



2013 JUDICIAL SYMPOSIUM

ON

Domestic Violence

POWERPOINT PRESENTATIONS



HON. JUDY HARRIS KLUGER

CHIEF OF POLICY AND PLANNING • NEW YORK STATE COURTS

DECEMBER 5–6, 2013

NEW YORK MARRIOTT AT THE BROOKLYN BRIDGE

333 ADAMS STREET, BROOKLYN, NY

TABLE OF CONTENTS

| | |
|---|------------|
| AGENDA | 1 |
| WITNESS INTIMIDATION AND RECATANTION IN CIVIL & CRIMINAL DOMESTIC VIOLENCE CASES | 3 |
| <i>POWERPOINT PRESENTATION (NOTE FORMAT)</i> | |
| RECOGNIZING & RESPONDING TO STALKING IN THE 21ST CENTURY | 31 |
| <i>POWERPOINT PRESENTATION (NOTE FORMAT)</i> | |
| INTIMATE PARTNER VIOLENCE AND VETERANS | 47 |
| <i>POWERPOINT PRESENTATION (NOTE FORMAT)</i> | |
| UNDERSTANDING & ADDRESSING WOMEN’S USE OF FORCE | 77 |
| <i>POWERPOINT PRESENTATION (NOTE FORMAT)</i> | |
| HOW LANGUAGE HELPS SHAPE OUR RESPONSE TO VIOLENCE AGAINST WOMEN | |
| <i>POWERPOINT PRESENTATION (NOTE FORMAT)</i> | 87 |
| <i>PRESENTATION EXERCISES</i> | 108 |
| FACULTY BIOGRAPHIES | 113 |

THIS PROJECT WAS SUPPORTED BY SUBGRANT No. VW12-1077-DOO AWARDED PURSUANT TO A STOP VIOLENCE AGAINST WOMEN FORMULA GRANT PROGRAM ADMINISTERED BY DCJS, THE NEW YORK STATE ADMINISTERING OFFICE. THE OPINIONS, FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS EXPRESSED IN THIS PUBLICATION/PROGRAM/EXHIBITION ARE THOSE OF THE AUTHOR(S) AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE STATE OR THE U.S. DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN.

2013 Judicial Symposium on Domestic Violence
New York Marriott at the Brooklyn Bridge
333 Adams Street, Brooklyn, NY

AGENDA

| TIME – DECEMBER 5 | DESCRIPTION |
|---------------------|---|
| | Breakfast on Your Own |
| 8:30 - 9:00 AM | Registration |
| 9:00 - 9:15 AM | Welcome and Opening Remarks <i>Hon. Judy Harris Kluger, Chief of Policy and Planning for New York State Courts</i> |
| 9:15 - 10:30 AM | Witness Intimidation and Recantation in Civil & Criminal Domestic Violence Cases <i>Sarah Buel, Clinical Professor of Law, Sandra Day O'Connor College of Law, Arizona State University</i> |
| 10:30 - 10:45 AM | Break |
| 10:45 AM - 12:00 PM | Recognizing & Responding to Stalking in the 21st Century <i>Michelle M. Garcia, Director, Stalking Resource Center, National Center for Victims of Crime</i> |
| 12:00 - 1:15 PM | Lunch on Your Own |
| 1:15 - 2:30 PM | Intimate Partner Violence and Veterans <i>Deborah D. Tucker, Executive Director, National Center on Domestic and Sexual Violence</i> |
| 2:30 – 2:45 PM | Break |
| 2:45 – 4:00 PM | Understanding & Addressing Women's Use of Force <i>Lisa Larance, Domestic Violence Intervention Services Coordinator, Catholic Social Services of Washtenaw County, Ann Arbor, Michigan</i> |
| 4:00 - 5:00 PM | Facilitated Breakout Sessions: Judges: Firearms Resource Coordinators: Access to Justice Initiative |
| 5:00 PM | End of Day – Dinner on Your Own |

| TIME – DECEMBER 6 | DESCRIPTION |
|-------------------|--|
| | Breakfast on Your Own |
| 8:30 - 9:00 AM | Registration |
| 9:00 - 9:15 AM | Welcome and Opening Remarks <i>Hon. Judy Harris Kluger, Chief of Policy and Planning for New York State Courts</i> |
| 9:15 - 10:30 AM | How Language Helps Shape Our Response to Violence Against Women <i>Claudia J. Bayliff, Attorney, National Judicial Education Project</i> |
| 10:30 - 10:45 AM | Break |
| 10:45 - 12:00 PM | Overlap of Sex-Trafficking and Domestic Violence <i>Dorchen A. Leidholdt, Director, Sanctuary for Families Battered Women's Legal Services</i> |
| 12:00 - 12:15PM | Closing Remarks <i>Hon. Judy Harris Kluger, Chief of Policy and Planning for New York State Courts</i> |
| 12:15 PM | End of Symposium |

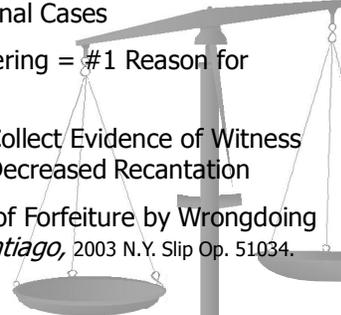
Witness Intimidation & Recantation in Civil & Criminal Domestic Violence Cases

Clinical Professor Sarah Buel
University of Texas School of Law
sbuel@law.utexas.edu



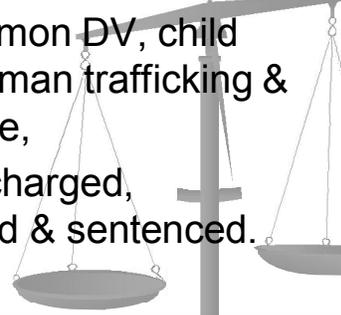
4 Key Take-Aways

- I. Endemic Witness Tampering & Retaliation in Civil & Criminal Cases
- II. Witness Tampering = #1 Reason for Recantation
- III. Teach ALL to Collect Evidence of Witness Tampering = Decreased Recantation
- IV. Use Doctrine of Forfeiture by Wrongdoing
→ *State v. Santiago*, 2003 N.Y. Slip Op. 51034.

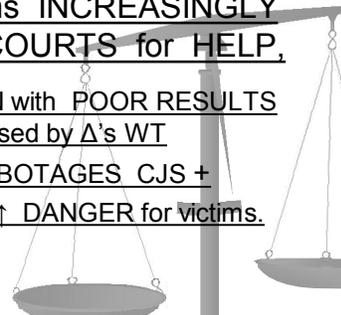


I. Endemic Witness Tampering (WT) & Retaliation in Civil & Criminal Cases

- Most common DV, child abuse, human trafficking & gang crime,
- yet least charged, prosecuted & sentenced.

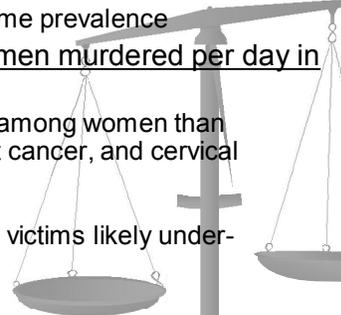


IPV Victims INCREASINGLY
TURN to COURTS for HELP,
TOO OFTEN with POOR RESULTS
caused by Δ's WT
that SABOTAGES CJS +
CREATES ↑ DANGER for victims.



A. DV Prevalence (D.O.J., 2012).

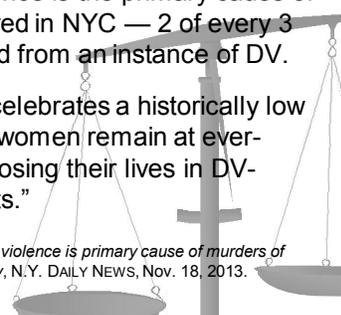
- 8 million women *report* physical abuse annually
- 31% report lifetime prevalence
- 4 battered women murdered per day in U.S.
- More prevalent among women than diabetes, breast cancer, and cervical cancer!
- Male & LGBTQ victims likely under-reported.



NYC Women at Great Risk in Violent Homes

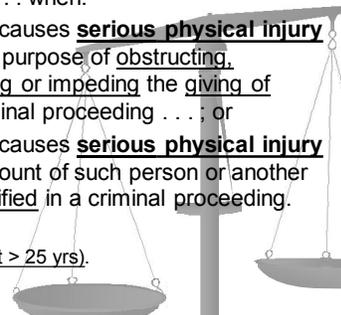
- “Domestic violence is the primary cause of women murdered in NYC — 2 of every 3 in 2012 resulted from an instance of DV.
- Even as NYC celebrates a historically low homicide rate, women remain at ever-greater risk of losing their lives in DV-related incidents.”

Nathaniel Fields, *Domestic violence is primary cause of murders of women in New York City*, N.Y. DAILY NEWS, Nov. 18, 2013.



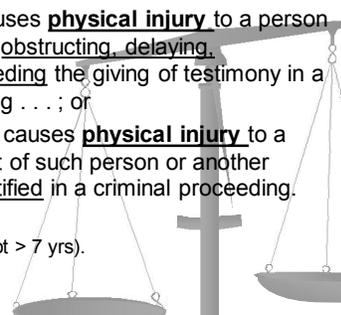
NY Pen. Law § 215.13
Tampering with a witness 1st degree

- A person is guilty . . . when:
- 1. He intentionally causes **serious physical injury** to a person for the purpose of obstructing, delaying, preventing or impeding the giving of testimony in a criminal proceeding . . . ; or
- 2. He intentionally causes **serious physical injury** to a person on account of such person or another person having testified in a criminal proceeding.
- = a class B felony (not > 25 yrs).



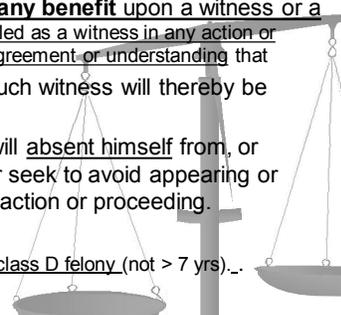
§ 215.12 Tampering with a witness 2nd degree

- A person is guilty . . . when he:
- 1. Intentionally causes **physical injury** to a person for the purpose of obstructing, delaying, preventing or impeding the giving of testimony in a criminal proceeding . . . ; or
- 2. He intentionally causes **physical injury** to a person on account of such person or another person having testified in a criminal proceeding.
- = a class D felony (not > 7 yrs).



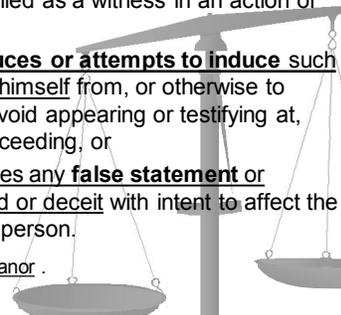
N.Y. PEN. LAW § 215.00. BRIBING A WITNESS

- A person is guilty ... when he **confers, or offers or agrees to confer, any benefit upon a witness or a person about to be called as a witness in any action or proceeding** upon an agreement or understanding that
 - (a) the testimony of such witness will thereby be influenced, or
 - (b) such witness will absent himself from, or otherwise avoid or seek to avoid appearing or testifying at, such action or proceeding.
- Bribing a witness is a class D felony (not > 7 yrs)...



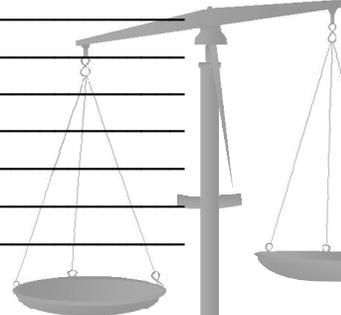
§ 215.10. Tampering with a witness, 4th degree

- A person is guilty ... when, knowing that a person is or is about to be called as a witness in an action or proceeding,
 - (a) he **wrongfully induces or attempts to induce such person to absent himself** from, or otherwise to **avoid** or seek to avoid appearing or testifying at, such action or proceeding, or
 - (b) he knowingly **makes any false statement or practices any fraud or deceit** with intent to affect the testimony of such person.
- is a class A misdemeanor .



What conduct = witness tampering?

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____



B. Types of Witness Tampering

- Endearments
- Pleas for Forgiveness
- Bribery/ Gifts
- Threats re: custody, physical harm, ICE
- New Assaults, Stalking, Revenge Porn
- Court Manipulation
- Vexatious Over-Litigation
- 3rd Parties Collusion



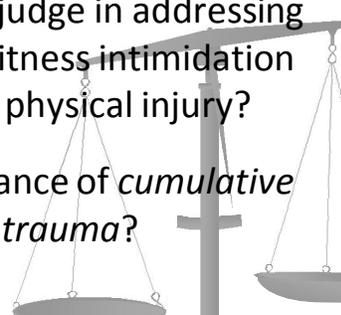
How distinguish “serious physical injury” vs. “physical injury”?

Consider traumatic injury?
Terroristic threats?
Cumulative harm?



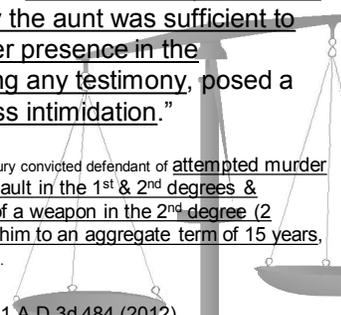
#1. Role of judge in addressing coercive witness intimidation without physical injury?

#2. Relevance of *cumulative trauma*?



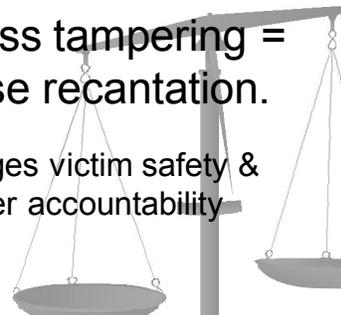
Witness Intimidation IN Courtroom

- “The prosecutor’s detailed description of the threats made by the aunt was sufficient to establish that her presence in the courtroom, during any testimony, posed a danger of witness intimidation.”
- Bronx County (Villegas, J.) jury convicted defendant of attempted murder in the 2nd degree, assault in the 1st & 2nd degrees & criminal possession of a weapon in the 2nd degree (2 counts) & sentenced him to an aggregate term of 15 years, unanimously affirmed.
- *People v. Pabellon*, 91 A.D.3d 484 (2012).



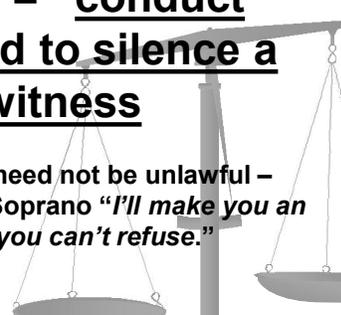
II. Witness tampering =
#1 cause recantation.

+ sabotages victim safety &
offender accountability

A pair of scales of justice is positioned behind the text, with the pans hanging from a central beam.

A. **WT = conduct**
intended to silence a
witness

*conduct need not be unlawful –
think: Tony Soprano “I’ll make you an
offer you can’t refuse.”

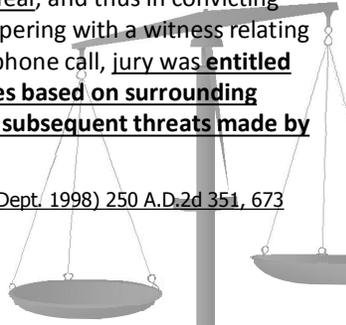
A pair of scales of justice is positioned behind the text, with the pans hanging from a central beam.

A cartoon illustration of a florist shop. A man in a suit stands at a counter talking to a florist. There are shelves of potted plants and a display case in the background.

What sort of flowers say, 'I promise to obey the
restraining order'? (= ...Witness Tampering!)

“In assessing whether statement on which tampering charge was based constituted an attempt to instill fear, and thus in convicting defendant of tampering with a witness relating to particular telephone call, jury was entitled to draw inferences based on surrounding events, including subsequent threats made by defendant.”

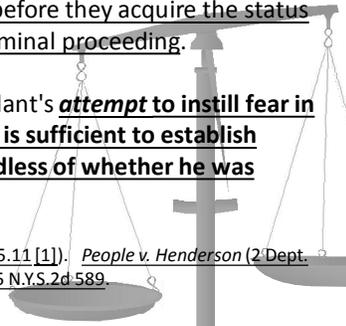
People v. Coursey (1 Dept. 1998) 250 A.D.2d 351, 673 N.Y.S.2d 78.



“Statute prohibiting intimidating a victim or witness in the 3rd degree is not limited to protecting victims before they acquire the status of a witness in a criminal proceeding.”

Moreover, a defendant's attempt to instill fear in a victim or witness is sufficient to establish these crimes regardless of whether he was successful.”

