

Peer-to-Peer Exchanges on Domestic Violence

Justice and Safety for All:
Promoting **Dialogue** Between
PUBLIC DEFENDERS and
VICTIM ADVOCATES

VERA INSTITUTE OF JUSTICE

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A film accompanies this publication. “In Their Own Words” is a 15-minute documentary that explores public defenders’ and victim advocates’ opinions about each other and their work on domestic violence cases.

Copies of the film and this publication can be obtained from the national associates programs department of the Vera Institute of Justice, 233 Broadway, 12th Floor, New York, New York, 10279, 212-334-1300. You can also download this publication directly from Vera’s website at www.vera.org.

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Introduction

Thirty years ago when violence occurred between intimate partners, the criminal justice system was reluctant to intervene in what almost everybody viewed as a “family matter.” Over the following decades, survivors of these crimes and other advocates for victims built a movement to end domestic violence. As a result of their advocacy, the practices of players across the justice system—from patrol officers to judges and in places as different as rural towns and America’s biggest cities—changed dramatically. In particular, the leaders of this movement cultivated strong alliances between prosecutors and advocates for victims. Most large district attorney’s offices now have staff who work closely with victims to meet their needs and facilitate prosecution. But public defenders, who over the years came to represent more and more people charged with domestic violence, have largely remained on the sidelines in terms of shaping criminal justice policy on this issue.

While our adversarial legal system pits defenders against prosecutors, the individuals who fill these roles must and do cooperate with each other. The system actually facilitates such

cooperation. Additionally, the educational background lawyers share and their professional code of ethics keep the battle in court from becoming overly personal. In contrast, public defenders and the individuals who advocate passionately for the needs of victims receive no support from the system to work together, nor do they have a common background to draw on. So they often end up, more or less reluctantly, in opposing camps. Misunderstanding, suspicion, and sometimes open hostility exist between the two professions. Members of each group can be quick to reduce the other to a stereotype: defenders only want to win and care nothing about a woman's future safety. Advocates are crusaders for a cause who will ignore due process to protect women. Add the fact that they see each other only in court—if at all—and it's not surprising that the two groups have rarely focused on their common interests and reasons for working together.

Despite the gulf between public defenders and advocates for victims of domestic violence, they serve the same families, so improving their relationship can be part of providing more

effective interventions. In November 2001, a group of 25 public defenders and victim advocates from around the United States gathered in Chicago. Perhaps for the first time, members of the two professions talked openly about how they view each other and their own work. That initial conversation, although far from comprehensive, showed that honest dialogue can dispel stereotypes and myths and reveal, for example, that a tough defense of someone accused of domestic violence doesn't have to put women in greater jeopardy.

Drawing on questions first raised and tentatively answered in Chicago, this booklet is intended to help other advocates for victims of domestic violence and other public defenders begin their own conversations, dialogue that could lead to greater understanding of and respect for each other and to the kind of cooperation that has the potential to advance safe and just resolutions in domestic violence cases.

For information on how to use this booklet to facilitate a structured dialogue in your community, refer to the guidelines on page 15 or contact the Vera Institute of Justice for assistance.

1. Winning at Any Cost

Winning the Case, at Any Cost? Ask anyone who advocates for victims of domestic violence what the public defender wants, and the answer likely will be: to win. In other words, defenders want to make sure that their clients are not convicted or otherwise held accountable. The stereotypical defender uses any trick in the book to get the case dismissed or, failing that, pursues a not guilty verdict without compassion for the alleged victim or any regard for what's best for the defendant in the long run. But do these hard-hearted, predatory defenders really exist?

Legally, a defender's primary responsibility is to the client. According to one defender, "We can't be a social change agent for the entire family or for society." And it is the client, the person accused of a crime, whose version of the facts must become the basis for the defender's approach to representation. A defender's initial obligations are to give an opinion about whether the client's story is believable, investigate the facts and the law, and recommend an appropriate plea based on that version of the events and what the prosecutor is offering. Ultimately, the client decides the course of his own defense—how to plead initially and what future offers from the prosecutor to accept or reject.

Defenders' legal obligations, however, don't blind them to the family and other social circumstances in which these cases arise and to the consequences of different defense strategies for everyone involved. Does this understanding influence their actions? For some defenders, it does. One person characterizes the work of the defense profession as "building a movement, little by little, of helping people move their lives in the right direction." Another defender agrees: "What's success? It's when I leave the client in a better situation than he started in."

