possible impact on her long-term safety. A victim’s relationship with her own lawyer is likely to be a rich source of trust and support, particularly in light of the inherent protection of the attorney-client privilege and the intensive time a civil lawyer typically spends with the victim soon after a violent incident occurs.<sup>98</sup> These features of the relationship are likely to encourage a strong degree of confidence in and connection with the attorney.

In addition, maximally effective advocacy requires the provision of intensive services on an ongoing, long-term basis. Although little

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97. Mandatory reporting requirements vary across jurisdictions, and differ primarily on the basis of the profession of the advocate. For example, social workers uniformly are required to report certain forms of child abuse. See INST. OF MED., CONFRONTING CHRONIC NEGLECT: THE EDUCATION AND TRAINING OF HEALTH PROFESSIONALS ON FAMILY VIOLENCE at app. C (2001) (detailing state-by-state reporting standards), available at <http://books.nap.edu/books/039074312/html/205.html#pagetop>.

98. Civil protection order cases typically are litigated within ten to thirty days of filing, in contrast to criminal prosecutions, which typically take several months to go to trial. See BARBARA J. HART, NAT’L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, STATE CODES ON DOMESTIC VIOLENCE: ANALYSIS, COMMENTARY AND RECOMMENDATIONS 8 (1992).

empirical research exists on this point, expert experience and clinical knowledge strongly support the idea that effective advocacy requires more than mere accompaniment in the courtroom or a conversation about how to navigate the court system.<sup>99</sup> Often, however, a government's entire prosecutorial victim advocacy program is comprised simply of this, typically because there are insufficient numbers of advocates to handle the large numbers of victims requesting their assistance.<sup>100</sup> In Washington, D.C., for example, six victim advocates at the U.S. Attorney's Office contact approximately 200 new victims at the court each month, in addition to carrying an ongoing caseload of approximately 150 victims.<sup>101</sup> Such staffing shortages are typical of jurisdictions nationwide,<sup>102</sup> leaving most victims without a continuous relationship with a single advocate and without the more extensive and particularized help that such an ongoing relationship could foster.

Only a handful of empirical studies on the effectiveness of intensive advocacy exist. However, those that have been done confirm the critical role of intensive advocacy in increasing women's safety. First, a study conducted in East Lansing, Michigan, compared two groups of battered women leaving a domestic violence shelter.<sup>103</sup>

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99. Although such information is crucial, it is far from sufficient.

100. See Bell & Goodman, *Supporting Battered Women*, *supra* note 47, at 1377-78 (commenting that although the passage of the Violence Against Women Act increased federal funds available for victim services, advocates are often unable to fully address the complex problems victims bring to them because of inadequate resources and staff).

101. Interview with Lorraine Chase, Supervisor of Victim/Witness Advocates Program, in Washington, D.C. (May 16, 2002). See also U.S. ATTORNEY'S OFFICE, DISTRICT OF COLUMBIA, VICTIM/WITNESS ASSISTANCE UNIT (last visited Jan. 16, 2003), at <http://www.usdoj.gov/usao/dc/vw/vw.html>.

102. See Kit Kinports & Karla Fischer, *Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes*, 2 TEX. J. WOMEN & L. 163, 173 (1993) (noting that the majority of domestic violence service providers nationwide report that victim demand for advocates far exceeds their availability). See generally Elena Salzman, *The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention*, 74 B.U. L. REV. 329, 340 (1994).

103. See Cris M. Sullivan, *The Provision of Advocacy Services to Women Leaving Abusive Partners: An Exploratory Study*, 6 J. INTERPERS. VIOLENCE 41, 43-44 (1991); see also Cris M. Sullivan & William S. Davidson II, *The Provision of Advocacy Services to Women Leaving Abusive Partners: An Examination of Short-Term Effects*, 19 AM. J. COMMUNITY PSYCHOL. 953, 956 (1991); Cris M. Sullivan et al., *An Advocacy Intervention Program for Women with Abusive Partners: Initial Evaluation*, 20 AM. J. COMMUNITY PSYCHOL. 309, 312 (1992) [hereinafter Sullivan, *Initial Evaluation*]. See generally Cris M. Sullivan et al., *An Advocacy Intervention Program for Women with Abusive Partners: Six-Month Follow-Up*, 22 AM. J. COMMUNITY PSYCHOL. 101, 107-17 (1994); Cris M. Sullivan & Deborah I. Bybee, *Reducing Violence Using Community-Based Advocacy for Women with Abusive Partners*, 67 J. CONSULTING & CLINICAL PSYCH. 43, 48 (1999) (discussing long term outcomes of the study).