(see, N.Y. Penal Law §§ 215.11 [1]). *People v. Henderson* (2 Dept. 1999) 265 A.D.2d 573, 705 N.Y.S.2d 589.



B. Witness Tampering of Children

- Many batterers threaten & harm children.
- Batterers' willingness to use children as bargaining chips is termed “custody blackmail” to capture the coercion.

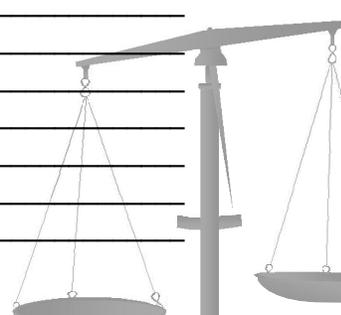


- 100's witness tampering cases involve batterers' direct harm to children as means of influencing the abused parent.
- Given that many who batter adult partners also harm kids, need ENHANCED PENALTIES FOR WITNESS TAMPERING OF CHILDREN.



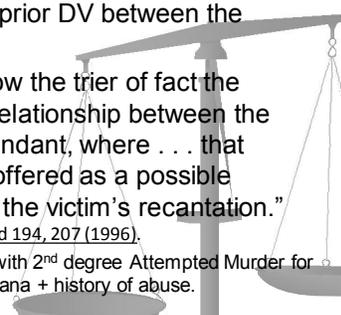
C. Why do victims recant?

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____



Recantation

- Several courts have found that when a victim recants, prior DV between the parties is
- "relevant to show the trier of fact the *context* of the relationship between the victim and defendant, where . . . that relationship is offered as a possible explanation for the victim's recantation."
State v. Clark, 926 P.2d 194, 207 (1996).
- Clark was charged with 2nd degree Attempted Murder for stabbing his wife, Diana + history of abuse.



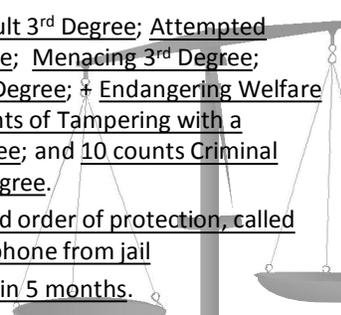
III. Teach ALL to Collect Evidence of Witness Tampering = ↓ Recidivism

- Allege victim is abuser
- Custody Blackmail
- Child Support Threats
- Stalking
- Threats & Assaults
- Immigration Threats
- Revenge Porn
- 'Conflicting out' legal aid
- Coerced Debt
- Exerting pressure to proceed too quickly
- Endearments
- Pleas for Forgiveness
- Bribery/ Gifts
- Vexatious Over-Litigation, court manipulation
- Protracted Litigation
- 3rd Parties Collusion
- Denying access to financial resources
- Hiding assets



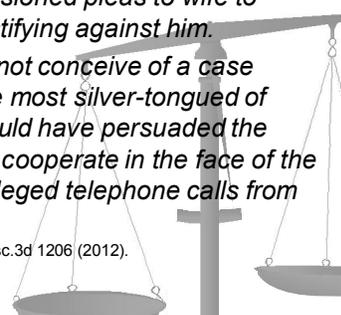
A. People v. Ndoye (N.Y., 2012)

- Dec. 14 Δ arraigned
- 3 counts of Assault 3rd Degree; Attempted Assault 3rd Degree; Menacing 3rd Degree; Harassment 2nd Degree; + Endangering Welfare of a Child; 3 counts of Tampering with a Witness 4th Degree; and 10 counts Criminal Contempt 2nd Degree.
- Dec. 15 Δ violated order of protection, called wife on her cell phone from jail
- 12 continuances in 5 months.



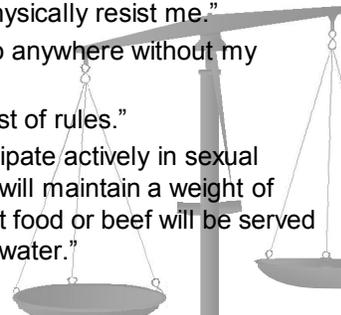
Coercive, “non-threatening” witness tampering

- Δ made *“impassioned pleas to wife to refrain from testifying against him.”*
- *This Court cannot conceive of a case where even the most silver-tongued of prosecutors could have persuaded the complainant to cooperate in the face of the onslaught of alleged telephone calls from her husband.”*
- *People v. Ndoye, 36 Misc.3d 1206 (2012).*



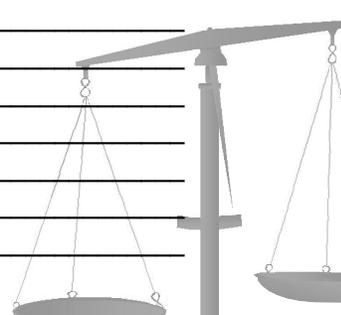
Inaction promotes batterer's sense of entitlement:

- "Do not ever physically resist me."
- "Do not ever go anywhere without my permission."
- "Notarize this list of rules."
- "Wife will participate actively in sexual activities. Wife will maintain a weight of 115 lbs. No fast food or beef will be served & only distilled water."



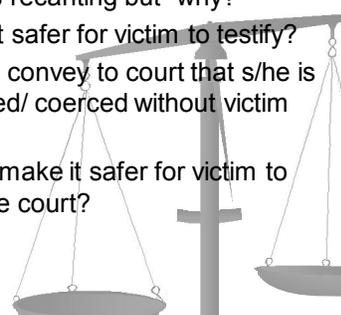
B. How remedy WT & recantation?

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____



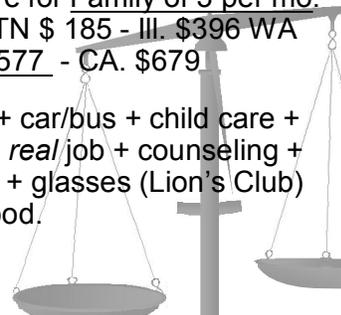
Ask the right questions:

- Not "if" victim is recanting but "why?"
- Can we make it safer for victim to testify?
- How can victim convey to court that s/he is being threatened/ coerced without victim testimony?
- How can court make it safer for victim to get to and leave court?



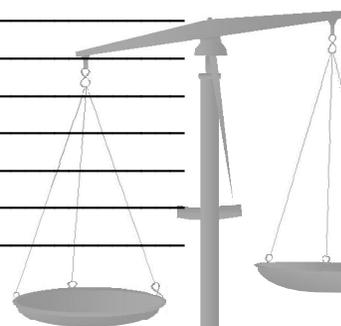
C. Economic Empowerment

1. TANF/ welfare for Family of 3 per mo:
Miss \$170 - TN \$ 185 - Ill. \$396 WA
\$546 – NY \$577 - CA. \$679
2. Plan: house + car/bus + child care +
job training + *real*/job + counseling +
medical care + glasses (Lion's Club)
+ dentist + food.



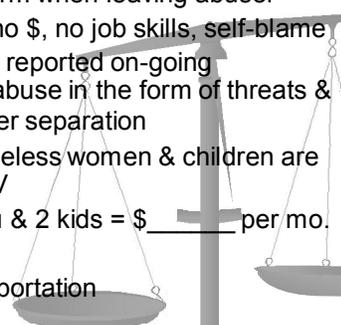
D. Why don't victims just leave?

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____



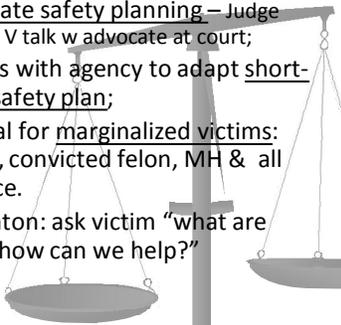
D. Why Don't Victims Just Leave?

1. Greater risk harm when leaving abuser
2. Threats, kids, no \$, no job skills, self-blame
3. 60% of women reported on-going
psychological abuse in the form of threats &
intimidation after separation
4. 50% of all homeless women & children are
fleeing from DV
5. Welfare for you & 2 kids = \$ _____ per mo.
6. Depression
7. Fear of ICE/deportation



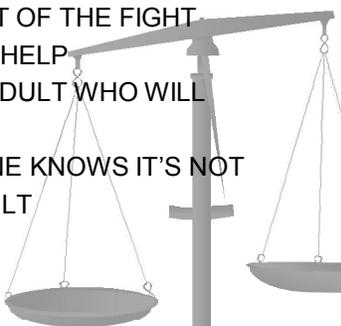
E. Teach SAFETY PLANNING to Stay Alive Before, During & After WT

- Court can facilitate safety planning – Judge Sydney Hanlon → V talk w advocate at court;
- Empower clients with agency to adapt short- and long-term safety plan;
- Especially critical for marginalized victims: undocumented, convicted felon, MH & all unable call police.
- Judge Mike Denton: ask victim “what are you afraid of & how can we help?”



Teach Kids S.A.F.E.

- S = STAY OUT OF THE FIGHT
- A = ASK FOR HELP
- F = FIND an ADULT WHO WILL LISTEN
- E = EVERYONE KNOWS IT'S NOT YOUR FAULT



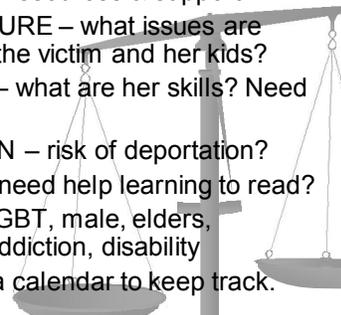
F. Download & DISTRIBUTE free Adult & Youth Safety Plans + Bunny Bag
Info: your local shelters + www.youngonesunited.org

= not copyrighted! Massively distribute in your community!



***Ensure Safety Planning covers:**

- FAITH – what resources & support?
- RACE/ CULTURE – what issues are important for the victim and her kids?
- LANGUAGE – what are her skills? Need translator?
- IMMIGRATION – risk of deportation?
- LITERACY – need help learning to read?
- Other, e.g., LGBT, male, elders, depression, addiction, disability
- Give each V a calendar to keep track.



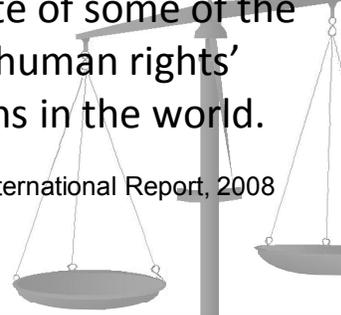
G. Safety Planning for Providers

- Protective order laws should cover 3rd parties assisting victims
- What is YOUR safety plan?
- Does it address physical safety and mental health/ self-care?



H. U.S. women’s prisons are the site of some of the worst human rights’ violations in the world.

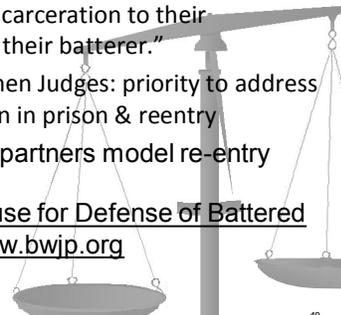
Amnesty International Report, 2008



Battered Women As Defendants

- “80-85% of women imprisoned in the U. S. attribute their incarceration to their association with their batterer.”
- Nat’l Assoc Women Judges: priority to address issues for women in prison & reentry
- Brooklyn DA + partners model re-entry

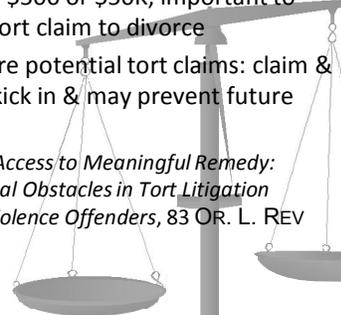
Nat’l Clearinghouse for Defense of Battered Women → www.bwjp.org



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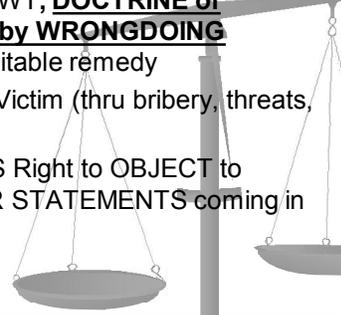
I. Batterer Accountability in Tort

- Even if client gets \$500 or \$50K, important to consider adding tort claim to divorce
- Unethical to ignore potential tort claims: claim & issue preclusion kick in & may prevent future action.
- See Sarah M. Buel, *Access to Meaningful Remedy: Overcoming Doctrinal Obstacles in Tort Litigation Against Domestic Violence Offenders*, 83 OR. L. REV 945 (Fall 2004).



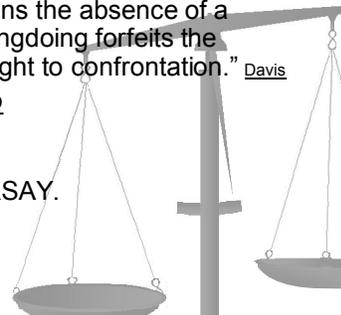
IV. Use Forfeiture → *State v. Santiago*

- In response to WT, **DOCTRINE of FORFEITURE by WRONGDOING** evolved as equitable remedy
- = if Δ silences Victim (thru bribery, threats, violence),
- then he LOSES Right to OBJECT to Victim’s PRIOR STATEMENTS coming in at trial.



A. NY Forfeiture by Wrongdoing

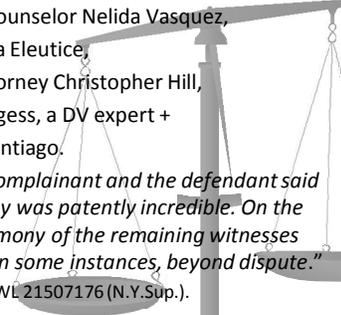
- “One who obtains the absence of a witness by wrongdoing forfeits the constitutional right to confrontation.” *Davis*
- State v. Santiago
- N.Y. Sirois Hearing
- Can use HEARSAY.



State v. Santiago = Forfeiture 101

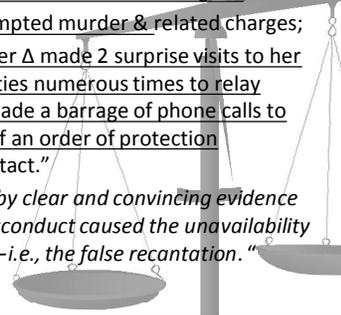
Judge Jeffrey Atlas: Sirois hearing witnesses:

- complainant Angela R.,
- Domestic Violence Counselor Nelida Vasquez,
- Police Officer Geneva Eleutice,
- Assistant District Attorney Christopher Hill,
- Dr. Ann Wolbert Burgess, a DV expert +
- defendant, Victor Santiago.
- *“Much of what the complainant and the defendant said during their testimony was patently incredible. On the other hand, the testimony of the remaining witnesses was believable and, in some instances, beyond dispute.”*
- *State v. Santiago*, 2003 WL 21507176 (N.Y.Sup.).



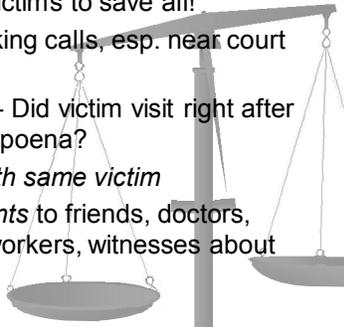
People v. Turnquest, 938 N.Y.S.2d 749 (2012).

- Wife told police & medical staff that Δ repeatedly punched her & pushed her out of a moving car;
- Δ charged with attempted murder & related charges;
- “Victim recanted after Δ made 2 surprise visits to her home, called 3rd parties numerous times to relay messages to her + made a barrage of phone calls to her, all in violation of an order of protection prohibiting such contact.”
- *“The People proved by clear and convincing evidence that defendant’s misconduct caused the unavailability of the complainant—i.e., the false recantation.”*



B. Evidence to Prove Forfeiture

- *Jail mail* - tell victims to save all!
- *Jail calls* – booking calls, esp. near court settings
- *Jail visitor logs* - Did victim visit right after served with subpoena?
- *Past contact with same victim*
- *Victim Statements* to friends, doctors, therapists, co-workers, witnesses about fear.