"Do defenders think anybody should go to jail? Do they think domestic violence cases even belong in the criminal justice system?"

In practice, this could mean encouraging someone to accept a plea that includes participating in a program designed to prevent violence and future arrests. "I have a reputation of being harder on my clients than anyone else, and I won't necessarily do whatever it takes to get someone off." Or it could also be as simple as letting clients vent their anger while also counseling them against engaging in future violence. Some defenders, especially those who work for an agency that serves a specific community, engage in "client-centered representation," which involves organizing services to address the root causes of crime. While more defenders might take up this approach if

they had additional time and staff to assist them, not all defenders agree that this type of representation is part of their job.

Whether or not defenders see their role as extending beyond the legal aspects of a case, they all agree that providing a strong legal defense is their primary obligation. “If I can use a technicality to get a case dismissed, I will. That’s my job.” It’s statements like this, however, that lead many victim advocates to ask rhetorically, “How do they sleep at night?”

But for most defenders, doing their job is not simply about defending individuals; it’s about maintaining the integrity of the criminal justice system. As one defender says, “The standards of proof must be kept intact.” And for most defenders, winning means more than just “getting the person off.” “I want my clients to feel that their attorney is as good as a rich person’s lawyer.” “Winning is when the client trusts me enough to talk honestly and listen when I explain what may happen in the courtroom.” For these public defenders and many others, their role is to correct the system’s tendency to run over people with few resources and to treat individuals out of context. “My biggest victory is having a client shake my hand and thank me for treating him like a person and working hard for him.”

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PUBLIC DEFENDERS: We’re not all the same.

All defense attorneys are obligated to represent their clients’ wishes and are bound by professional guidelines. Beyond these constraints however, wide variation in the practice of legal defense exists, variation that has a significant impact on how attorneys handle domestic violence cases. These variations often are driven by the type of office in which a defender practices and a defender’s own level of experience and individual style.

Although the landmark decision in *Gideon v. Wainwright* guarantees every person accused of a crime the right to legal representation, jurisdictions can provide counsel in several ways. Some communities rely primarily on publicly funded defender offices, while others also use lawyers who work for nonprofit organizations as well as attorneys in private practice. There are many reasons to draw lawyers from several sources, including the desire to avoid conflicts of interest in cases that involve more than one defendant. Among these sources, the greatest variation in practice occurs between institutionally based defenders and private attorneys who work on their own.

Public defender offices and nonprofit organizations usually have clear policies governing the work of staff attorneys. And the legal work of these attorneys is augmented by staff social workers, investigators, and paralegals. These attorneys also typically receive on-going education and training on issues such

as domestic violence, and they benefit from the supervision and support their colleagues provide. Private attorneys, in comparison, are much freer to use professional discretion to create their own rules of practice but when representing poor defendants often have fewer resources and less support to draw on. These supplemental resources matter for the outcome of the court case and for improving the client's life circumstances to prevent criminal acts. Non-legal staff can assess a defendant's needs and connect that person with appropriate services in the community.

Experience also plays a major role in shaping the work of defenders, no matter what type of office they work in. Defenders who work principally on domestic violence cases cultivate expertise in this area and can provide a more robust and often more successful defense than attorneys who only occasionally represent alleged batterers, particularly if they work within a domestic violence court. And defense lawyers who have represented victims of domestic violence—sometimes fighting hard to get courts to accept the importance of their clients' histories of victimization in understanding their actions or culpability—acquire a balanced and nuanced understanding of domestic violence.

Of course variation in practice also exists among veteran defenders bound by institutional guidelines. Some defenders are particularly careful, for example, not to mislead or manipulate a woman who is uncertain about whether or not to press charges. Some defenders take extra time to listen to their clients and try to defuse any anger. And some not only counsel clients against committing a future crime but also offer specific advice about how to avoid situations that might tempt their clients to commit a crime. A conscientious lawyer will always work hard to provide his or her client with a vigorous, thorough defense, but a tough defense doesn't have to put anyone in jeopardy.

Achieving Safety, at Any Cost? Ask a public defender what the victim advocate wants and the answer likely will be: to lock the guy up or at least keep the case in court. Many public defenders believe that the individuals who advocate for the rights and needs of victims are so narrow-minded as to care nothing about justice and due process and to assume every defendant is not only guilty—"Otherwise, why would they call them batterers?"—but also dangerous. But do these feminist crusaders trampling over civil rights actually exist?