One was a control group in which women received no additional services as part of the study; in the other, each woman was assigned a trained college-student volunteer who served as her advocate for four to eight hours per week over the course of ten weeks.<sup>104</sup> The advocacy work focused on helping each woman assess her personal needs and goals and then assisting her in obtaining limited or difficult-to-access community resources, such as housing, employment, legal assistance, transportation, child care, health care, or counseling for herself or her children.<sup>105</sup>

The researchers interviewed both groups of women every six months for two years and found that women in the advocacy group reported less physical violence than the women in the control group.<sup>106</sup> In fact, over twice as many women in the advocacy group experienced *no* violence whatsoever during the two-year period.<sup>107</sup> They also reported having a higher quality of life and perceived themselves as more effective in obtaining needed resources and interpersonal support.<sup>108</sup> In addition women in the advocacy group who wished to end their abusive relationships reported more success in doing so than women in the control group.<sup>109</sup>

In a second study, conducted in suburban Chicago, advocates at a local shelter contacted victims following any police visit to their home, interviewing women regardless of whether an arrest had occurred.<sup>110</sup> During these contacts, advocates provided victims with information about civil protection orders, explained the prosecutorial process, and referred victims to resources to assist them with tangible needs such as child care or welfare.<sup>111</sup> When applicable,

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104. See Sullivan & Davidson, *supra* note 103, at 955.

105. See Sullivan, *Initial Evaluation*, *supra* note 103, at 328 (detailing specific needs of battered women leaving shelters). See generally Sullivan & Bybee, *supra* note 103, at 45.

106. See Deborah I. Bybee & Cris M. Sullivan, *The Process Through Which an Advocacy Intervention Resulted in Positive Change for Battered Women Over Time*, 30 AM. J. COMMUNITY PSYCHOL. 103, 125 (2002) (discussing the success of the program and its positive effects on the women's lives); see also Sullivan, *Initial Evaluation*, *supra* note 103, at 328-29 (detailing results of the interviews).

107. See Sullivan & Bybee, *supra* note 103, at 51.

108. See *id.*

109. See *id.* at 47 (finding that 96% of the women in the advocacy group, compared with 87% in the control group, were more effective in ending their abusive relationships).

110. See Arlene N. Weisz et al., *An Ecological Study of Nonresidential Services for Battered Women Within a Comprehensive Community Protocol for Domestic Violence*, 13 J. FAM. VIOLENCE 395, 397 (1998) [hereinafter Weisz, *An Ecological Study*]; see also Weisz, *Legal Advocacy*, *supra* note 33, at 141.

111. See Weisz, *An Ecological Study*, *supra* note 110, at 397.

advocates also helped women complete court paperwork and accompanied women to court hearings.<sup>112</sup> On average, victims received six hours of service per month but were able to call for support at any time.<sup>113</sup>

Victims reported that as a result of their work with advocates, they understood their legal rights and options more fully, learned how the police were supposed to respond when called, and, in general, learned “how to handle the system better.”<sup>114</sup> Victims also reported being more assertive with police officers about their legal rights and were more likely to have subsequent police visits end with an arrest.<sup>115</sup> Having been encouraged by advocates to press charges, those victims who received protection orders were also more likely to have pursued criminal cases with completed prosecutions.<sup>116</sup> The researcher theorizes that these changes occurred because the physical presence, empathy, and information provided by advocates helped meet victims’ “relational needs” for caring and connectedness.<sup>117</sup>

Finally, a recent study evaluated the impact of a law school legal clinic in which students provided general advocacy services as well as representation to battered women involved in civil protection order cases.<sup>118</sup> In addition to providing the emotional support, safety-planning, information, and connections to community resources described earlier, the students also provided complete legal assistance by appearing in court as counsel for the victim, and by helping her draft and file paperwork, follow court procedures, and prepare for direct and cross-examination.<sup>119</sup> Over the course of six weeks, victims generally met with their advocates a total of four times, usually for two or more hours per session.<sup>120</sup> On average, women reported talking on the phone with their advocates an additional three times per week.<sup>121</sup> In comparison, the control group received the standard court services of the court.<sup>122</sup> The study found that relative to participants in the control group, clinic clients reported significantly

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112. *See id.*

113. *See id.* at 406.