C. De Facto Witness Tampering Ought to Trigger Forfeiture

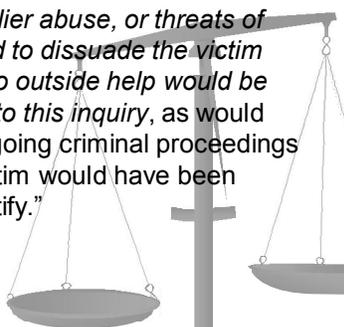
1. Accord and Satisfaction
2. Over-Litigiousness
3. Borderline Criminal Conduct
4. Relentless, Retaliatory Harassment
5. Attorney Collusion
6. Non-violent terror (think Tony Soprano)



Prior Abuse as Intent

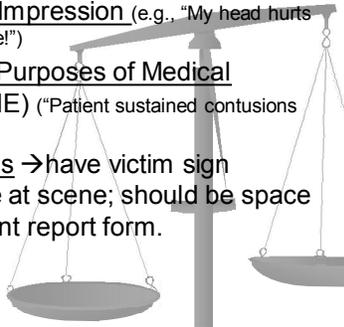
- *Giles said, "Earlier abuse, or threats of abuse, intended to dissuade the victim from resorting to outside help would be highly relevant to this inquiry, as would evidence of ongoing criminal proceedings at which the victim would have been expected to testify."*

■ at 2693.



**OTHER ADMISSIBLE HEARSAY LIKELY
NON-TESTIMONIAL**

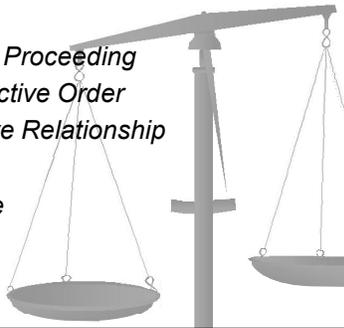
- **Present Sense Impression** (e.g., "My head hurts where batterer hit me!")
- **Statements for Purposes of Medical Diagnosis (SANE)** ("Patient sustained contusions under left eye . . .")
- **Medical Records** → have victim sign medical release at scene; should be space on police incident report form.



D. My Proposal re: Intent to Silence

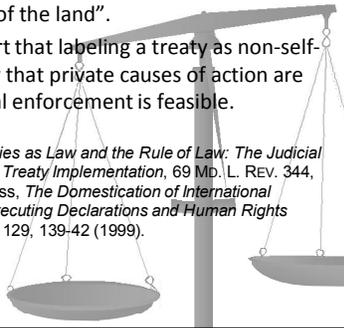
Case Factors triggering INFERENCES

1. *Murder*
2. *Pending Legal Proceeding*
3. *Present Protective Order*
4. *Classic Abusive Relationship*
5. *Recantation*
6. *Mixed Purpose*
7. *Context*



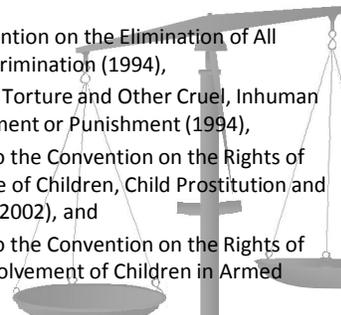
E. Human Rights in U.S. Trial Courts

- The Constitution's Supremacy Clause is unequivocal in providing that ratified treaties are to be given full effect as the "supreme law of the land".
- Some scholars purport that labeling a treaty as non-self-executing means only that private causes of action are precluded, but judicial enforcement is feasible.
- William M. Carter, Jr., *Treaties as Law and the Rule of Law: The Judicial Power to Compel Domestic Treaty Implementation*, 69 Md. L. REV. 344, 346 (2009-2010); David Sloss, *The Domestication of International Human Rights: Non-Self-Executing Declarations and Human Rights Treaties*, 24 YALE J. INT'L L. 129, 139-42 (1999).



The U.S. has ratified 5 human rights protocols & treaties:

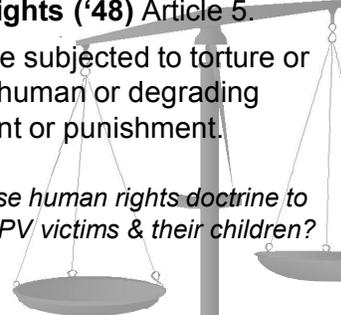
- 1) International Covenant on Civil and Political Rights (1992),
- 2) International Convention on the Elimination of All Forms of Racial Discrimination (1994),
- 3) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1994),
- 4) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2002), and
- 5) Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2002).



U.N. Universal Declaration on Human Rights ('48) Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

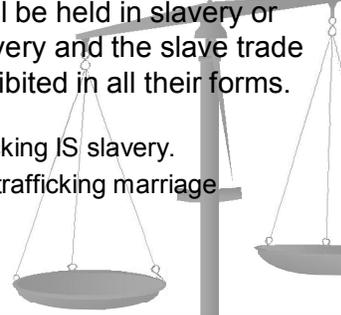
- *How can we use human rights doctrine to better protect IPV victims & their children?*



U.N. Universal Declaration on Human Rights ('48) Article 4.

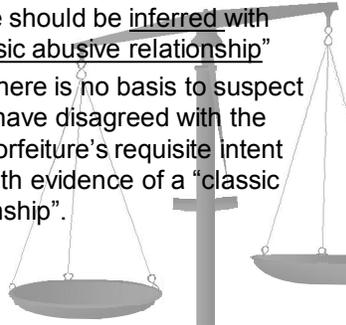
No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

- Human trafficking IS slavery.
- Increasing # trafficking marriage cases.



Classic Abusive Relationship, cont'd.

- Justice Souter's concurrence
- intent to silence should be inferred with proof of a "classic abusive relationship"
- + argues that there is no basis to suspect framers would have disagreed with the inference that forfeiture's requisite intent could be met with evidence of a "classic abusive relationship".



Prior Bad Acts, cont'd.

- Witness testimony regarding past incidents of domestic violence between defendant and victim was relevant to show absence of mistake regarding victim's injuries.

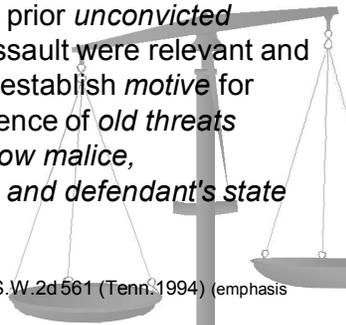
■ *State v. Romero*, 139 N.M. 386, 133 P.3d 842 (2006), certiorari granted 139 N.M. 429, 134 P.3d 120, affirmed 141 N.M. 403, 156 P.3d 694, rehearing denied, certiorari dismissed 126 S.Ct. 976, 169 L.Ed.2d 799, Criminal Law 371(1)



Proving Intent, Malice, Premeditation & Defendant's State of Mind

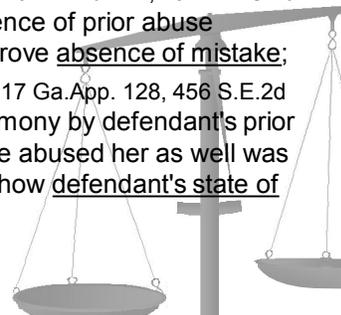
- Evidence of 2 prior *unconvicted* charges for assault were relevant and admissible to establish *motive* for murder - evidence of *old threats relevant to show malice, premeditation and defendant's state of mind.*

■ *State v. Smith*, 868 S.W.2d 561 (Tenn. 1994) (emphasis added).

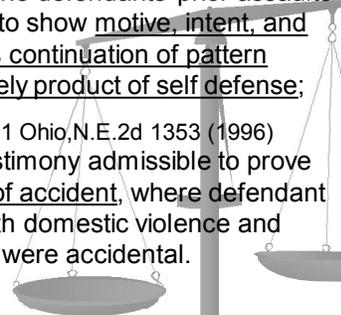


State's law re: prior bad acts:

- *People v. Sims*, 110 A.D.2d 214, 494 N.Y.S.2d 114 (1985) evidence of prior abuse admissible to prove absence of mistake;
- *Wetta v. State*, 217 Ga.App. 128, 456 S.E.2d 696 (1995) testimony by defendant's prior girlfriend that he abused her as well was admissible to show defendant's state of mind.

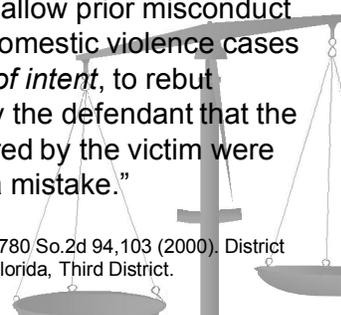


- *People v. Hawker*, 626 N.Y.S.2d 524 (1995) allowing children's testimony in murder case who witnessed the defendants' prior assaults on their mother to show motive, intent, and that murder was continuation of pattern rather than merely product of self defense;
- *State v. Grubb*, 111 Ohio,N.E.2d 1353 (1996) former wife's testimony admissible to prove intent and lack of accident, where defendant was charged with domestic violence and claimed injuries were accidental.



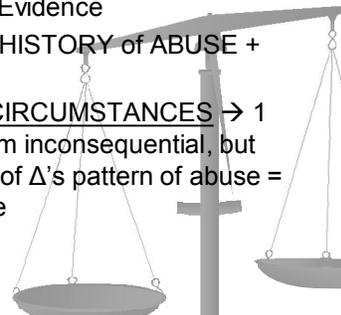
Proving Intent

- "Many states allow prior misconduct evidence in domestic violence cases as *probative of intent*, to rebut allegations by the defendant that the injuries suffered by the victim were the result of a mistake."
- *Robertson v. State*, 780 So.2d 94,103 (2000). District Court of Appeal of Florida, Third District.



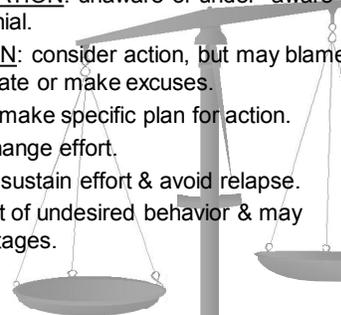
7. Context ~Totality of Circumstances

- Cumulative Evidence
- Circumstantial Evidence
- = COMPLETE HISTORY of ABUSE + INCIDENT
- TOTALITY of CIRCUMSTANCES → 1 factor may seem inconsequential, but viewed as part of Δ's pattern of abuse = intent to silence



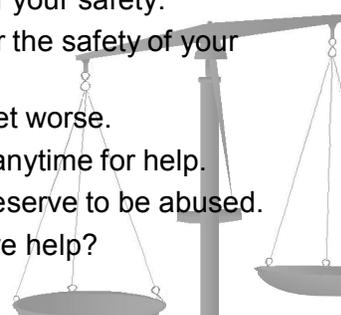
Change Process,
Prochaska & DeClemente Research

1. PRECONTEMPLATION: unaware or under- aware of problem; in denial.
2. CONTEMPLATION: consider action, but may blame others, procrastinate or make excuses.
3. PREPARATION: make specific plan for action.
4. ACTION: overt change effort.
5. MAINTENANCE: sustain effort & avoid relapse.
6. RELAPSE: repeat of undesired behavior & may return to earlier stages.



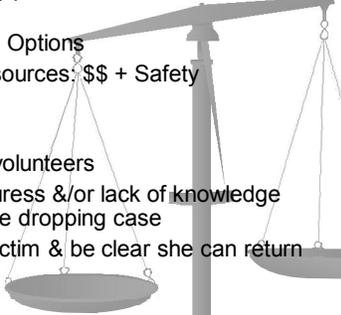
D. Talk to Recanting Victim

1. I'm afraid for your safety.
2. I'm afraid for the safety of your children.
3. It will only get worse.
4. Contact us anytime for help.
5. You don't deserve to be abused.
6. How can I/we help?



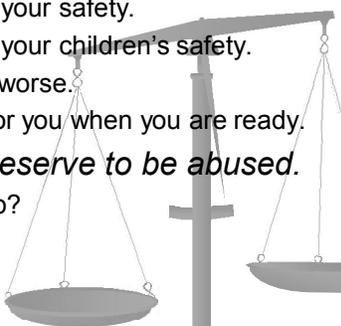
E. Project Options, Travis County

- Any victim dropping protective order must attend 2 Classes:
 1. Criminal Justice Options
 2. Community Resources: \$\$ + Safety Planning
- Taught by trained volunteers
- Assumption that duress &/or lack of knowledge about options cause dropping case
- MUST discuss w victim & be clear she can return



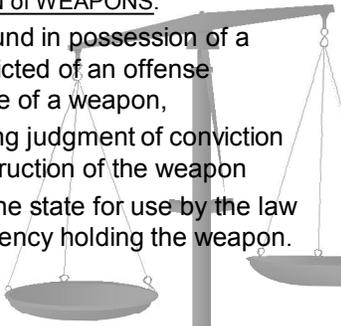
F. 6 Things to Say to a Victim

1. I am afraid for your safety.
2. I am afraid for your children's safety.
3. It will only get worse.
4. We are here for you when you are ready.
5. *You don't deserve to be abused.*
6. How can I help?



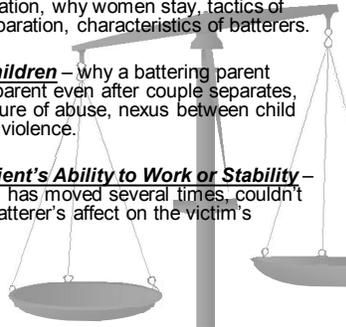
G. INSIST ON FULL PROTECTIVE ORDER

- * Unethical to leave guns with batterers → DISPOSSESSION of WEAPONS:
- If the person found in possession of a weapon is convicted of an offense involving the use of a weapon,
- the court entering judgment of conviction must order destruction of the weapon
- or forfeiture to the state for use by the law enforcement agency holding the weapon.



H. Experts

- **DV Basics** – Lethality assessments, power/control safety issues, recantation, why women stay, tactics of control, effects of separation, characteristics of batterers.
- **Effects of DV on Children** – why a battering parent would still be a bad parent even after couple separates, intergenerational nature of abuse, nexus between child abuse and domestic violence.
- **Effects of DV on Client's Ability to Work or Stability** – why she is in shelter, has moved several times, couldn't hold down her job, batterer's affect on the victim's parenting.



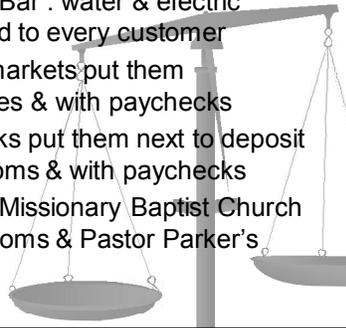
I. Massively Distribute Safety Plans

- In courthouse & police station waiting areas & bathrooms
- In libraries, schools, stores, laundromats, community agencies
- Offices of doctors, lawyers, professionals
- Distributed by police at every crime scene
- Where else?