Like the public defender, the victim advocate's job is to listen and respond to her client's (the victim's) version of what happened. An advocate's first responsibility is to convey a few basic and crucial messages to

someone who identifies as a victim of domestic violence: “It’s not your fault; you don’t deserve it; and it’s not going to stop on its own”—messages that anyone who has contact with an alleged victim can convey. The advocate also explains how the criminal justice system can respond to the alleged crime and the woman’s potential role in that response and helps her get whatever support and services she needs to be safe in the future.

But does this mean that advocates passively accept whatever a woman says? Some defenders think so and also believe that women who claim to be victims of domestic violence are frequently lying or exaggerating the truth. These defenders see advocates as co-conspirators in this deception, ignoring false accusations and burying any evidence that supports the defendant. But the majority of advocates operate quite differently: “Of course we ask questions. To think that we’re blindly believing people is unfair.” “The work for me is about getting it right. Sure there are some advocates who forget about due process, but don’t assume we all work that way. Justice matters for most of us.” While defenders are focused on women who lie or embellish and want clear answers about how victim advocates deal with these women, the advocates want defenders to look more critically at information they get from their own clients and from police reports and to recognize that it could be biased because the defendant is lying or minimizing the violence.

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“Victim advocates aren’t in the game. Their job isn’t legal work. It’s social work.”

Occasionally, women do make false allegations of abuse—although some victim advocates say this occurs so rarely that they cannot even estimate the proportion who fall into this category. Those advocates who have firsthand experience with women who lied outright or exaggerated the abuse, say that women sometimes make false accusations in order to get services they need and feel are otherwise unavailable. Someone who is homeless, for example, might make an allegation of domestic violence against her boyfriend to be eligible for temporary shelter or subsidized housing. In other situations, a woman may not be lying but may embellish the events to ensure that her boyfriend or husband is removed from the house. Generally, even if an advocate feels that someone’s allegations of abuse are false or exaggerated, the advocate will still try to help that woman get whatever services she is seeking.

Some defenders also believe that advocates who work for nonprofit organizations refuse to listen to their own clients and instead treat alleged victims like children, giving advice based on what they think the woman should do. While most victim advocates reject this view of how they relate to their clients, many advocates for battered women are reluctant to ask a prosecutor to drop the charges even when that’s what the woman wants.

Having pushed hard for prosecutors to base their decisions on the available evidence—not on the woman’s wishes—advocates can be uncomfortable endorsing a departure from this policy. As a result, even when a woman recants her story or refuses to testify, defenders often point out, the case still goes to trial.

“It’s that rare homicide that terrifies everyone,” claims one defender, “because no one can see it coming.” In this defender’s view, the system applies the same harsh tactics across the board—try to convict on the most serious charge possible and apply the most severe punishment—rather than respond to the particular circumstances of each case. Demanding the same response in every case may have been necessary when most police officers, prosecutors, and judges were not inclined to hold batterers accountable for their actions, but today advocates are more likely to support flexibility in how the criminal justice system responds to domestic violence. “I want defenders to understand that a ‘no-drop’ prosecution policy raises concerns for some of us too,” says one advocate. She and many others believe that women should have more control over what happens following an arrest. At the same time, advocates for victims of domestic violence remain equally concerned about prosecutors who still refuse to treat these cases seriously.

While there will always be advocates who feel strongly that a woman’s safety hinges on tough prosecution, others focus as much or sometimes more on addressing her material and emotional needs. “The majority of women want to go back, and in these cases, we need to figure out what can be done. We need to deal with the social issues.” Whatever their approach, advocates believe that defenders have a real impact on a woman’s safety just by how they interact with their own clients. As the examples above illustrate, many defenders understand this. Even the most conventional ones counsel their clients against committing a crime—simply because it’s good defense work—and alert authorities if they know about a pending criminal act.

VICTIM ADVOCATES: We’re not all the same.

Those who advocate for the rights and needs of victims of domestic violence are not a homogeneous group. They occupy various roles; have different styles, approaches, and levels of experience; and hold a wide range of perspectives on domestic violence and the appropriate responses.

As individuals, victim advocates function within organizations with established cultures and policies that restrict and shape their actions. And depending on where they work, advocates are subject to different legal and ethical constraints. The size of the agency also influences the work of individual advocates. Those who work for larger agencies typically receive formal training, guidance, and supervision by more experienced

advocates, and support from their colleagues. At the other extreme, some victim advocates are the only person in their agency hired to provide court-based advocacy, and they may be working part-time with little legal training or supervision.