114. Weisz, *Legal Advocacy*, *supra* note 33, at 142.

115. *See Weisz, An Ecological Study*, *supra* note 110, at 411-12.

116. *See id.* at 412.

117. *See Weisz, Legal Advocacy*, *supra* note 33, at 141.

118. *See Bell & Goodman, Supporting Battered Women*, *supra* note 47, at 1383-85.

119. *See id.* at 1385.

120. *Id.*

121. *Id.*

122. *See id.* at 1384.

higher levels of emotional support and lower levels of psychological and physical re-abuse six weeks after obtaining their civil protection orders.<sup>123</sup>

Given the impressive results obtained by these programs, it appears that intensive advocacy services have the potential to significantly aid battered women struggling with the obstacles and decisions described above. As a result, it appears that to maximize the impact of advocacy services, advocates should be (1) non-governmental, private actors; and (2) able to provide intensive, ongoing assistance to victims. To achieve this, prosecutors must establish close connections with private, intensive advocacy organizations, such as shelter programs, domestic violence coalitions, law school clinical programs, or other sources of civil legal assistance. Then, the government must ensure that appropriate referrals are made and must work collaboratively with such organizations to maximize their potential results.

It is also crucial that advocates themselves adopt the long-term, contextual perspective on safety we propose. While the work of many advocates nationwide already embodies this approach, what follows next are our own suggestions, as to how individuals working with battered women might address the multiple levels of factors influencing battered women's decision-making.<sup>124</sup>

1. *Make Visits to Court Less Stressful*

Help the victim limit her visits to court by identifying which dates she must be there and, when possible, let her know in advance of cancellations and postponements. Provide a private waiting area so that she can minimize contact with the abuser and arrange for friends, family members, or an advocate to accompany her to the courtroom. Help her feel in control of the process, for example, by having her choose where to sit in the courtroom.

2. *Provide Information to Prepare her for Court*

Work with the victim to prepare and practice her testimony in advance. Explain the criminal court process, including how it differs from civil proceedings, what type of remedies are available in each, and what kind of outcomes she might expect from the criminal case.

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123. See Bell & Goodman, *Supporting Battered Women*, *supra* note 47, at 1395-98.

124. We will not discuss the full scope of actions advocates might take in helping victims, as this has been comprehensively discussed elsewhere. See, e.g., JILL DAVIES ET AL., *SAFETY-PLANNING WITH BATTERED WOMEN: COMPLEX LIVES/DIFFICULT CHOICES* (1998).

### 3. *Acknowledge her Emotional Reluctance to Prosecute*

Remind her of the benefits of prosecution and the potential for escalation of the abuse. Inform her that she doesn't need to end the relationship to get help from the court and in general, focus on her desire to end the violence, even if she does wish to continue the relationship. Help her seek the outcomes she desires, such as batterer treatment. Recognize the obstacles that depression or poor mental health may present to participation.

### 4. *Do Everything Possible to Promote her Safety*

Help the victim conduct extensive safety planning, including helping her seek out family and friends who can provide protection and/or safe places to stay; making her workplace aware of her situation; and obtaining a civil protection order. Advocates should pressure prosecutors to respond decisively to pre-settlement threats or violence. Advocates should also maintain current contact information with the victim to facilitate prosecutors' communication with her post-disposition about possible parole, furloughs, or discharge of the abuser.

### 5. *Connect her with other Sources of Help*

Inform her of the possibility of receiving victim's compensation and help her make contact with community agencies that can assist with financial, housing, counseling, childcare, transportation, or immigration issues. Collaborate with and train child protective services staff to ensure the best treatment of the children in the larger context of an informed assessment of how the perpetrator's violence affected the entire family and may have influenced the victim's parenting behavior.

### 6. *Educate her Family and Friends*

A support system is critical if the victim is to make it through the prosecution process. Educate individuals close to the victim about the dynamics and nature of domestic violence and suggest ways in which they might help her, during her case and beyond.