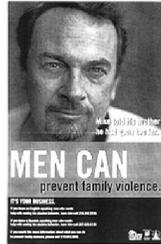
*Safety Plan Distribution

- Charlotte, S.C. Bar : water & electric company mailed to every customer
- Kroger Supermarkets put them throughout stores & with paychecks
- Sun Trust Banks put them next to deposit slips, in bathrooms & with paychecks
- David Chapel Missionary Baptist Church put in all bathrooms & Pastor Parker's sermons



“MEN CAN” Billboard Campaign

- FREE & not copyrighted
- Austin: on side of buses
- Philly: on billboards & posters

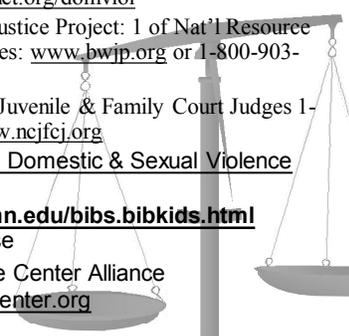


Must educate community:
 “Men Can” Campaign on
 Billboards & Side Austin Buses
www.instituteforsafefamilies.org



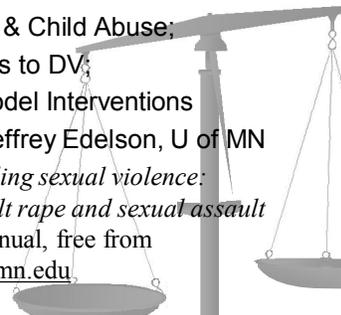
Resources

- American Bar Association’s Commission on Domestic Violence: www.abanet.org/domviol
- Battered Women’s Justice Project: 1 of Nat’l Resource Centers on legal issues: www.bwjp.org or 1-800-903-0111
- National Council of Juvenile & Family Court Judges 1-800-52-PEACE www.ncjfcj.org
- National Center on Domestic & Sexual Violence www.ncdsv.org
- www.mincava.umn.edu/bibs.bibkids.html invaluable database
- Nat’l Family Justice Center Alliance www.familyjusticecenter.org



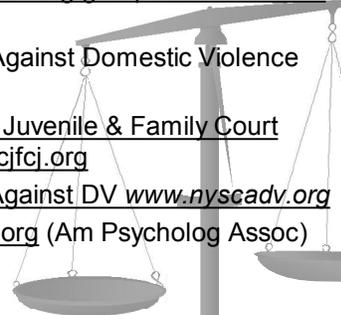
www.mincava.umn.edu/bibs.bibkids.html

- Extensive collection of articles & links
- Correlation DV & Child Abuse;
- Child Witnesses to DV;
- Research & Model Interventions
- Run by Prof. Jeffrey Edelson, U of MN
- e.g. *Understanding sexual violence: Prosecuting adult rape and sexual assault cases*, 63 pg. manual, free from www.mincava.umn.edu



Resources

- ABA Comm. Domestic & Sexual Violence www.americanbar.org/groups/domestic_violence.html
- Nat'l Coalition Against Domestic Violence www.ncadv.org
- Nat'l Council of Juvenile & Family Court Judges www.ncjfcj.org
- N.Y. Coalition Against DV www.nyscadv.org
- APA: www.apa.org (Am Psycholog Assoc)

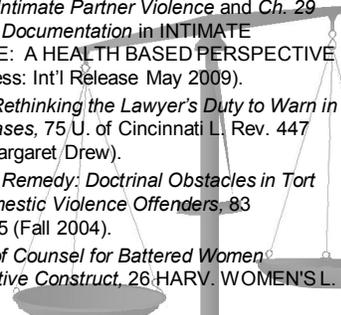


For info & TA relating to DV & Child Protection, call
#1-800-52-PEACE
 National Council of Juvenile & Family Court Judge's Resource Center
www.ncjfcj.org/dept/fvd



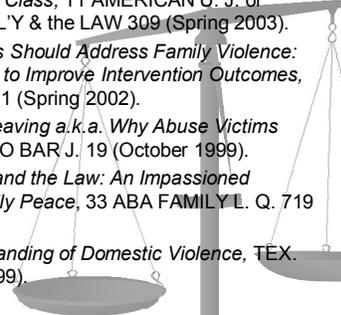
Articles by Sarah Buel – happy to send any

- *Putting Forfeiture to Work*, U.C. Davis L. Rev. (Spring 2010).
- *Ch. 28 Obstacles and Remedies for Criminal and Civil Justice for Victims of Intimate Partner Violence* and *Ch. 29 Medical and Forensic Documentation* in INTIMATE PARTNER VIOLENCE: A HEALTH BASED PERSPECTIVE (Oxford University Press: Int'l Release May 2009).
- *Do Ask and Do Tell: Rethinking the Lawyer's Duty to Warn in Domestic Violence Cases*, 75 U. of Cincinnati L. Rev. 447 (Winter 2006) (with Margaret Drew).
- *Access to Meaningful Remedy: Doctrinal Obstacles in Tort Litigation Against Domestic Violence Offenders*, 83 OREGON L. REV. 945 (Fall 2004).
- *Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct*, 26 HARV. WOMEN'S L. J. 217 (Spring 2003).



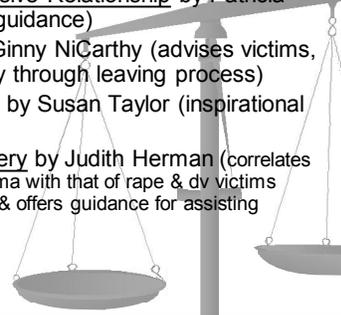
Articles by Sarah Buel, cont'd:

- *The Pedagogy of Domestic Violence Law: Situating Domestic Violence Work in Law Schools, Adding the Lenses of Race and Class*, 11 AMERICAN U. J. of GENDER, SOC POL'Y & the LAW 309 (Spring 2003).
- *Why Juvenile Courts Should Address Family Violence: Promising Practices to Improve Intervention Outcomes*, JUV. & FAM. CT. J. 1 (Spring 2002).
- *Fifty Obstacles to Leaving a.k.a. Why Abuse Victims Stay*, 28 COLORADO BAR J. 19 (October 1999).
- *Domestic Violence and the Law: An Impassioned Exploration for Family Peace*, 33 ABA FAMILY L. Q. 719 (Fall 1999).
- *A Lawyer's Understanding of Domestic Violence*, TEX. BAR J. (October 1999).



Helpful Books

- *The Verbally Abusive Relationship* by Patricia Evans (practical guidance)
- *Getting Free* by Ginny NiCarthy (advises victims, colleagues, family through leaving process)
- *Lessons in Living* by Susan Taylor (inspirational guidance)
- *Trauma & Recovery* by Judith Herman (correlates prisoner of war trauma with that of rape & dv victims based on research; & offers guidance for assisting trauma survivors).





Recognizing and Responding to Stalking

Judicial Symposium on Domestic Violence
December 5 – 6, 2013

Stalking
resource center

Presented by:

Michelle Garcia
Director
Stalking Resource Center
National Center for Victims of Crime
mgarcia@ncvc.org
202-467-8700

Stalking
resource center

www.victimsofcrime.org/src

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Stalking
resource center

Training
Technical Assistance
Resources

- Statutes
- Legislative Updates
- Manuals/Guides
- Videos
- Clearinghouse

THE NATIONAL CENTER FOR
Victims of Crime

The Stalking Resource Center is a program of the National Center for Victims of Crime. The mission of the Stalking Resource Center is to enhance the ability of professionals, organizations, and systems to effectively respond to stalking. The Stalking Resource Center envisions a future in which the criminal justice system and its many allied community partners will effectively collaborate and respond to stalking, improve victim safety and well-being, and hold offenders accountable.

The Stalking Resource Center provides training, technical assistance, and resource materials for professionals working with and responding to stalking victims and offenders.

Stalking

A pattern of behavior directed at a specific person that would cause a reasonable person to feel fear.

Stalking: Fear

What is difficult about this aspect of the crime of stalking?

- Subjective
- People don't admit to being fearful
- People react differently to fear
- All about the context of the behaviors

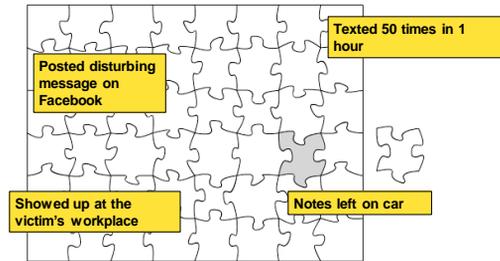
Understanding Stalking – Fear

- Something may be frightening for the victim but not to you
- Stalking behaviors often have specific meaning that is only understood between offender & victim
- Stalking criminalizes otherwise non-criminal behavior



Context & Fear

Context is critical in stalking cases



New York Stalking & Related Statutes

Stalking

- § 120.40. Definitions
- § 120.45. Stalking in the fourth degree
- § 120.50. Stalking in the third degree
- § 120.55. Stalking in the second degree
- § 120.60. Stalking in the first degree

Harassment

- § 240.25. Harassment in the first degree
- § 240.26. Harassment in the second degree
- § 240.30. Aggravated harassment in the second degree
- § 240.31. Aggravated harassment in the first degree

Related Offenses

- § 250.45. Unlawful surveillance in the second degree
- § 250.50. Unlawful surveillance in the first degree
- § 250.55. Dissemination of an unlawful surveillance image in the second degree
- § 250.60. Dissemination of an unlawful surveillance image in the first degree

Prevalence of Stalking

How many people are stalked in one year:

- United States?
- New York?
- Your community?

Stalking Dynamics

18 – 24 year olds experience the highest rates of stalking

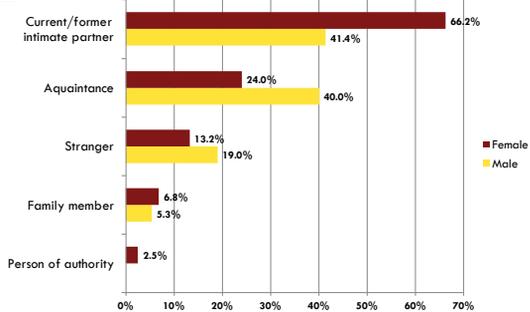
Women are more likely to experience stalking

Most offenders are male

The majority of victims know the offender

- The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report (2011)

Victim Offender Relationship



- The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report (2011)

Stalking & Domestic Violence



Stalking and Domestic Violence

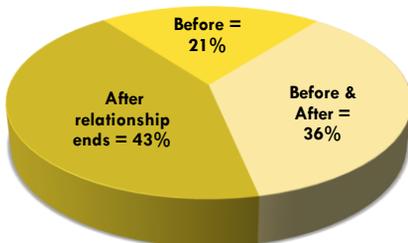
81% of stalking victims who were stalked by an intimate partner reported that they had also been physically assaulted by that partner.

- National Violence Against Women Survey (1998)

3/4 of women who experienced stalking-related behaviors experienced other forms of victimization (sexual, physical, or both)

- Stalking acknowledgement and reporting among college women experiencing intrusive behaviors (2007)

Point in Intimate Relationship when Stalking of Women Occurs



- National Violence Against Women Survey (1998)

Intimate Partner Stalkers: Increased Risk for Victims

- More likely to physically approach victim
- More insulting, interfering and threatening
- More likely to use weapons
- Behaviors more likely to escalate quickly
- More likely to re-offend

The RECON Typology of Stalking, Mhandie et al (2006)

Intimate Partner Stalking Risk

More separation attempts than victims of intimate partner violence alone

• Logan et al, Stalking victimization on the context of intimate partner violence (2007)

Intimate partner stalkers are more likely to assault third parties than non-intimate stalkers

• Sheridan and Davies Criminal Behavior and Mental Health, (2001)

Risk of Violence

- Approx. 25 – 35 % of stalking cases involve violence
 - Includes ANY kind of physical aggression, pushing, kicking, punching through to weapon use and homicide
 - Based on NISVS numbers → 1.75 – 2.45 million women and 0.5 – 0.7 million men lifetime experience of stalking related violence
- 2% of stalking cases involved serious violence including homicide
 - Based on NISVS numbers → 140,000 women and 40,000 men may suffer serious stalking related violence

• Moley JR. The psychology of stalking: clinical and forensic perspectives. San Diego, CA: Academic Press; 1998.

Stalking Violence

- When is the greatest risk of stalking violence?
 - issued direct threats of violence
 - was jealous of the victim's relationships with others during the relationship
 - user of illegal drugs
- Where there is evidence of the presence of all of these factors, the risk of stalking violence is heightened.

- Women's Experience of Violence During Stalking by Former Romantic Partners (2005)

Lethality

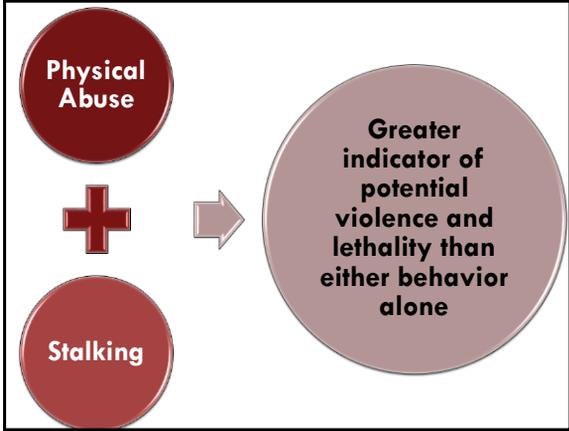
- 76% of femicide cases:
 - at least one episode of stalking within 12 months prior to the murder
- 85% of attempted femicide cases:
 - at least one episode of stalking within 12 months prior to the attempted murder

Stalking and Intimate Partner Femicide, McFarlane et al. (1999)

Lethality

- 67% of the femicide victims:
 - had been physically abused by their intimate partner in the 12 months before the murder.
- 89% of the femicide victims who had been physically abused:
 - had also been stalked in the 12 months before the murder.

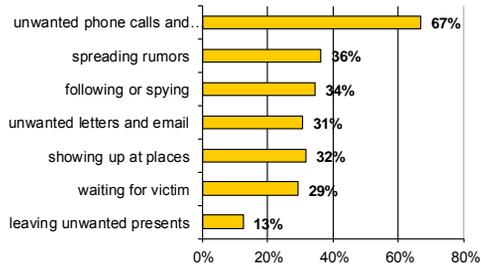
Stalking and Intimate Partner Femicide, McFarlane et al. (1999)



Stalking Behavior

- Pattern of Behavior**
- 2/3 of stalkers pursue their victim at least once per week
 - 78% of stalkers use more than one means of approach
 - Weapons used to harm or threaten victims in about 20% of cases
- The RECON Typology of Stalking (2006)

Stalking Behaviors



- Stalking Victimization in the United States - Revised, BJS (2012)

Using kids

Gifts

Legal system harassment

Theft

Stalking Behaviors

OP violations

Vandalism

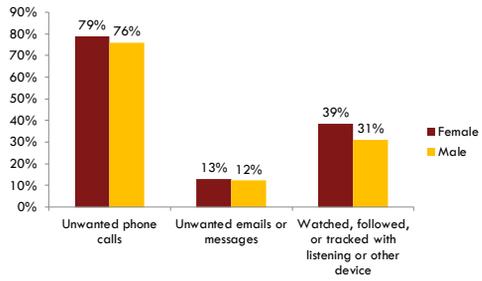
Following

Use of Technology to Stalk

- Phones – calls, SMS, MMS
- Fax machines
- Cameras
- Global Positioning Systems (GPS)
- Location based services
- Computers
- Spyware
- Email & IM
- Social networking sites
- Assistive technologies



Use of Technology to Stalk



- The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report (2011)

Use of Technology to Stalk

www.victimsofcrime.org/src

THE USE OF TECHNOLOGY TO STALK
DVD & DVD-ROM CASE

Call phones, GPS, Computers. Did you know that these technologies can be designed to track a victim's location? This self-paced interactive course will give you a better understanding of how stalkers use these and other technologies to locate, harass, and control their victims. You will also identify steps to avoid or interrupting tracking systems and supporting victims of stalking.

Stalking.org
Victims of Crime
OVC
U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

Stalking by Proxy

- Third party stalking
 - Unintentional
 - Intentional
- 50% - 60% of partner stalking victims say others were involved in stalking - Logan et al. (2006)

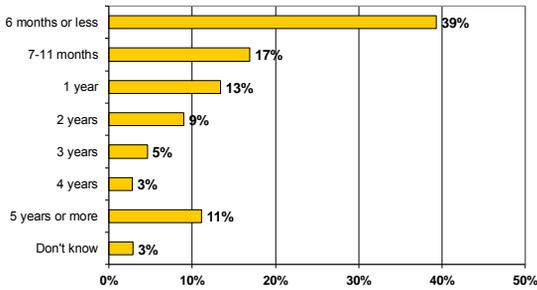
Recidivism

- Domestic violence reabuse occurs in 24% to 60% of cases
 - The majority of offenders do so within 6 months of beginning probation and/or a batterer program
- Occurs in 60% of stalking cases
 - Time between intervention and recidivism was about 2 months
 - Ranged from 1 day to 6 years

- Klein et al, (2005)

- The RECON Typology of Stalking (2006)

Duration



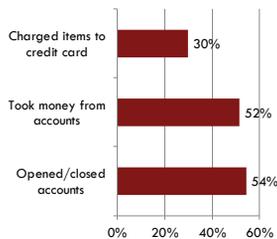
- Stalking Victimization in the United States - Revised, BJS (2012)

Stalking and Other Crimes

□ Among stalking cases...

- 24% involve property damage
- 21% involve a direct attack on the victim
- 15% involve an attack on another person or pet

□ Identity theft



- Stalking Victimization in the United States, BJS (2009)

Stalking and Sexual Assault

2% of stalking victims were raped/sexually assaulted by their stalker

- Stalking Victimization in the United States, BJS (2009)

31% of women stalked by her intimate partner were also sexually assaulted by that partner

- National Violence Against Women Survey, Tjaden & Thoennes (1998)

“Red Flags”



More Dangerous Times

Separation

Protective order served/criminal arrest

Offender's loss of job, other life events

Multiple incidents in a short period of time – increase in quantity of contacts as well as escalation in behaviors

More Dangerous Offenders

- History of substance abuse
- History of mental illness (narcissistic personality disorders—you hurt me bad, you will fix it)
- History of violence, esp. towards victim
- Threats of murder/murder-suicide
- Actual pursuit
- Possession and/or fascination with weapons
- Vandalism, arson
- Tendency towards emotional outbursts and rage
- History of violating POs

Previous Abuse as Indicator

- Previous abuse indicates higher lethality risk
- Previous abuse arrest indicates higher lethality risk
 - ▣ **Lack of previous arrest does not indicate reduced risk!**

- Adams, David. *Why Do They Kill?*, 2007

Victims of Stalking



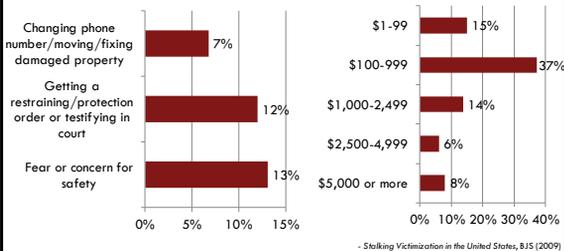
Impact of Stalking

- Minimization; Self-blame
- Guilt, shame or embarrassment
- Frustration, Irritability, Anger
- Shock and confusion
- Fear and anxiety
- Depression
- Emotional numbness
- Flashbacks
- Isolation/disconnection from other people
- Difficulties with concentration or attention
- Feeling suicidal
- Decreased ability to perform at work or school, or accomplish daily tasks
- Post-traumatic stress disorder (PTSD)
- Sleep disturbances, nightmares
- Sexual dysfunction
- Fatigue
- Fluctuations in weight
- Self-medication with alcohol/drugs
- Feeling on guard most of the time - hypervigilance

Impact on Victims

1 in 8 of employed victims lost time from work

- More than half lost 5 days or more



Impact on Victims

Afraid of:

- 46% not knowing what would happen next
- 30% bodily harm
- 29% behavior would never stop
- 13% harm or kidnap a child
- 10% loss of freedom
- 9% death
- 4% losing one's mind

- Stalking Victimization in the United States, BJS (2009)

“It’s not easy to describe the fear you have when you see the stalker, or signs of the stalker, everywhere you go. I have given up all hopes of ever having a safe life. For the rest of my life, I will be looking over my shoulder, expecting to see him there.”