Even within subgroups, such as advocates who are employed by district attorneys or those who work for nonprofit organizations, there is a wide diversity of legal standards, rules, practices, and perspectives around key issues such as confidentiality, sharing exculpatory evidence, and a woman's right to determine the response to a crime. There are also differences, and sometimes tensions, between people working to advance domestic violence policy and those who serve individuals directly. Advocates themselves want more open discussion about what roles and practices are appropriate and in what contexts.

Is it ever acceptable, for example, for an advocate to help a woman try to convince a prosecutor to drop the charges against her alleged abuser? The answers vary. Some advocates would never offer this kind of help because criminal prosecution is one way that batterers can be held accountable, but they would provide emotional support to the victim, explain why the charges can't be dropped, and help her explore additional remedies. Other advocates and the agencies they work for are more flexible on this and other issues.

While the common goal of all advocates is the safety of women, individual advocates can promote safety in many different ways—by providing information and services directly to women, by seeking to reform institutional responses to domestic violence, and sometimes by just advocating strongly for whatever the woman decides that she wants.

2. At Issue: Contact Between Defenders and Victims

While the stereotypical view of both professions—that they want to triumph at any cost—obviously strains relations between individual defenders and victim advocates, there are many practical issues that also cause friction between them. Contact between defenders and alleged victims is one of the more important issues and one that clearly illustrates the need for more dialogue and improved relations between the professions.

The view that defenders abuse their access to the alleged victim—whenever they have access to her—is common among victim advocates.

Why Caring About Victim Safety is Good Public Defense

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We're a stubborn lot, us public defenders. But we're that way for good reason. It seems that every day somebody for some reason is trying to distract us from doing our job, that is, from zealously representing our clients. Your judge wants you to clear his docket. Your prosecutor wants you to sell her deals. Drug courts want you to be "part of the team." And now advocates for victims of domestic violence want you to concern yourself with "victim safety." At first blush, most of us reject the notion that we should care. However, I would argue not only should we care, but it is our job to care, for at least three reasons.

First, our clients accused of battering rarely get in "real trouble" until they are branded repeat offenders. Any step you take to keep the client from acquiring that recidivist label will clearly benefit him, as well as promote the safety of women.

Second, any violent act our client commits after we begin our representation weakens our bargaining position around the charged offense. Nothing gets the prosecutor's attention like the news that "he's still bothering her."

Finally, any new violence against the alleged victim or any other partner potentially could be admissible evidence at the client's jury trial.

For these reasons, the woman's safety is in everyone's interest and should be addressed by the defense attorney from the initial client interview forward. This means discussing how the client will comply with any "no contact" orders, encouraging the client to enroll in voluntary counseling programs, and generally impressing upon our clients that any act of violence while the case is pending will be taken seriously and will adversely effect the outcome of the case and his life.

Concern for victim safety isn't a distraction from our job. In fact it is our job.

DAN SCHAFFER

Assistant Public Defender, Daytona Beach, Florida

Why Caring About Legal Representation for Accused Batterers Serves the Interests of Victim Advocates

Today, advocates across the country find themselves in alliances with police and prosecutors and in opposition to the lawyers who represent alleged perpetrators of domestic violence. But our support for arresting and prosecuting offenders should not cause us to undermine the function of defenders.

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In the United States, the law requires a very high standard of proof, “beyond a reasonable doubt,” to prove a suspect’s guilt. This high standard can cause defendants who actually commit crimes to be acquitted but lessens the likelihood that someone who is not guilty will be wrongfully punished.

Remember, the consequences of being convicted of a domestic violence crime can be serious, including losing a job, being barred from certain types of employment, being deported, losing the right to vote or serve as a juror, and losing public benefits, including housing.

While the presumption of innocence lies at the heart of our justice system, it is only a reality when the state and defendant have competent legal counsel. As advocates for battered women, we know that legal rights and protections are sometimes the only tools available to help individuals obtain freedom and justice. The state brings many resources to its case, especially relative to the resources of a low- or middle-income defendant. And the system is so complicated and, like other institutions, tainted by race, class, and other biases that without competent counsel a defendant is in jeopardy of being punished unfairly. Good defense attorneys not only balance the scales of justice in individual cases, they work to keep the whole system honest.