### 7. *Strive to be Culturally Sensitive*

While emphasizing that the violence is not her fault, convey respect for her community and cultural values that may lead her to prioritize preservation of the relationship. Make efforts to connect her with advocates or other individuals who can help who are of her race, ethnicity, or culture.

### B. Flexibility

While advocacy may be a way to help victims overcome obstacles to prosecution by modifying various contextual factors, prosecutors also need to find ways to make the process of criminal prosecution itself more flexible and responsive to a victim's context. Flexibility is particularly important in light of the deep ambivalence most victims feel about their abusive partners. A woman may love her partner but also be afraid of him. She may want to stop the violence but not want him to go to jail. This "fluctuating readiness to consider change" greatly affects the way she reacts to the urging of others.<sup>125</sup>

For example, in the current no-drop prosecution context, the government emphasizes only one side of the conflict that the victim is experiencing.<sup>126</sup> By insisting that she participate in prosecuting her partner, without creating space to acknowledge the positive feelings she might have toward him, prosecutors risk pushing a victim toward the other side of her ambivalence, thereby strengthening her allegiance to the batterer.<sup>127</sup> More flexible policies could greatly increase the government's ability to "hold" the victim's ambivalence by explicitly recognizing the complexity of her situation—thus evoking less resistance from her.

One fundamental approach to increasing prosecutorial flexibility is to consider *not* prosecuting in certain cases, even where prosecutorial merit exists.<sup>128</sup> For example, in cases where there is a strong indication that the victim is at a high risk of felony-level or homicidal retribution and there is little hope that the perpetrator will receive a lengthy sentence, it seems reasonable for long-term victim safety to supercede offender accountability as the primary goal.<sup>129</sup>

Prosecutors tend to react to this option with extreme discomfort. Even if they recognize that a prosecution is unlikely to protect the

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125. WILLIAM R. MILLER & STEPHEN ROLLNICK, *MOTIVATIONAL INTERVIEWING: PREPARING PEOPLE TO CHANGE ADDICTIVE BEHAVIOR* 36 (1991).

126. Mandatory prosecution has received mixed results in studies analyzing recidivism. See, e.g., Davis, et al., *The Deterrent Effect of Prosecuting Domestic Violence Misdemeanors*, 44 *CRIME & DELINQ.* 434, 441 (1998).

127. See MILLER & ROLLNICK, *supra* note 125, at 44-45 (warning that paradoxical responses to treatment intervention can occur if a person believes "his or her personal freedom is being threatened").

128. This situation assumes, of course, that the victim herself opposes prosecution.

129. See generally Arlene N. Weisz et al., *Assessing the Risk of Severe Domestic Violence: The Importance of Survivors' Predictions*, 15 *J. INTERPERS. VIOLENCE* 75, 86-88 (2000) (concluding that victim's predictions on repeat abuse and future danger to their children are useful in determining long-term victim safety); Lauren Bennett et al., *Risk Assessment Among Batterers Arrested for Domestic Assault: The Salience of Psychological Abuse*, 6 *VIOLENCE AGAINST WOMEN* 1190, 1199-00 (2000).

victim in the long run and may even further endanger her, it is personally and politically difficult to depart from the traditional response in a high-risk case. This is particularly true where, as here, there is no guarantee that a different approach—intensive advocacy alone, for example—will ensure the victim's safety. When faced with the risk that a victim will be re-abused, most prosecutors take comfort in remaining within the professional norm.

But if the state is to embrace a more meaningful strategy for eradicating domestic violence, such options must remain on the table. Perhaps one way to diminish a prosecutor's concerns about risk-taking in this regard is to build in an experimental, evaluative component around prosecutorial decision-making so that ultimately the viability of alternative strategies may be known.

The suggestion that the government occasionally refrain from prosecution is in no way meant to suggest a return to prosecutorial practices of an earlier era. The gains that have been made in sending a clear message of condemnation to batterers must be preserved. Prosecutors must not cede control over the criminal justice system to abusers who can threaten or beat their partners into convincing prosecutors to drop charges. Prosecutors must confine this option to cases in which the facts support an assessment that dropping charges is in the best interests of the victim's long-term safety and must simultaneously provide the intensive advocacy services to best ensure that if any future violence does occur, the victim will be in a better position to be protected by prosecution.