Raising Awareness



www.stalkingawarenessmonth.org

Stalking resource center

Training

- In person training
- Webinars

Technical Assistance

- Individual & organizational assistance
- Fact sheets, brochures, manuals, guides
- Policy/protocol development & consultation

Resources

- Videos
- Online resources
- Stalking Awareness Month materials



www.victimsofcrime.org/src



***Intimate Partner Violence
and Veterans***

*2013 Judicial Symposium on Domestic Violence
December 5 and 6, Brooklyn, New York*
Deborah D. Tucker, National Center on Domestic
and Sexual Violence, www.ncdsv.org

***Intersection of IPV
and Military Service***

- Agenda +/- 1:15-2:30
 - Settle down from lunch and get goin'
 - Formal presentation, Debby Tucker (1-54)
 - Supplemental Information provided (slides 55-88)
 - *YOUR* training, questions welcome as we go and then discussion
- Y'all!

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***Responsibilities of the
Movement to End VAW***

- Collaborate with battered women, victims of domestic and sexual violence.
- Build organizations that learn and are responsive.
- Create cooperation, coordination and collaboration in the community.
- Create a society and world without violence.

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MANIFESTATIONS OF VIOLENCE

Abuse can occur in different forms. It can be physical, emotional, sexual, spiritual, social and/or economic. The diagrams below describe some of the abuse tactics batterers use as they attempt to gain or regain power and control over their intimate partner. Abuse does not always progress in the steps shown here. Sometimes the abuse may advance from punning or hitting directly to more severe physical violence such as the use of a weapon. Although each relationship is unique, any type of abuse will be considered a serious cause for concern. Despite different circumstances, it is important to remember that abuse can escalate (especially if there is no intervention). A coordinated community response holding batterers accountable for their abusive behavior is essential, as is a response acknowledging and respecting the rights of victims of domestic violence.

Tip: It is helpful to be aware of the different manifestations of domestic violence. Circle the types of abuse you are now experiencing (or that you have experienced). Notice if the violence is increasing in frequency, severity or frequency. Talk to a domestic violence advocate to develop or review your current safety plan or explore your options. Remember, domestic violence is never your fault, even if you were drinking or using drugs.

EMOTIONAL ABUSE

- stare treatment
- blaming/accusations
- ignoring of feelings
- jealousy
- isolation
- humiliation
- harming of pets
- calling you "crazy" or "stupid" or a "jerk"

PHYSICAL ABUSE

- isolation
- deny physical needs
- stare
- bite
- scare
- tease and use
- hit
- tease and punch
- target hit
- kick
- throw objects
- strangle
- burn
- keep
- deprive of sleep
- poison
- use of a weapon
- murder
- displacement/abandonment

continued...

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Manifestations of Violence: continued

SEXUAL ABUSE

- embarrassing comments
- sexual jokes
- ignoring of sexual needs
- unwanted touching
- forcing one to look at pornography
- teasing one like a sex object
- 12th step
- sex as duty
- withholding of sex as a punishment
- control of contraceptives
- demands of monogamy when abuser's promiscuous
- forced prostitution for drug
- forced sex soon after pregnancy
- rape
- death

SOCIAL/ENVIRONMENTAL ABUSE

- use gender mythologies
- degrades culture, religion, gender, profession, necessary from substance abuse, etc.
- denies property
- demonstration of strength
- control major decisions
- denies access to work
- conholds money or finances
- altruistic support system including access to health care or substance abuse treatment
- making threats to victim's family/friends
- child abuse/neglect
- suicide
- complete isolation
- convincing victim that she or he is hysterical/paranoid/suicidal

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Who all served?

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Current Statistics

NCDSV, Military Stats
www.ncdsv.org, then *Military Tab*, then
 Statistics/Research *Drop-Down*

- SPOUSE ABUSE DATA, Family Advocacy Program, U.S. Department of Defense, Washington, DC.
- FY 2011 (scroll down) — Child Abuse and Domestic Abuse Data Trends from FY 2001-2011, Mary E. Campise

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Sexual Violence 'til 2011

Hidden Victims
 The Defense Department counted about 2,700 victims of sexual assault last fiscal year, but because of underreporting, it estimates that there were far more—19,000.

Service-member victims in reports of sexual assault by fiscal year

| Fiscal Year | Service-member victims |
|-------------|------------------------|
| 2007 | 2,223 |
| 2008 | 2,395 |
| 2009 | 2,670 |
| 2010 | 2,617 |
| 2011 | 2,723 |

Source: Defense Department, "Annual Report on Sexual Assault in the Military"

Sexual Violence 2012

- <http://www.gillibrand.senate.gov/mjia>

**Comprehensive Resource Center
 for the Military Justice
 Improvement Act**
26,000

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NISVS

■ **2010 National Intimate Partner and Sexual Violence Survey - Technical Report (1.7 MB)**

The CDC National Intimate Partner and Sexual Violence Survey (NISVS) is an ongoing, nationally representative telephone survey that collects detailed information on intimate partner violence (IPV), sexual violence, and stalking victimization of adult women and men in the United States. The survey collects data on both past-year and lifetime experiences of violence. CDC developed NISVS to better describe and monitor the magnitude of these forms of violence in the United States. In 2010 – the initial year of the NISVS – the Department, Department of Justice (DOJ), and CDC worked together to include two random samples from the military: Active Duty women and wives of Active Duty men.

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Four theories: what causes domestic violence?

1. Individual pathology
2. Relationship dysfunction
3. Learned response to stress and anger
4. Theory of dominance

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Individual Pathology

- The person using violence has some kind of illness or condition (mental, PTSD, TBI)
- Batterer is problem – not society, leaves individual to bear all responsibility rather than exploring what is taught and absorbed
- Individual psychiatric care, treatment for addiction, or counseling is a typical response

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Relationship Dysfunction

- 'It takes two to tango'
- Couple is playing off of each other
- Either could stop the violence
- Both parties are responsible
- Couples counseling, or relationship counseling separately, is response

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Learned Response to Stress and Anger

- "Cycle of Violence" theory – Lenore Walker
 - tension-building phase
 - explosion of violence
 - honeymoon phase or respite
- Men were more often socialized to use violence, however we are too often seeing girls who believe violence is a reasonable response.
- Increases in frequency and severity
- Popular theory with anger management the typical response

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Theory of Dominance

- System of power and control tactics
- Includes:
 - Physical violence
 - Sexual violence
 - Other tactics on Power and Control Wheel
- Battering comes from social conditions, not individual pathology, most accepted view today, even though sometimes recognize there is an interplay of other "causes" at work.
- Response is to balance power differential by using power of the state
- Re-education and sanctions

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Use of Violence has Different Intents

1. **Battering** – intends to control the relationship
2. **Resistive violence** – intends to stop the battering
3. **Situational violence** – intends to control a situation
4. **Pathological violence** – intent is controlled to some degree by pathology
5. **Anti-Social Violence** – abusive to many in public and private settings

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Battering

- **System of power and control**
- **Includes:**
 - Fear
 - Threats
 - Intimidation
 - Coercion
- **Belief in entitlement**
- **Social movement to end it**



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Resistive Violence

- **Substantial numbers of victims of battering use force against the batterer**
- **May not legally qualify as self-defense**
- **Victim's violence usually different**
- **Practitioners often question, prefer victims who don't fight back**
- **Different impact – individual and social**

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Situational Violence

- **The violence is related to a situation**
- **Not part of a larger system of controlling tactics**
- **No pattern of dominance**
- **However, battering looks like this if the pattern is invisible**

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Pathological Violence

- **Violence is due to some kind of illness**
 - **Mental health**
 - **Alcohol**
 - **Drugs**
 - **Brain injury**
 - **PTSD**
- **Not typically part of system of controlling tactics**
- **Because a person's violence is linked to a pathology does not completely preclude that its intent at times can also be to batter, to resist battering, or to control a situation**

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Anti-Social Violence

- **Abusive in several settings: bars, work, home, sports field, etc.**
- **No empathy, shame, or remorse, and little understanding of consequences**
- **Not gendered – appears to be caused by childhood abuse, neglect and chaos**
- **Not amenable to change through self-reflection or therapy, may not benefit from existing batterer's programs (Gondolf, 1999)**
- **25% of men court ordered to batterer's programs could be 'anti-social' (Gondolf, 1999; Gondolf & White, 2001)**
- **Separate anti-social violence of individuals from group violence created by systematic oppression and domination**

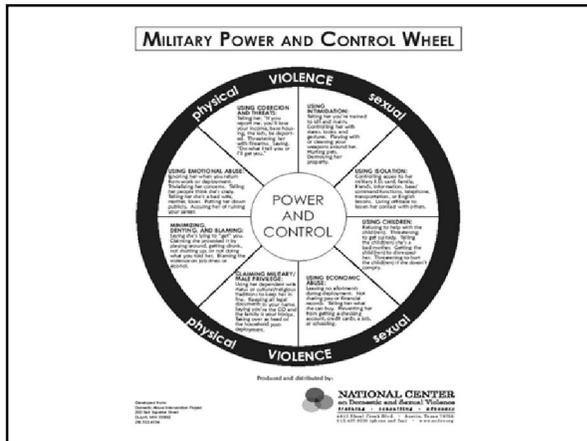
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Understanding Intent or "Cause" is Important

Why?

- Help us to differentiate between acts of violence
- Help us to determine most appropriate response
- Not getting it right could be dangerous

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Pathological Violence, Military Context

Considerations for Active Duty and Veterans

- Post Traumatic Stress Disorder
- Traumatic Brain Injury
- See Supplemental Information for much more detail on these conditions and other factors

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What to Look For?

| <i>Physical</i> | <i>Behavioral</i> | <i>Emotional</i> |
|--|--|---|
| Fatigue Chest Pain Weakness Sleep Problems Nightmares Breathing Difficulty Muscle Tremors Profuse Sweating Pounding Heart Headaches | Withdrawal Restlessness Emotional Outbursts Suspicion Paranoia Loss of Interest Alcohol Consumption Substance Abuse | Anxiety or Panic Guilt Fear Denial Irritability Depression Intense Anger Agitation Apprehension |

List not all inclusive

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Consider the Source of the Conduct

- Regardless of source, offender must be held accountable and victim protected
- Accountability strategy must take into account the source and how to intervene appropriately
- In other words, untreated TBI sufferer unlikely to be helped by battering intervention

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Consider the Source of the Conduct

- Nor should a batterer escape appropriate consequences for conduct by alleging TBI or PTSD when those are NOT the cause
- We must be thoughtful and vigilant to ensure the intervention fits the offense

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How do we determine the source?

- Is the conduct new?
- Have there been other incidents of violence directed to non-family?
- What other factors require attention?
- Does the offender avoid situations that remind him or her of the original trauma?
- Are power and control tactics more pronounced?

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Principles of Intervention

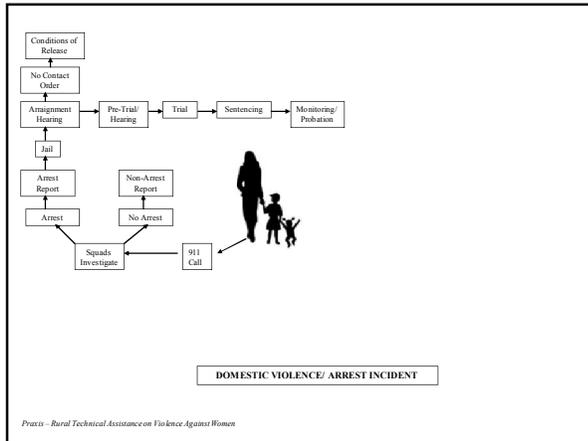
- Victim Safety and Well-being
- Offender Accountability
- Changing the Climate of Tolerance to Violence in the Community

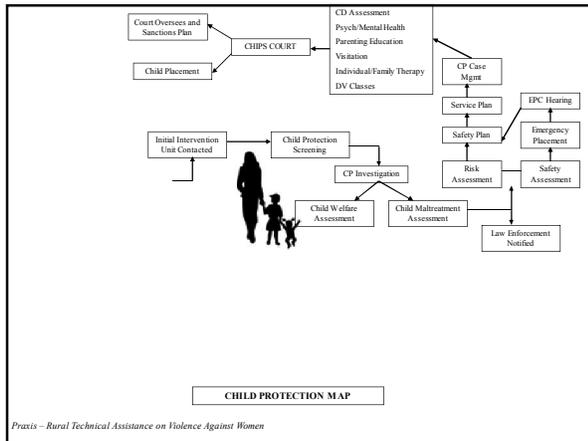
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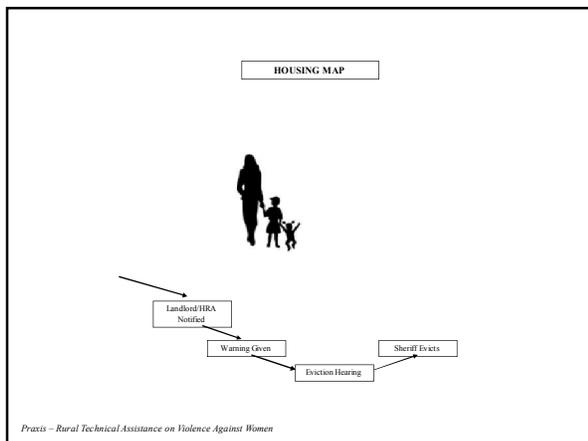
Maze Map

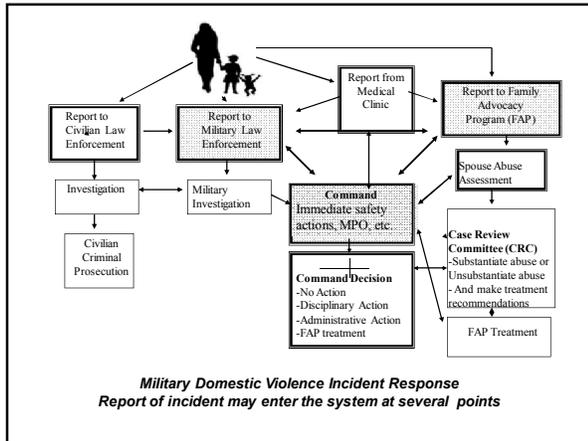
A few processes domestic violence victims may encounter when involved with child protection, civil and criminal justice systems, AND the military response.

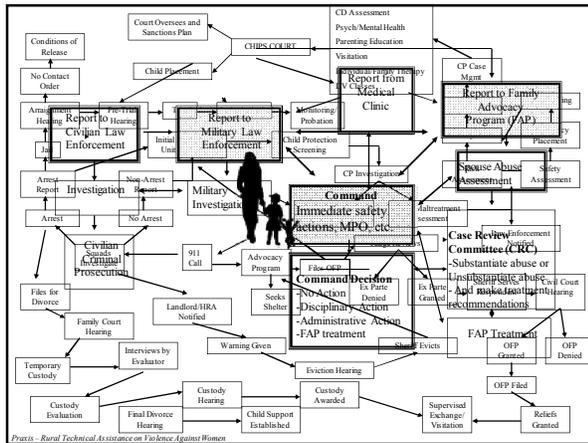
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Five Things to Say to a Battered Woman

- I am afraid for your safety.
- I am afraid for the safety of your children.
- It may get worse.
- I am here for you when are ready for change.
- You don't deserve to be abused.