Well trained, responsible defenders can serve more than those purposes, however. Their work can actually protect women. They can warn their clients about the consequences of abusing and harassing the victim, and they can help clients get services to prevent violence as well as other crucial social services. These efforts, in concert with those of the prosecutor, may actually persuade some batterers to change and may actually protect some victims.

LORETTA FREDERICK

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Advocates generally believe that defenders take advantage of the relationship between a woman and her alleged abuser and coerce women into dropping charges or refusing to testify, often by exaggerating the consequences of a conviction. A defender might say, “If you go to court, he’s going away for nine months,” something advocates claim that a defender would never do in a case involving an alleged crime between strangers. “In that situation, they wouldn’t even think of asking the victim if she wanted to drop the charges.”

From the perspective of defenders, however, the situation looks very different. They often feel that the prosecution has an unfair advantage because advocates who work in the prosecutor’s office have the most extensive contact with alleged victims. Although the prosecutor is obligated to share certain information with the defense counsel, including any exculpatory statements the woman makes, what defenders learn comes secondhand.

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It’s also common for defenders to simply feel outnumbered. Defenders may feel that some judges are not neutral because they serve on boards of nonprofits that focus on domestic violence and have ex-parte communications with victim advocates. In their view, it adds up to a playing field that isn’t level, and the victim advocate who sits with the prosecutor in court and speaks on behalf of her client has come to symbolize this larger problem.

While many defenders believe that advocates deliberately try to obstruct contact between defenders and alleged victims, this is not always the case. “I understand the feeling of being ganged up on and make sure I let the woman know that she has a right to speak to the public defender. I even give her the defender’s number. I also explain that what she tells the public defender, just like what she tells me as an employee of the district attorney’s office, can be used against her in court.” And not all defenders try to coerce the state’s top witness. Here’s what contact between public defenders and women can look like in practice.

The notion that defenders have to trick or pressure women into talking with them is rarely true. Most are willing to speak with defenders or with investigators who work for the defense. Some women even contact defenders to learn all they can about the status of the case. While defenders often want a chance to talk with the woman in person or over the phone, sometimes just to know if she sounds “coached,” some are satisfied to get the woman’s perspective from her advocate. When a defender does talk with or hear about a woman whose story is strong and accurate, he can tell his client that while she doesn’t want him to be prosecuted and go to jail, she also isn’t going to lie. This information convinces some defendants to accept a guilty plea and agree to participate in a program for batterers.

Starker differences among defenders arise around what advice, if any, they will offer an alleged victim. “We don’t all say the same things, and we don’t say the same things to all victims.” Some defenders might say, “I’m not your lawyer,” refuse to give the woman any advice, and also remind her that what she says can be used against her in court. Other defenders—even

those working in the same office—could take a very different approach and tell the woman that the case will be dismissed if she doesn't show up in court. Some defenders might go a step further and try to persuade women to assist them, perhaps by exaggerating the potential sentence or saying, "The prosecutor is not your friend and is not going to help you pay the rent and put food on the table after this case is closed." When defenders take this approach, they typically feel justified because, in their view, most women don't want to press charges and are being manipulated by the prosecutor.

Defenders point out that in cases where the woman refuses to testify, prosecutors sometimes distort what the defense counsel supposedly told her. And both defenders and domestic violence advocates realize that women can misinterpret what a defender says. Dialogue between the professions about the ethics of giving informal advice to alleged victims and the legality of coaching a defendant on how to persuade his spouse or partner to drop the charges or refuse to testify would be helpful. So would finding ways to protect women who want to speak with the defense counsel. Advocates have suggested that an impartial witness accompany a woman anytime she meets with the defense counsel, unless she objects. Many defenders are open to such a procedure and say that they want advocates to know exactly what information is exchanged between themselves and an alleged victim. Many of these defenders, however, would also like advocates to freely share more information with them. "I've received some of my best information, both to defend and plead, from advocates who can say whether or not the woman is good source of information."

3. Common Ground

Several of the public defenders and victim advocates who met each other in Chicago left that encounter feeling that they work in similar ways, just from different sides. One advocate admitted, with a little discomfort, that she has more in common philosophically with public defenders than with the prosecutors she works for. Members of both professions tend to have a strong commitment to serving their clients well and with compassion. In other words, both are fierce advocates and not only for individuals. The ideals and hard work of advancing social justice are their common ground.