Another, less radical way to increase flexibility is for the government to consider delaying prosecution in certain cases. That is, prosecutors could accumulate the evidence necessary to prosecute, but delay filing charges while the victim is provided with the advocacy services she needs to take action or to assess her situation with greater clarity.

Offering deferred sentencing in a broader range of cases than they might do ordinarily could be another way for prosecutors to respond flexibly to the victim's circumstances. In a deferred sentencing program, the defendant agrees to plead guilty up front. In exchange, the government agrees to recommend that sentencing be deferred for an extended period, during which time the defendant must strictly abide by various conditions, such as attending batterer's treatment sessions, complying with the terms of any civil protection order, or testing clean for substance abuse. If the perpetrator fulfills all of his obligations during this period, the prosecution will agree to the withdrawal of the guilty plea.

Deferred sentencing programs typically are limited to specific categories of domestic violence cases, such as those involving first-time offenders or situations of relatively low-level violence. A victim might feel safer and more heard by the government if, at her request, the perpetrator was offered an opportunity to avoid a term of imprisonment by complying with long-term restrictions designed to promote her safety and his rehabilitation. Again, prosecutors must confine any expansion to cases in which there was strong showing that deferred sentencing would better protect the victim's long-term safety, where the restrictions on the batterer are carefully crafted to promote her safety, and where these conditions are easily and swiftly enforceable.<sup>130</sup>

### C. Coordination

In addition to providing victims with advocacy services and considering more flexible prosecution strategies, court systems could significantly improve their sensitivity to a victim's context by increasing coordination with civil legal services and other sources of victim assistance.

One example of such a coordinated approach is the Targeted Offender Program ("TOP"), an experimental project underway in the District of Columbia.<sup>131</sup> TOP brings together a specially assigned prosecutor, a victim advocate from the D.C. Coalition Against Domestic Violence, and civil attorneys who specialize in representing victims in civil protection order cases.<sup>132</sup> As a team, the group handles cases of victims at high risk of serious physical re-abuse.<sup>133</sup> To this end, team members share information whenever possible and meet regularly to discuss options for resolving each situation.<sup>134</sup>

This type of coordination can operate usefully in many ways. For example, although civil attorneys and advocates can explain the

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130. Caution is imperative in relying on batterer treatment programs as the primary way to promote perpetrator rehabilitation. The evidence regarding the short or long-term success of such programs is mixed, at best, *see generally* HEALEY ET AL., *supra* note 3; therefore their impact in promoting victim safety is questionable. More (and more rigorous) experimental evaluation of various batterer treatment programs could eventually provide the data necessary to assess their utility.

131. *See* TARGETED OFFENDER PROGRAM ("TOP"), D.C. COALITION AGAINST DOMESTIC VIOLENCE (last visited Oct. 26, 2002) [hereinafter TARGETED OFFENDER PROGRAM] (explaining the goals of the program), *available at* <http://www.dccadv.org/what.htm#TOP>. TOP operates as part of the D.C. Coalition Against Domestic Violence's Victim Advocacy Program. *See id.*

132. *See id.* (noting that victims receive direct services).

133. *See id.*

134. *See id.*

prosecutorial process to victims, such discussions would be greatly facilitated by coordination and information sharing with the government. Access to detailed information regarding issues such as what charges the government is likely to bring, what plea offer it would consider making, and its assessment of the likelihood of conviction after a contested trial, allow the victim's attorney or advocate to provide her with more concrete and specific assistance.

Civil attorneys might (with their client's permission) relay detailed case information as well as any victim concerns to the prosecution, and can advocate for an approach that takes these concerns into account. For example, an advocate or civil attorney might convince a prosecutor to include a provision regarding a particular form of relief important to the victim — such as mandatory substance abuse counseling or parenting classes — in a plea agreement or sentencing argument. Through TOP, civil attorneys have influenced both the charges included in a plea offer (for example, in cases where the victim felt strongly about the abuser admitting to an assault, rather than merely to property damage) as well as the length and structure of the recommended sentence.