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Domestic Violence & Sexual Assault Restricted Reporting

- Assists those who don't want an official investigation
- Provides services
- Builds a bridge of trust
- Restricted reporting avenues
- Exceptions
- *Many* file official report later
 - **RESTRICTED REPORTING POLICY FOR INCIDENTS OF DOMESTIC ABUSE**, Andrew England, U.S. Department of Defense, Washington, DC: January 22, 2006.

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Other Significant Policy Change

- Visit, www.ncdsv.org, *Military Tab, Implementation Drop Down*
 - DTFDV developed a TOP TEN recommendations to create oomph in advocacy with the Congress, the President and the larger military community.
 - *Most of those have now been acted upon.*
 - *Of course more to go!*

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Five Things to Say to an Abuser

1. I'm afraid you'll really hurt her badly or kill her next time.
2. I'm afraid you'll hurt your children.
3. It can get worse if nothing changes.
4. I'm here for you when you're ready to change.
5. No one, including you, has the right to abuse/hurt another person.

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Supplemental Information

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Supplemental Information

- DTFDV Reports
- Resources
- DTFDV Prevention Conceptual Model
- Creating a CCR with Military/Civilian
- Understanding the Military Culture
- Pathological Violence, Military Context
- Advocacy M/C working Together

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DTFDV Reports

www.ncdsv.org

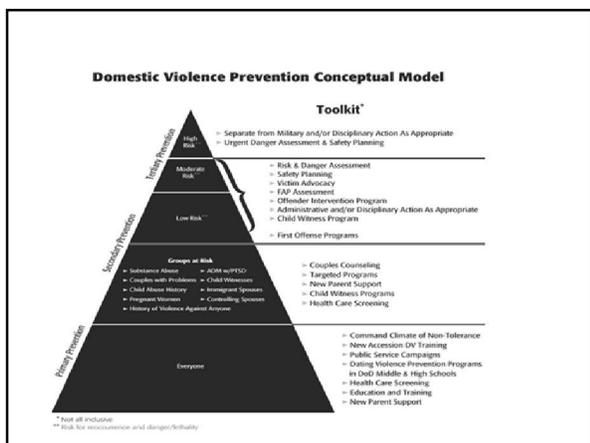
- Military Tab
 - DTFDV
 - DTFDV Implementation
 - Other Tools
 - TFCVSA Implementation
 - Veterans
 - News Accounts
 - Stats/Research
 - Sexual Violence Issues
 - Congressional Testimony.....and more

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Resources *(see full listing on handout)*

- Battered Women's Justice Project**
www.bwjp.org <http://www.bwjp.org/military.aspx>
<http://www.bwjp.org/articles/article-list.aspx?id=30>
- Domestic Abuse Intervention Project**
www.duluth-model.org
- National Center on Domestic and Sexual Violence**
www.ncdsv.org http://www.ncdsv.org/ncd_militaryresponse.html
- Mending the Sacred Hoop**
www.msh-ta.org
- National Resource Center on Domestic Violence**
www.nrcdv.org
- Praxis International**
www.praxisinternational.org
- Witness Justice**
www.witnessjustice.org NCDV-NYS 2013 Judicial Symposium, IPV and Veterans, Dec 5-6, 2013



Creating a...

*...Coordinated Community
Response involving
Military and Veterans*

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Understanding Military Culture

- Mission is to defend U.S. territories and occupied areas and overcome any aggressor that imperils our nation's peace and security
- Chain of Command
- Challenges, Strengths

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Chain of Command

- Rank is everything, with rank comes increasing responsibility & authority = respect
- Chain of Command is the law of the hierarchy
- Access to those high in the Chain of Command will be filtered by his/her staff

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Command "need- to -know"

- There are no institutional boundaries between one's employer, doctor, judge, social worker and advocate
- The military system is, for the most part, seamless
 - There is no "right to privacy" for any facet of an individual's life that may potentially effect "mission-readiness"

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"Only the strong survive"

- Deficiencies must be corrected and eliminated
- Someone is always to blame, i.e. responsible for any identified "deficiencies" in performance of duties
- Failure is not an option

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Directives/regulations govern everything

- ...except Command prerogative, much like our judges
- **“Domestic Violence.....will not be tolerated in the Department of Defense”DepSecDef**
- Defense Task Force on Domestic Violence, visit www.ncdsv.org, Military

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Challenges

- War (violence, stress, injuries, death)
- Frequent absence/deployments
- Permanent change of station
- Demographics
- Finances
- Bureaucracy
- Offender accountability
- Downsizing



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Strengths

- Family advocacy
- Community service programs (financial readiness, relocation assistance, team building, resiliency training, supportive civilian resources)
- Medical care (physical, mental health)
- Military Family Life Consultants
- Chaplains (Battlemind, family life chaplains)
- Restricted reporting
- 100 % employment
- Values based training

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Pathological Violence, Military Context

Considerations for Active Duty and Veterans

Post Traumatic Stress Disorder

Traumatic Brain Injury

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Post Traumatic Stress Disorder

- Anxiety disorder after a traumatic event
- During event, your life or others' lives are in danger
- Feel afraid or that you have no control
- Anyone who has gone through a life-threatening event can develop PTSD

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Post Traumatic Stress Disorder

- Events can include:
 - Combat or military experience
 - Child sexual or physical abuse
 - Terrorist attack
 - Sexual or physical assault
 - Serious accident, such as car wreck
 - Natural disasters, fire, tornado, etc.

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Post Traumatic Stress Disorder

- Not clear, why some develop and others do not. Likelihood may depend upon:
 - Intensity and length of trauma
 - Whether someone dies or is badly hurt
 - Proximity to the event
 - Strength of reaction
 - Feelings of control
 - Help and support received afterwards

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Traumatic Brain Injury

- Occurs if the head is hit or violently shaken (such as from a blast or explosion)
- Results in a concussion or closed head injury, not life-threatening but may have serious symptoms, worse if exposed more than once, behavior and personality changes possible

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Common Symptoms of Brain Injury

- Difficulty organizing daily tasks
- Blurred vision or eyes tire easily
- Headaches or ringing in ears
- Feeling sad, anxious or listless
- Easily irritated or angered
- Feeling tired all the time

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Common Symptoms of Brain Injury

- Trouble with memory, attention or concentration
- More sensitive to sounds, lights, or distractions
- Impaired decision-making or problem-solving
- Difficulty inhibiting behavior, impulsive

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Common Symptoms of Brain Injury

- Slowed thinking, moving, speaking or reading
- Easily confused, feeling easily overwhelmed
- Change in sexual interest or behavior

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Impact of Trauma/PTSD

- Victims experience PTSD after the violence
- Those who use violence MAY be experiencing PTSD from prior victimization, or
- As a result of trauma in combat or other life-threatening circumstances.

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Fatality Review

DOMESTIC VIOLENCE AND CHILD ABUSE
 FATALITY REVIEWS, David S.C. Chu,
 U.S. Department of Defense,
 Washington, DC: February 3, 2004.
 www.ncdsv.org
 then Military,
 then Implementation,
 then alpha to Domestic

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Advocacy

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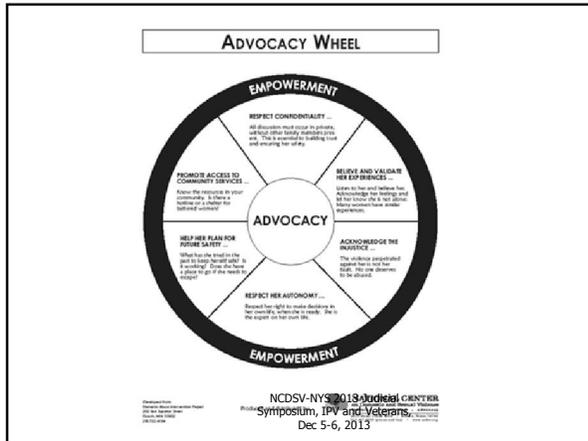
Usual Understanding of Advocacy

Helping Battered Women:

- Consider options
- Devise strategy
- Make decisions
- Implement justice
- Speak/advocate for self/children

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81



Empowerment Advocacy

“Empowerment advocacy believes that battering is not something that happens to a woman because of her characteristics, her family background, her psychological “profile”, her family origin, dysfunction, or her unconscious search for a certain type of man.

“Battering can happen to anyone who has the misfortune to become involved with a person who wants power and control enough to be violent to get it.”

— Barbara J. Hart, JD, *Seeking Justice: Legal Advocacy Principles and Practice*, Pennsylvania Coalition Against Domestic Violence, Harrisburg, PA

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Where You Stand Depends on Where You Sit

- Community-based Advocates work in local shelters, domestic violence programs, rape crisis centers, coalitions and *can* be located inside the system
- System Advocates typically work in police/sheriff departments, DA’s offices, hospitals and also the military

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Goals of Community Advocacy

- Safety
- Agency/Authority/Autonomy
- Restoration/Resources
- Justice

NCDSV-NYS 2013 Judicial Symposium, IPV and Veterans, Dec 5-6, 2013

Goals of System Advocates

- Safety of victims
- Accountability of perpetrators
- Deterrence of perpetrators
- Services for victims
- Seamless response, cooperation with criminal justice and social service agencies

NCDSV-NYS 2013 Judicial Symposium, IPV and Veterans, Dec 5-6, 2013

Advocates in the Military Community

- Meshing of roles, usually divided in civilian communities
- Responsibilities much the same
 - Individual Advocacy
 - Systemic Advocacy
 - Social/Cultural Change Advocacy limited

NCDSV-NYS 2013 Judicial Symposium, IPV and Veterans, Dec 5-6, 2013

Contact Information:

Debby Tucker

512-407-9020

dtucker@ncdsv.org



NATIONAL CENTER
on Domestic and Sexual Violence
training · consulting · advocacy
tel: 512.407.9020 · fax: 512.407.9020 · www.ncdsv.org

Understanding & Addressing Women's Use of Force



Judicial Symposium on Domestic Violence
Lisa Young Larance, MSW, LCSW, LMSW
December 5, 2013

1

BACKGROUND

- Conflict Tactics Scale (CTS)
& CTS2
- Mandatory, Preferred, & Pro- Arrest
Policies

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Tonya & George

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3



Her Arrest & Conviction Have an Impact On (I):

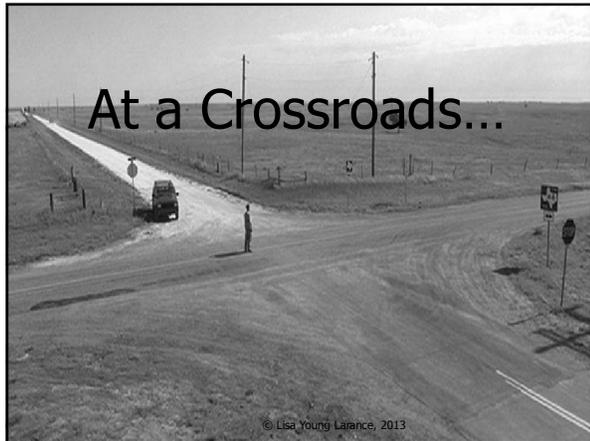
- DV shelters' willingness to accept her
- His ability to use arrest & incident details against her at "home"

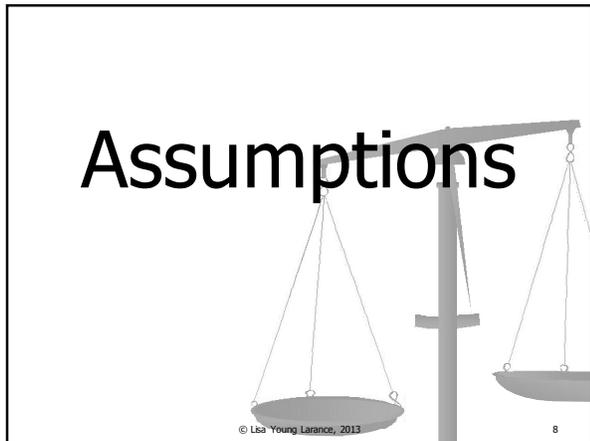
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Her Arrest & Conviction Have an Impact On (II):

- Her public benefits including housing & financial aid
- Her employment and/or schooling

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African American Women

- Expectation by other American ethnic groups that African American women are "strong" and invulnerable (Miller, 2001).
- Dilemma: If they report their partner's violence against them, they are reinforcing negative stereotypes that black men are naturally violent (Donovan & Williams, 2002; Swan and Snow, 2006).

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Language

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**“Definitions belong to the definers,
not the defined.”**

- Toni Morrison, *Beloved*

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Use of Force

...refers to physically, verbally, and emotionally detrimental behaviors used toward an intimate partner...to gain short term control of chaotic, abusive and/or battering situations.

(Dasgupta, 2002; House, 2001; Larence, 2006; Osthoff, 2002)

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Battering

...signifies a pattern of coercive control, intimidation, and oppression effectively used to instill fear and maintain long term relationship domination.

(Osthoff, 2002; Pence and Dasgupta, 2006; Schechter, 1982; Stark, 2007)

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Women's Use of Force Increases:

- *His violence* toward her and, therefore, risk to her safety (Swan and Snow, 2002).
- Likelihood that she will be injured severely by her male partner (Archer, 2000).
- Risk that she will use force again — putting *her* — at increased risk of future harm (Larence, 2006, 2007).

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Distinctions in Behavior

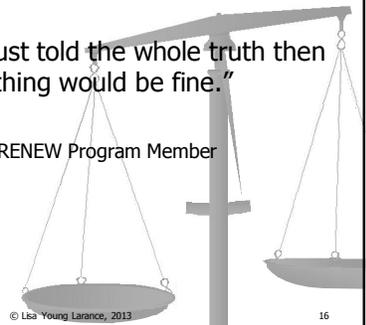


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At Court...

"I believed if I just told the whole truth then everything would be fine."

- Sarah, RENEW Program Member



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Men's Group

Women's Group

- ✓ Over-report victimization
 - ✓ Under-report battering tactics
 - ✓ Violent & coercively controlling tactics changed partners' behaviors over short & long-term
- ✓ Under-report survivorship
 - ✓ Over-report use of force tactics
 - ✓ Use of force escalated violence against them over short &/or long-term

17



Keep Fishing for Answers...

Are You **Sure** She Is Not A Survivor?

- "It was just a fight with another woman."
- "But her husband is a great guy."
- "She says she is not afraid of him."

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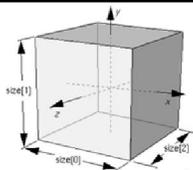
19

Fear Factor...

- Does she **dread** his presence?
- Does she **dread** his findings?
- Does she **dread** what he can do to her that other people may not understand?

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WO Men

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Catch22

- ❑ Majority of the women are survivors of domestic violence and sexual assault.
- ❑ Majority of the women have been arrested for using force.
- ❑ The women need assistance exploring choices that will keep them from getting involved in the legal system and reduce the violence in their lives.



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To emphasize and promote safety...

her's, children's, partner's, and community's

...is our professional duty.



Philosophy: The Three Strands...



Safety & Support



Cultural & Societal Messages



Skills & Resources



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Accountability



“Actions, thoughts, or behaviors that reflect the integrity of the person I want to be.”

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- **Responsibility**
- **Releasing Shame**
- **Exploring Betrayal**
- **Personal Choice**

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28

Please direct
comments or questions to:

Lisa Young Larence, MSW, LCSW, LMSW



Catholic Social Services of Washtenaw County
llarence@csswashtenaw.org

www.csswashtenaw.org/renew

All group member names were changed in order to
promote the women's anonymity.

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29

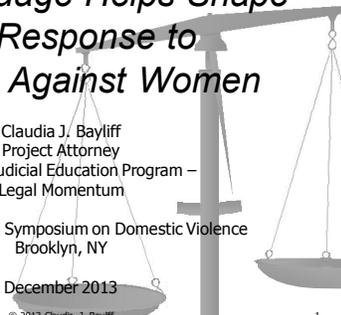
*How Language Helps Shape
Our Response to
Violence Against Women*

Claudia J. Bayliff
Project Attorney
National Judicial Education Program –
Legal Momentum

New York Judicial Symposium on Domestic Violence
Brooklyn, NY

December 2013

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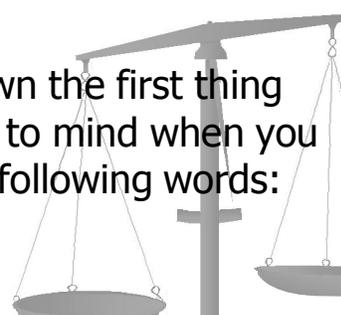
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Word Association

Write down the first thing
that comes to mind when you
hear the following words:

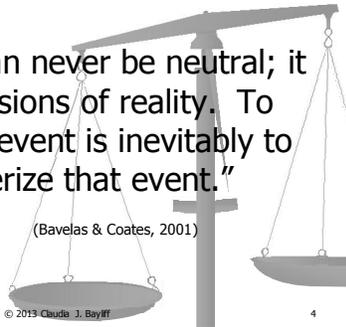
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Choice of Language

“Language can never be neutral; it creates versions of reality. To describe an event is inevitably to characterize that event.”