The defenders arrived in Chicago knowing little about what advocates for domestic violence victims actually do but with many prejudices against them. Several defenders left the meeting with a clear understanding of and appreciation for the contributions of advocates. "Every crime victim, not just victims of domestic violence, should have such committed and informed people working on their behalf," one defender said. As for the advocates, many left Chicago with the impression that defenders may know and care

more about the implications of domestic violence than they had assumed. Realizing that there are defenders who want to win cases in ways that work out well for both parties was both a revelation and something to build on.

Perhaps most striking, members of both professions discovered that they have some common concerns about the criminal justice system's response to domestic violence.

Concerns about the Criminal Justice System Defenders tend to assume that all advocates for victims of domestic violence have the same opinion about the value of the criminal justice system: that arrest, prosecution, and punishment is always the correct response and always has some benefit, and that the system falters when it misses offenders or fails to punish the people it does catch harshly enough. In reality, advocates' views on the issue are far from unanimous and are evolving every day. "There's a movement that's gone into the work we do, and each of us has a different relationship to that movement. And some of us are questioning that movement and looking at where it's failed." While the movement has many facets, a visible priority has been and continues to be the criminalization of violence between intimate partners.

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Today there are advocates who view the emphasis on arrest and prosecution—in some places to the exclusion of other responses—as a mistake. "I remember in the '70s when some women, especially women of color, opposed the criminalization of domestic violence and felt they would pay the consequences. And I realize now that the battered women's movement has relied too heavily on the criminal justice system when it's only a piece of the solution." These advocates are worried about women who approach a civil court for an order of protection or social service and are told to take their problems to criminal court, as if prosecution is always the best and only option. And while they know that even prosecutors in jurisdictions with so-called no-drop policies let some cases go, they worry that women won't get the help they want if the only safe house in town backs prosecuting every case.

Of course, there are just as many victim advocates—maybe more—who continue to view arrest and prosecution as the only realistic and legitimate ways to protect victims and hold people accountable for abusive behavior. "My position is that prosecution is a good thing because it's someone outside of the relationship imposing consequences." "Although the criminal justice system is racist and classist, that doesn't make the way domestic violence cases are prosecuted wrong. Racism and classism are larger issues. I don't have a problem with who's in there. I have a problem with who's not in there. White, middle class men."

Debate among advocates about how much our society should invest in criminal justice responses to domestic violence compared with other inter-

ventions will continue; so will conversation about the failings and unintended consequences of this approach. And public defenders can be strong allies for advocates interested in improving the criminal justice responses they helped forge.

It's a system that hits poor people and racial minorities hardest. Individuals who are socially disenfranchised as a result of their class, race, or ethnicity are more likely to become involved in the criminal justice system. While the reasons for their disproportionate numbers are not clear, this issue concerns not only defenders but also many of the advocates for domestic violence victims who view themselves as justice reformers generally.

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It's also becoming more apparent that the criminal justice system hits families that are already fragile and, in many cases, increases the burdens on them. The arrest and conviction of a family member can result in loss of public housing, putting the woman and any children in jeopardy of becoming homeless. Deportation is a possible consequence for residents who are not citizens. In some cases, losing the wages a family member contributes breaks a family apart and sends children into foster care. This is more likely to happen when the woman is coping with a serious problem such as drug abuse or mental illness. These are just some of the ways that women and other family members are unintentionally hurt in the process of punishing offenders.

“We need to put the criminal justice response into historical context. In the past there was no accountability for these crimes. It's not perfect but at least it is a response.”

“The criminal justice system is being used to solve issues where men and women want only the violence—not the relationship—to end. We need to figure out what to do after criminal justice involvement ends. Just prosecuting people and running them through the system isn't enough.”

Advocates for battered women have long recognized these unintended consequences and have tried to counter them by mobilizing emotional support and other aid—such as professional counseling, housing, and child care—for women and their children. So have many defenders, particularly those who work in offices that serve a single community. While the person accused of a crime is the defender's focus, these lawyers know that improving their client's well-being can have a positive effect on the client's whole

family. Many victim advocates want to develop broad, community-based coalitions outside the criminal justice system to address domestic violence, and those defenders who already have ties with such agencies are certainly potential partners in this work.