Additionally, civil attorneys and advocates are likely to learn of a long history of violence the victim has suffered of which the prosecution typically is unaware. By sharing this information as part of a collaborative team, they sometimes can convince the government to add charges that otherwise never would have been brought.<sup>135</sup> These additional charges may increase the amount of jail time for the perpetrator, giving the victim additional time and space to create a new, safer life. Or, when appropriate, a civil attorney might even successfully convince a prosecutor to decline pursuit of a particular charge if that would be in the victim's best interests.<sup>136</sup> Prosecutors involved in the TOP have found coordination with civil attorneys "tremendously useful" in obtaining the information and evidence necessary to reach the most appropriate outcome in criminal prosecutions.<sup>137</sup>

The additional information that civil attorneys and outside victim advocates can provide also may facilitate the government's trust in the victim's story. Often, prosecutors who are insufficiently trained in

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135. For example, in one TOP case the prosecution added a civil protection order violation charge based on information provided by the victim's civil protection order attorney.

136. Thus far, however, no such cases have arisen in the TOP. It is unclear at this point how receptive the U.S. Attorney's Office would be to such a suggestion.

137. Interview with Assistant United States' Attorney Barton Aronson, Assistant United States Attorney assigned to TOP, in Washington, D.C. (Apr. 4, 2002).

the dynamics of domestic violence read inconsistencies in a victim's story or an oddly flat emotional affect as certain evidence of untrustworthiness, and may make important case decisions based on these misconceptions. A victim advocate or civil attorney can help clarify the situation, either by providing a more in-depth factual background to explain an apparent inconsistency or by explaining the potential impact of depression or post-traumatic stress disorder on a victim's presentation.

Conversely, an information-sharing approach to domestic violence cases also may facilitate the victim's sense of trust in the system, in that it enables prosecutors to approach victims in a way that is maximally designed to address their concerns. With the advance knowledge of the victim's reservations regarding prosecution provided by civil advocates or attorneys, the government can address these concerns up front and avoid alienating her. Research has shown that a woman who experiences government officials as listening to her story and responding to her individual needs is more likely to feel treated fairly and therefore to cooperate with prosecutors' requests than is a woman who feels forced into a mandatory model dismissive of her input.<sup>138</sup> The trust that develops in the former situation also may lay the groundwork for her long-term sense of trust in the criminal justice system, so that a victim may be more likely to utilize its resources in the future.<sup>139</sup>

Frequent and intensive TOP meetings also facilitate personal relationships among prosecutors, civil attorneys, and victim advocates in Washington, D.C. Such relationships have an intangible but real effect on case management. Increasing levels of trust among members of the group make it more likely that prosecutors will listen to and act upon arguments presented by civil advocates regarding the victim's safety concerns. In turn, this may help the victim feel more supported and safe.

One further way to maximize communication between victims and prosecutors would be to permit the victim to have her civil attorney or civil advocate present during meetings with the prosecutor. This may help the victim to feel supported within the larger context of the criminal justice system in a way that would be difficult for the

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138. See Erez & Belknap, *supra* note 7, at 264; see also David A. Ford & Mary Jean Regoli, *The Criminal Prosecution of Wife Assaulters: Process, Problems, and Effects*, in *LEGAL RESPONSES TO WIFE ASSAULT: CURRENT TRENDS AND EVALUATION* 127, 153-56 (N. Zoe Hilton ed., 1993).

139. Hotaling & Buzawa, *supra* note 13 (finding that 67% of those victims who wished to speak to prosecutors about an assault prosecution but were unable to do so failed to report a subsequent assault).

government to replicate on its own.

#### CONCLUSION

The debate surrounding aggressive prosecution in domestic violence cases has focused primarily on the choice between no-drop policies as they are currently formulated and the “always drop” policies of the past. In this paper, we have tried to carve out a middle ground by suggesting a package of reforms that can be thought of as “prosecution in context.” These reforms are designed to maximize the government’s responsiveness to an individual victim’s context and, in so doing, improve her opportunities for long-term safety—without jeopardizing existing efforts to hold offenders thoroughly accountable for their abusive behavior.

One challenge to us has been to suggest reforms that are sufficiently pragmatic to allow prosecutors to implement them without delay. We believe that the adoption of prosecution in context principle could substantially and immediately improve the criminal justice system’s response to intimate partner violence. But we also consider this paper a starting point for a discussion of more radical alternatives that might—assuming an expansion of available resources beyond those in the traditional justice system—more significantly improve the lives and safety of battered women in the future.