(Bavelas & Coates, 2001)



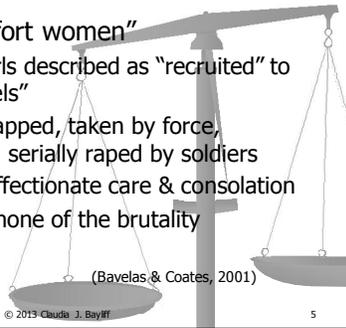
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4

Choice of Language

- The term “comfort women”
 - Women and girls described as “recruited” to “work in brothels”
 - In reality, kidnapped, taken by force, imprisoned and serially raped by soldiers
 - Term implies affectionate care & consolation
 - Term conveys none of the brutality

(Bavelas & Coates, 2001)



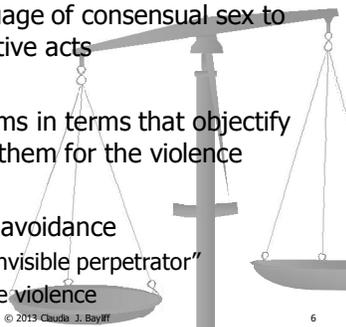
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5

Topics Covered

- Using the language of consensual sex to describe assaultive acts
- Describing victims in terms that objectify them or blame them for the violence
- Using linguistic avoidance
 - To create an “invisible perpetrator”
 - To minimize the violence

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6

Topics Covered

- Victim v. survivor
- How we are going to change how we talk about violence against women



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Importance of Legal Language

“Written judgments not only express current law, but also shape future law and society itself.”

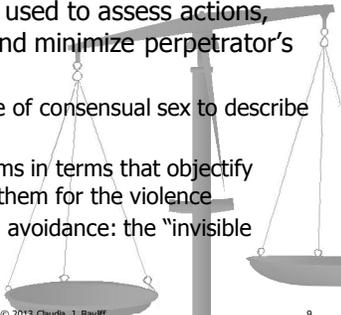
(MacMartin, 2002)



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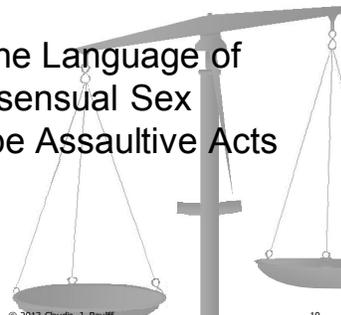
Language of Sexual Assault

- Language often used to assess actions, ascribe blame and minimize perpetrator’s responsibility:
 - Use of language of consensual sex to describe assaultive acts
 - Describing victims in terms that objectify them or blame them for the violence
 - Use of linguistic avoidance: the “invisible perpetrator”



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**Using the Language of
Consensual Sex
to Describe Assaultive Acts**



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**Using the Language of
Consensual Sex**

- Describing acts in terms usually used for pleasurable and affectionate acts:
 - Minimizes and hides the intrinsic violence of an assault
 - Makes it harder to visualize the acts as unwanted violations
 - Allows society to rationalize, justify and excuse sexual aggression

(Bavelas & Coates, 2001)
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Language of Consensual Sex

- Eroticized language that creates an intimate and non-threatening scene
 - "He fondled her breasts"
 - "He kissed, hugged, caressed or had sex with her"
- Statements that imply consent without the context of force (physical or emotional)
 - "They had intercourse"
 - "She performed oral sex"

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Language of Consensual Sex

- Canadian study also found:
 - There was no statistically significant difference between the way the judges described acts in cases where the defendant was acquitted or convicted.
 - "Acts that had been legally established as assaults and acts that had been deemed consensual and noncriminal were equally likely to be described in sexual terms."

(Bavelas & Coates, 2001)
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Language of Consensual Sex

- Think about the difference between these two statements:
 - "He had sex with her"
 - "He forcefully penetrated her vagina with his penis"

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14

Victim-Blaming Language

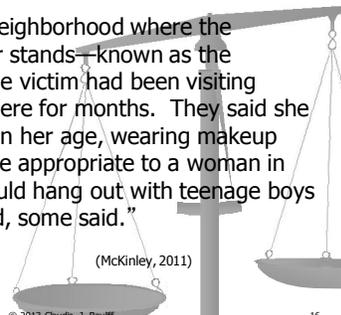
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15

Victim-Blaming Language

“Residents of the neighborhood where the abandoned trailer stands—known as the Quarters—said the victim had been visiting various friends there for months. They said she dressed older than her age, wearing makeup and fashions more appropriate to a woman in her 20s. She would hang out with teenage boys at the playground, some said.”

(McKinley, 2011)

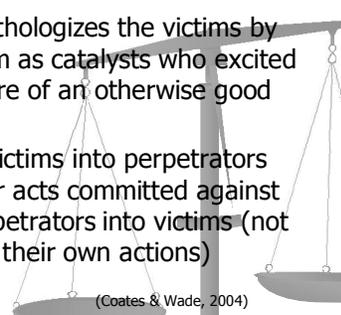


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Victim-Blaming Language

- Blames and pathologizes the victims by portraying them as catalysts who excited the sexual desire of an otherwise good person
- Reformulates victims into perpetrators (responsible for acts committed against them) and perpetrators into victims (not responsible for their own actions)

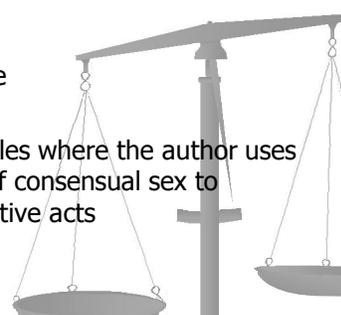
(Coates & Wade, 2004)



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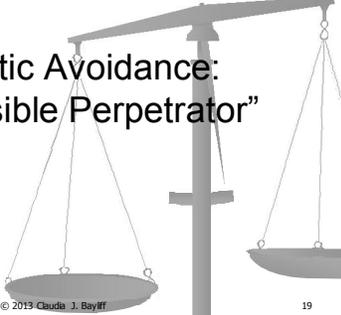
Jastorff Pleads Not Guilty Exercise

- Read the article
- Identify examples where the author uses the language of consensual sex to describe assaultive acts



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Linguistic Avoidance:
The “Invisible Perpetrator”

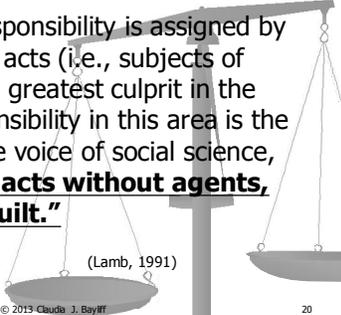


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The “Invisible Perpetrator”

“Linguistically, responsibility is assigned by naming agents of acts (i.e., subjects of verbs). Thus, the greatest culprit in the diffusion of responsibility in this area is the ubiquitous passive voice of social science, **which presents acts without agents, harm without guilt.**”

(Lamb, 1991)

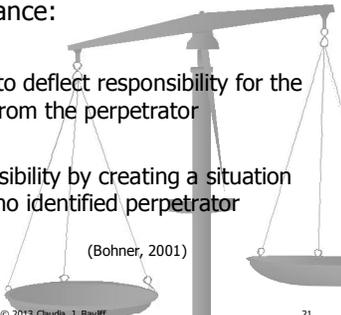


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The “Invisible Perpetrator”

- Linguistic avoidance:
 - Uses language to deflect responsibility for the violence away from the perpetrator
 - Diffuses responsibility by creating a situation where there is no identified perpetrator

(Bohner, 2001)



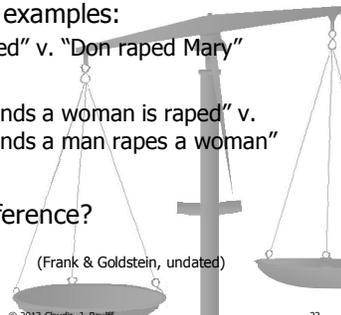
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The "Invisible Perpetrator"

- Consider these examples:
 - "Mary was raped" v. "Don raped Mary"
 - "Every 46 seconds a woman is raped" v. "Every 46 seconds a man rapes a woman"
- What is the difference?

(Frank & Goldstein, undated)

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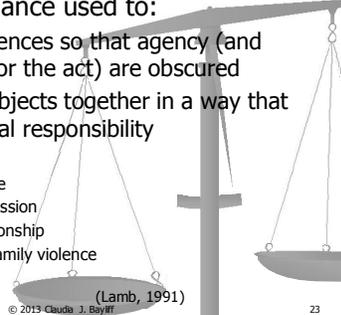


The "Invisible Perpetrator"

- Linguistic avoidance used to:
 - Construct sentences so that agency (and responsibility for the act) are obscured
 - Identify the subjects together in a way that suggests mutual responsibility
 - Examples:
 - Spouse abuse
 - Marital aggression
 - Violent relationship
 - Parental or family violence

(Lamb, 1991)

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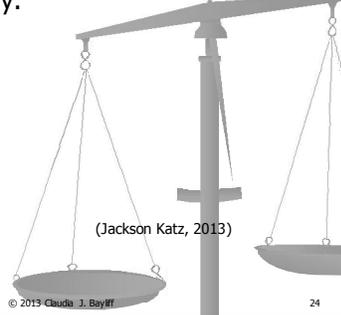


The Evolution of "The Invisible Perpetrator"

- Jacob beat Mary.

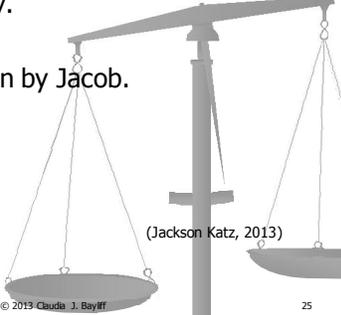
(Jackson Katz, 2013)

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The Evolution of
"The Invisible Perpetrator"

- Jacob beat Mary.
- Mary was beaten by Jacob.

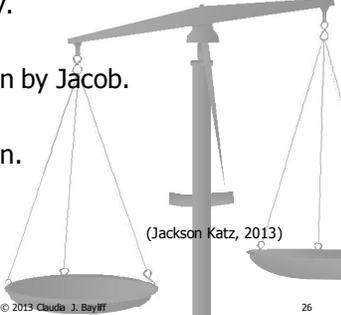


(Jackson Katz, 2013)

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The Evolution of
"The Invisible Perpetrator"

- Jacob beat Mary.
- Mary was beaten by Jacob.
- Mary was beaten.

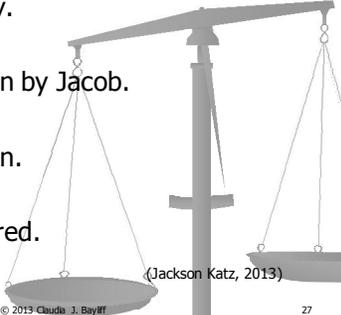


(Jackson Katz, 2013)

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The Evolution of
"The Invisible Perpetrator"

- Jacob beat Mary.
- Mary was beaten by Jacob.
- Mary was beaten.
- Mary was battered.

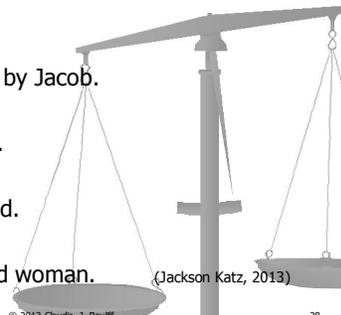


(Jackson Katz, 2013)

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The Evolution of "The Invisible Perpetrator"

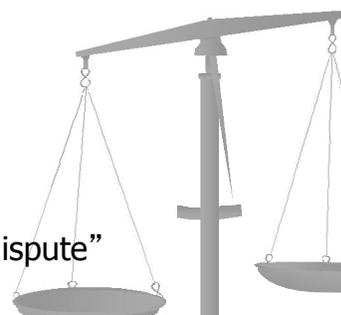
- Jacob beat Mary.
- Mary was beaten by Jacob.
- Mary was beaten.
- Mary was battered.
- Mary is a battered woman.



(Jackson Katz, 2013)
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Unaccountable Language: To Minimize the Violence

- "Accuser"
- "Date rape"
- "Domestic dispute"



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Unaccountable Language: To Minimize the Violence

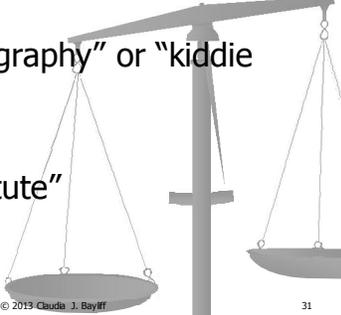
- "Abusive relationship"
- Victims "confessed" they were sexually abused as children



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Unaccountable Language: To Minimize the Violence

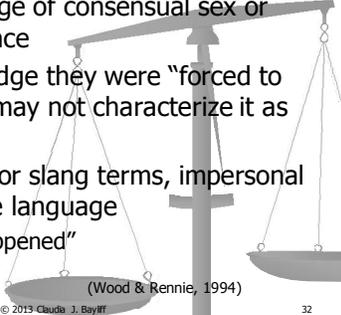
- "Child pornography" or "kiddie porn"
- "Child prostitute"



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Victims' Use of Language

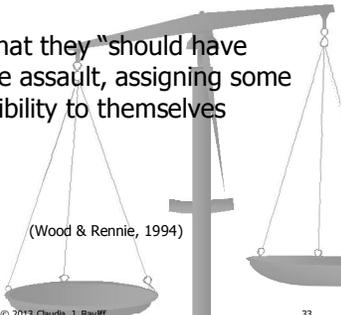
- May use language of consensual sex or mutual experience
- Often acknowledge they were "forced to have sex," but may not characterize it as rape
- May use vague or slang terms, impersonal verbs or passive language
 - "Something happened"



(Wood & Rennie, 1994)
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Victims' Use of Language

- May describe what they "should have done" to end the assault, assigning some level of responsibility to themselves
- Why?



(Wood & Rennie, 1994)
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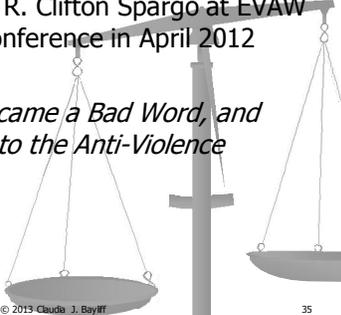
Victim v. Survivor



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Reclaim "Victim"

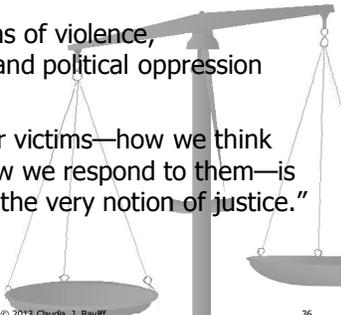
- Presentation by R. Clifton Spargo at EAW International Conference in April 2012
- *How 'Victim' Became a Bad Word, and Why It Matters to the Anti-Violence Movement*



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Spargo's Thesis

- Rights for victims of violence, discrimination, and political oppression
- "What we do for victims—how we think about them, how we respond to them—is fundamental to the very notion of justice."



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Spargo's Thesis

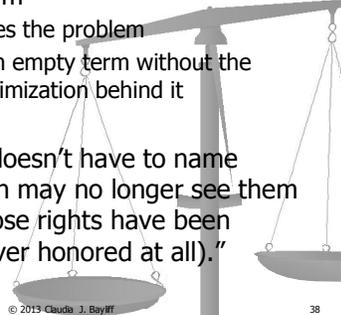
- Backlash against the victims' rights movement
 - Blaming the victim
 - "Victim" used as a term of contempt or notoriety
 - Examples from pop culture



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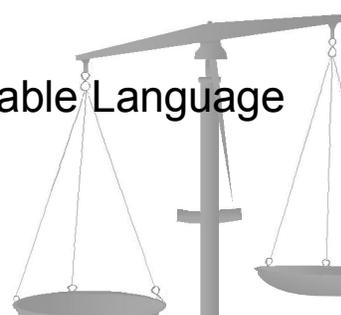
Spargo's Thesis

- Survivor v. victim
 - "Versus" creates the problem
 - "Survivor" is an empty term without the premise of victimization behind it
- "A public that doesn't have to name 'victims' as such may no longer see them as persons whose rights have been violated (or never honored at all)."