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It's a system with a narrow range of possible penalties. After about twenty years of working to ensure that the criminal justice system treats family violence seriously, there are still very few ways to deal with convicted offenders. Usually, it's a choice among jail, probation, a batterers intervention program, or some combination of these responses. Mandating an offender to participate in a program—alone or combined with confinement—can seem like the best way to prevent future violence. And many advocates for victims question, sometimes in anger, why defenders fight “tooth and nail” against a sentence that requires a person to complete a batterer intervention program but readily accept mandatory alcohol treatment for people convicted of DUI. In response, defenders say that most of their clients simply can't afford the fees programs charge participants; nor can their clients attend the many required sessions *and* hold down a job. Some defenders also object to what they describe as the “verbally assaultive” nature of the programs.

Yet to pit defenders against advocates in a debate about batter intervention programs oversimplifies the situation. It turns out that many victim advocates have reservations about the programs that operate today. They worry that all programs take essentially the same psycho-educational approach and that there is not enough sound research on whether this approach works and for which batterers. They worry that persistent and particularly violent offenders receive the same treatment as someone whose abusive behavior is less frequent and more mild. They worry that most programs—even some that serve exclusively African-American and Latino offenders—are not culturally appropriate. And they are concerned that programs are not set up to anticipate and manage repeat violence, which is inevitable in some cases. Some victim advocates even question whether the term “batterer” is appropriate or useful. “Why call it a ‘batterers group?’ That's an offensive name and probably counterproductive.” Finally, in the words of one advocate, today's programs for batterers “don't help us figure out which defendants need to be kept away from the victim and other family members.”

It's a system that often fails to adequately defend battered women charged with crimes. Some defenders see a stark irony in the justice system's response to domestic violence. Consider a woman arrested for selling a small amount of heroin on the street. According to these defenders, the tough-on-family-violence prosecutor all of a sudden doesn't care about the woman's history of abuse or that her abusive boyfriend pressures her to sell drugs. Defenders say they feel “demoralized” by how little support they

receive when they raise a battered woman's defense in cases like this one. Victim advocates readily acknowledge that the domestic violence movement has not done enough to support such women. Some advocates feel that they should help build a strong defense for any woman with a history of abuse: "You [defenders] can't sit down and do a thorough relationship assessment on all these clients. We need to help you." Advocates also would like defenders to refer battered women to them for services.

A related concern for many domestic violence advocates is the inappropriate response, in their view, when both partners are charged with crime. Mandatory arrest policies, now common across the country, have dramatically increased the number of such mutual arrests. In some places, the laws and policies fail to include requirements and guidelines for determining whether the woman was acting in self-defense and who is actually the primary aggressor. While players across the justice system work to resolve these problems, advocates are concerned about how defenders respond in these cases. According to some victim advocates, the two defense attorneys normally get together and agree that their clients won't testify against each other, which usually means that the prosecutor will drop the charges or the judge will dismiss the case. These resolutions might be appropriate in a few cases, but advocates feel that in most cases an aggressive defense of the actual victim is the right course of action. Many defenders sympathize with women in this situation. But because there is no way to predict how a jury will react, they feel it would be negligent to put such a person at risk of serving time in jail or even on probation. Members of both professions are eager for cross training on this issue.

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"Everyone—the judge, the defense attorney, the prosecutor, the victim advocate—works on their own in a vacuum and hopes that in the end someone may actually benefit from this type of system. But the only time I saw real progress in my career as a defender was when everybody shared ideas, discussed cases, and worked together based on mutual trust and credibility."

"It's ill conceived and simplistic to work from separate sides of the equation. These cases are about relationships and all the components need to be put together in the same picture. It's important that we develop a better working connections with defenders."

4. Holding Your Own Meeting

Many public defenders have never had a substantive conversation with a victim advocate. When a rare conversation does occur, one or both parties is likely to feel that the exchange was heated, went nowhere, and ended in stony silence. Yet members of both professions say they want to engage in non-defensive, constructive conversation—to get “unstuck from the rhetoric.”

15 Even people who see little common ground between the professions acknowledge the value of understanding each other’s role in a non-stereotypical way. “Having seen the impact of leaving defense attorneys out of the conversations about domestic violence, I am less interested in having everyone get along than in having everyone come to a better understanding of what our work as victim advocates means and to hear defenders’ perspectives on the work they do.”

A meeting between public defenders and victim advocates is an opportunity for both groups to confront stereotypes, question each other and themselves, possibly discover common interests, and build a foundation for continued dialogue and better working relations. Based on Vera’s experience hosting an initial conversation between defenders and victim advocates in Chicago, we’ve culled a few guidelines to help others set up a meeting that accomplishes these goals.

Facilitation Tips

Select facilitators whom a diverse audience will respect. Expert facilitation is a key to the success of this kind of meeting. You need someone who knows firsthand about the work of defenders and victim advocates and who can manage an active and occasionally contentious conversation. The participants must view the facilitator as someone who is neutral and credible, and who wants them to be heard. If you can’t find one person who embodies all these qualities, consider asking a current or former defender and victim advocate to co-facilitate the meeting. This strategy proved to be extremely effective in the meeting Vera held in Chicago.

State your goals clearly. If the main purpose of the meeting is to improve communication and understanding between defenders and victim advocates and identify possible areas for collaboration, say so directly. Assure everyone involved that as organizers of the meeting, you have no hidden agenda. Otherwise, some participants may suspect that you are attempting to “win them over” or otherwise diminish their zealous advocacy. Then stand by your word. You may not have a hidden agenda, but some participants might harbor one. Remain neutral and stick to your stated goals.

Know your audience. Talk with each participant before the meeting to discover what he or she hopes to achieve by attending. This preliminary interview will help you construct an agenda that is useful for the majority of participants and identify those people who have strong opinions or intentions that differ wildly from the main goals of the meeting. Make a special effort to acknowledge these outliers on the day of the meeting and try and draw them into the group. Allow them enough time to speak, but don't let them dominate the conversation.

Find a safe space to hold the conversation. Don't underestimate the value of finding the right place to bring together adversarial groups. Neither group should have a "home court advantage," so a neutral location is essential. Gathering out of town can work quite well but so can a meeting held locally if you pick a facility or hotel that is not associated with either group.

Displace the heat. When facilitating any meeting where participants may have natural animosities, find a way to bring these feelings to the surface as soon as the meeting starts. Vera commissioned a short video called "In Their Own Words" that captures what defenders and advocates who work in New York City and who did not come to the meeting think of each other. Copies of the video are available from Vera. There are other ways to accomplish this goal. Reading aloud the first section of this booklet ("Winning At Any Cost") could work. Acting out skits or engaging in exercises based on hypothetical scenarios is another option. The point is to unburden participants of this responsibility and keep the group from becoming embattled.

Construct an agenda that allows the conversation to build. At a meeting like this, it's best to start the conversation by allowing defenders and advocates to talk first with their peers. After opening the meeting in Chicago, we separated the defenders and victim advocates and asked each group to answer two questions: What do you want to know about the other group? What do you want the other group to know about you? We then formed small groups of participants mixed by profession to answer these questions for one another. Finally, we reserved our last small group session for defenders and advocates from the same jurisdiction to think about the implications of this dialogue for their own community and to identify local opportunities for collaboration. Because the most challenging task is to promote open discussion among defenders and advocates who work in the same jurisdiction, consider holding the meeting in partnership with one or more neighboring jurisdictions.

How the Peer Exchange Project Provides National Assistance

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The Peer Exchange Project on domestic violence assists government officials and leaders of community-based agencies around the country as they work to keep victims safe, hold offenders accountable, and provide coordinated, efficient services. We provide that assistance mainly by convening small, multi-jurisdictional meetings where people facing similar issues can learn from one another and by connecting our clients with the most experienced domestic violence professionals active in the field today, people who serve as the project's associates. Since 1997, the Peer Exchange Project has helped approximately 70 communities improve their responses to domestic violence.

We found that facilitating dialogue between public defenders and victim advocates leads to greater understanding and respect between the professions and promises to advance safe and just resolutions in domestic violence cases. Hopefully, this publication can stimulate dialogue and improve relationships between defenders and victim advocates in your jurisdiction. The staff and associates of the Peer Exchange project also are available to assist you in that effort.

Promoting dialogue between public defenders and victim advocates is just one of the issues that the project addresses. A recent meeting, for example, focused on improving services for rural immigrant women. And much of our current work centers around developing domestic violence policies that reflect the concerns and needs of African-American communities, particularly as these communities reintegrate ex-offenders.

Whether you want to improve communication between public defenders and victim advocates in your community or are focused on other issues, the Peer Exchange Project may be able to help you. To learn more about the project and the tailored assistance we provide, contact me at (212) 334-1300 or by e-mail, lcrowder@vera.org.

LORI CROWDER
Director of the Peer Exchange Project

A private, nonprofit organization, Vera works closely with government to improve the services people rely on for safety and justice. The Institute develops innovative, affordable programs that often grow into self-sustaining organizations, studies social problems and current responses, and provides practical advice and assistance to public officials in New York and around the world.

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