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Accountable Language

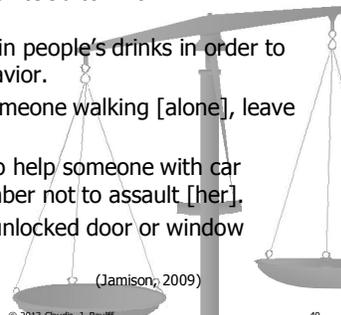


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**The Visible Perpetrator:
"Sexual Assault Prevention Tips
Guaranteed to Work!"**

- "Don't put drugs in people's drinks in order to control their behavior.
- When you see someone walking [alone], leave [her] alone!
- If you pull over to help someone with car problems, remember not to assault [her].
- NEVER open an unlocked door or window uninvited."

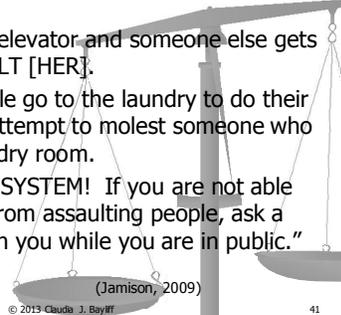
(Jamison, 2009)
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**The Visible Perpetrator:
"Sexual Assault Prevention Tips
Guaranteed to Work!"**

- "If you are in an elevator and someone else gets in, DON'T ASSAULT [HER].
- Remember, people go to the laundry to do their laundry, do not attempt to molest someone who is alone in a laundry room.
- USE THE BUDDY SYSTEM! If you are not able to stop yourself from assaulting people, ask a friend to stay with you while you are in public."

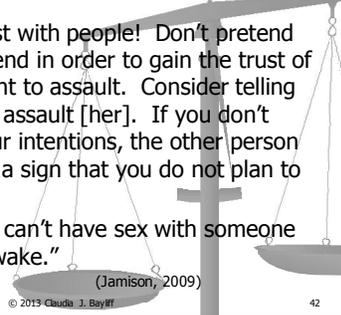
(Jamison, 2009)
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**The Visible Perpetrator:
"Sexual Assault Prevention Tips
Guaranteed to Work!"**

- "Always be honest with people! Don't pretend to be a caring friend in order to gain the trust of someone you want to assault. Consider telling [her] you plan to assault [her]. If you don't communicate your intentions, the other person may take that as a sign that you do not plan to rape [her].
- Don't forget: you can't have sex with someone unless [she is] awake."

(Jamison, 2009)
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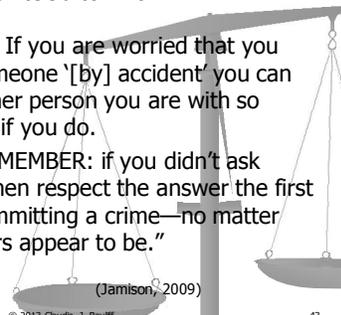


**The Visible Perpetrator:
"Sexual Assault Prevention Tips
Guaranteed to Work!"**

- "Carry a whistle! If you are worried that you might assault someone '[by] accident' you can hand it to the other person you are with so [she] can blow it if you do.
- And, ALWAYS REMEMBER: if you didn't ask permission and then respect the answer the first time, you are committing a crime—no matter how 'into it' others appear to be."

(Jamison, 2009)

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**What Are We Going
To Do About It?**

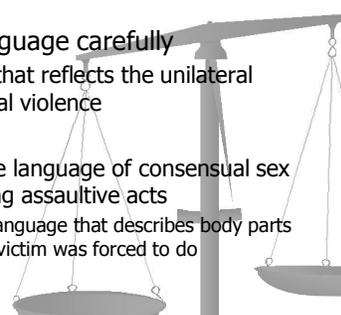
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**What Are We
Going To Do About It?**

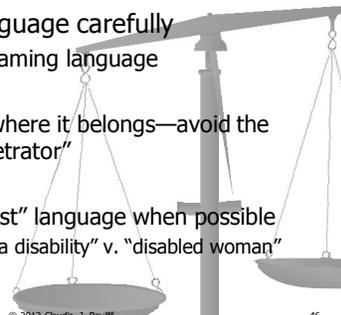
- Choose our language carefully
 - Use language that reflects the unilateral nature of sexual violence
- Avoid using the language of consensual sex when describing assaultive acts
 - Instead, use language that describes body parts and what the victim was forced to do

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What Are **We** Going To **Do** About It?

- Choose our language carefully
 - Avoid victim blaming language
- Place agency where it belongs—avoid the “invisible perpetrator”
- Use “person first” language when possible
 - “Woman with a disability” v. “disabled woman”



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What Are **We** Going To **Do** About It?

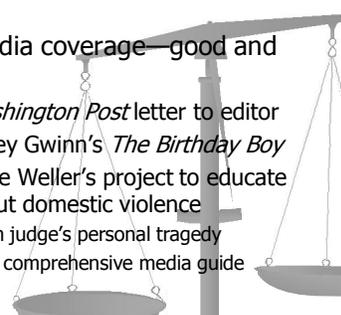
- Obvious exception: when quoting witnesses or statutory language
- Educate about these issues everywhere we go



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What Are **We** Going To **Do** About It?

- Respond to media coverage—good and bad
 - Example: *Washington Post* letter to editor
 - Example: Casey Gwinn’s *The Birthday Boy*
 - Example: Judge Weller’s project to educate the media about domestic violence
 - Stemmed from judge’s personal tragedy
 - Judge created comprehensive media guide

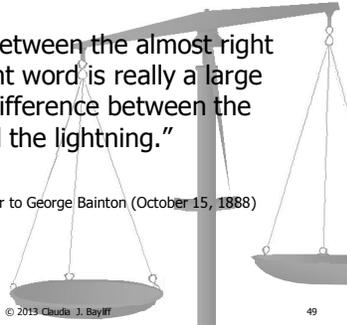


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Remember

“The difference between the almost right word and the right word is really a large matter—it’s the difference between the lightning bug and the lightning.”

Mark Twain, in a letter to George Bainton (October 15, 1888)



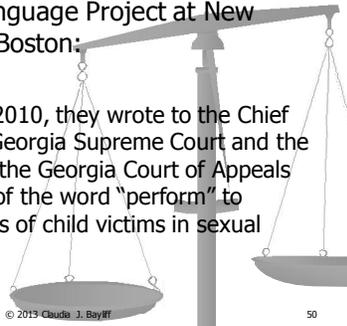
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49

We Can Make a Difference

■ The Judicial Language Project at New England Law | Boston:

- In September 2010, they wrote to the Chief Justice of the Georgia Supreme Court and the Chief Judge of the Georgia Court of Appeals about the use of the word “perform” to describe actions of child victims in sexual assault cases



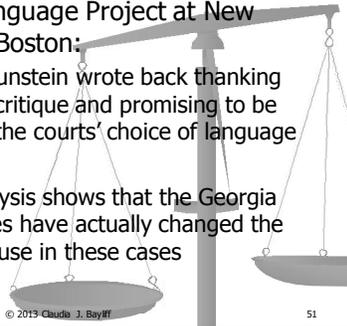
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50

We Can Make a Difference

■ The Judicial Language Project at New England Law | Boston:

- Chief Justice Hunstein wrote back thanking them for their critique and promising to be mindful about the courts’ choice of language
- April 2011 analysis shows that the Georgia appellate judges have actually changed the language they use in these cases

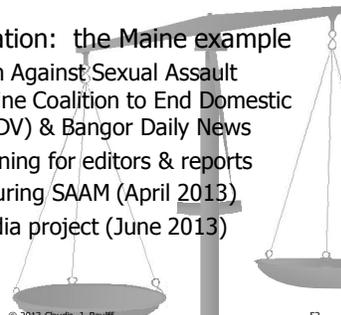


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51

We Can Make a Difference

- Media collaboration: the Maine example
 - Maine Coalition Against Sexual Assault (MECASA), Maine Coalition to End Domestic Violence (MCEDV) & Bangor Daily News
 - Mandatory training for editors & reports
 - **Daily** op-ed during SAAM (April 2013)
 - *Proof* multimedia project (June 2013)

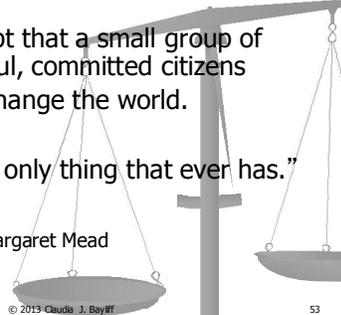


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Closing Thoughts

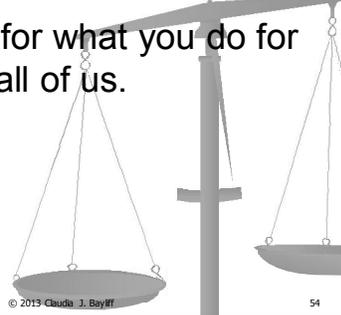
“Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed it is the only thing that ever has.”

Margaret Mead



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Thank you for what you do for all of us.



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Contact Information

Claudia J. Bayliff
 Project Attorney
 National Judicial Education Program –
 Legal Momentum
 101 Lounsbury Place
 Falls Church, VA 22046
 (703) 532-1134
cjbayliff@cox.net

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55

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56

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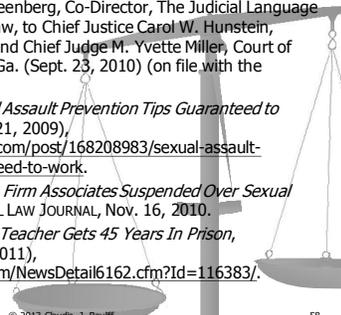
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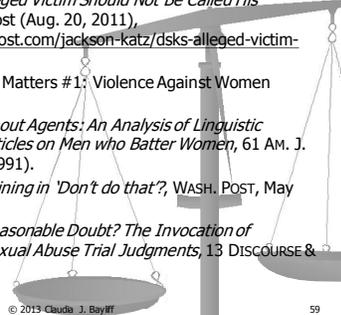
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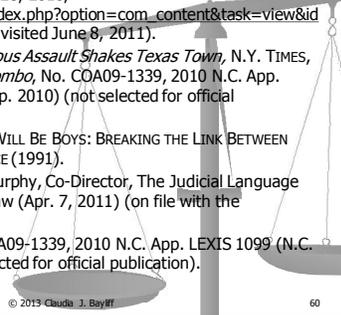
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61

*How Language Helps Shape
Our Response to
Violence Against Women*

Presentation Exercises

**Claudia J. Bayliff
Project Attorney
National Judicial Education Program –
Legal Momentum**

**New York Judicial Symposium
on Domestic Violence**

Brooklyn, NY

December 2013

For questions or requests for additional information, please contact:

Claudia J. Bayliff
Project Attorney
National Judicial Education Program-
Legal Momentum
101 Lounsbury Place
Falls Church, VA 22046
(703) 532-1134
cjbayliff@cox.net

Appendix B

Exercise: Jastorff Pleads Not Guilty

Jastorff Pleads Not Guilty to More than 30 Counts of Rape

by Jenna Mann, December 28, 2010 6:16 PM

KDLT South Dakota News – NBC Affiliate

http://www.kdlt.com/index.php?option=com_content&task=view&id=6866&Itemid=57

The Sioux Falls middle school teacher accused of fostering sexual relationships with two 13-year-old girls was back in court today. 26-year-old Nicolas Jastorff entered his plea on more than three dozen counts of rape.

Jastorff, a former special education teacher at Patrick Henry Middle School, faced judges in two counties and pleaded not guilty to all 39 counts against him."

Jastorff was first arraigned in Minnehaha County Tuesday morning on 25 counts of fourth degree rape. He is also charged with two counts of solicitation of a minor and two counts of sexual contact with a minor. Later, Jastorff appeared in Lincoln County on an additional ten counts of fourth degree rape.

Jastorff is accused of maintaining sexual relationships with two 13-year-old girls who attended Patrick Henry. According to police affidavits, he would perform sex acts on the two victims in a classroom at the middle school. The documents show he would visit one of the girls at her home during the summer, and the same victim would go to his home in Harrisburg, where the two engaged in sexual activity.

During his arraignment in Minnehaha County, Jastorff's lawyer asked the judge to lower bond from \$1 million to \$50,000, on the condition he would remain under house arrest at his parents' residence in Spearfish and would check in daily with the Spearfish Police Department. The judge denied the request, but did lower bond to \$500,000 cash only.

Jastorff's lawyer did not request bond be lowered in Lincoln County because he said it was *not* possible for Jastorff to make bail in Minnehaha County.

In Minnehaha County, a trial has been scheduled for March 7. The judge has scheduled a jury trial to begin in Lincoln County the next month, on April 7.

35 of the charges against Jastorff are Class 3 felonies. Each is punishable by up to 15 years in prison and/or a \$30,000 fine.

VIOLENCE AGAINST WOMEN

Violence against women continues to be a major problem in U.S. society in the 21st century. Our rates of rape, sexual abuse, spouse abuse, and sexual harassment are the highest in the industrialized world.

Each year, according to national crime statistics, more than one-half million women are raped. Half are raped before the age of 18. Contrary to one of the old myths about rape, most of these victims are assaulted by someone they know, including family members and friends. Rapists come from every socio-economic class and racial background. Most have a "normal" appearance; you can't tell if a person is a rapist by how they look.

Annually, millions of girls are sexually abused. Much of this abuse happens to adolescents. But sometimes girls as young as two or three are abused by members of their own family, or other adults in care-giving roles. The high incidence of child sexual abuse is one of the great tragedies of modern American society.

On average, three women every day are murdered as a result of domestic violence. According to the Surgeon General, battering is the leading cause of injury to women in the U.S. More women are injured by partners or spouses than by automobile accidents, athletic injuries, or household mishaps. Sometimes these injuries result in emergency room visits. Domestic abuse is one of the leading causes of emergency room visits by women. It occurs in every socioeconomic class and racial group. Batterers can be middle-aged, twenty-something, or high school students. They can be stockbrokers or truck drivers. Family violence doesn't discriminate by age or profession.

Millions of girls and women suffer sexual harassment in school, in the workplace, and on the street. One national study found that 83% of the girls responding reported being harassed at school. Women and girls of all racial and ethnic backgrounds are harassed by peers, teachers, and employers.

There are no easy solutions to the problem of violence against women. Over the past two decades, services for rape survivors and victims of domestic violence have improved, although funding for these services is often precarious and frequently inadequate to the scope of the problem. There has also been an increase in the number of programs for sex offenders and batterers, although activists in the battered women's movement still maintain that sentences are typically lenient and abusers are rarely held accountable, either by the law or by their school or employer.

While the problem is deep and widespread, better services for victims, more effective treatment of offenders, and an increased focus on prevention through education and community awareness campaigns offers the hope that one day violence against women will not be such a common event, but rather a rare and aberrational occurrence.

Language Matters #1: "Violence Against Women"
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www.jacksonkatz.com

Faculty Biographies

Claudia J. Bayliff is an attorney and educator with twenty-five years of experience working on issues related to sexual assault. She is currently serving as the National Judicial Education Program's (NJEP) Project Attorney, developing judicial educational materials and educating judges nationwide about sexual assault. She has a broad range of experience on the issue of sexual violence, from volunteering as a hotline crisis counselor to serving as the first Chief of the United States Air Force's worldwide Sexual Assault Prevention and Response Program. She has also consulted with the Department of the Navy, the Navy, the Marine Corps and the Army to help them develop their sexual assault prevention and investigation strategies. Ms. Bayliff served as the Assistant Director of the Boulder County Rape Crisis Team. She also taught classes on women and the law at the University of Colorado in Boulder and Denver.

Ms. Bayliff is a nationally recognized expert on sexual violence. She has extensive experience in policy analysis and development, research, and curriculum development for civilian, military and tribal communities. She has also presented at conferences and professional organizations throughout the United States, Canada and Europe about sexual violence and the intersection of sexual and domestic violence.

Contact: cjbayliff@cox.net

Sarah Buel has spent the past 35 years working with domestic violence, child abuse, sexual assault, human trafficking, juvenile justice, and human rights matters. Currently, Ms. Buel is a Clinical Professor of Law, previous director of the Ruth McGregor Family Protection Clinic, and founding director of the Diane Halle Center for Family Justice at the Sandra Day O'Connor College of Law at Arizona State University, where she also teaches *Domestic Violence and the Law*, *Criminal Law*, *Evidence*, and *Human Trafficking*. She is the faculty advisor to the student groups APADV, Community Advocacy Project, Street Law, Women Law Students' Association, '13' (Anti-Human Trafficking Group), and Minority Women in Science.

She came to Arizona after 14 years as a clinical professor at the University of Texas School of Law, having started, then co-directing their Domestic Violence Clinic. Additionally, Prof. Buel taught *Domestic Violence and the Law*, *Criminal Law*, *Torts*, and *Public Education, Civic Engagement & Policy* courses, and was co-founder of the U.T. Voices Against Violence program and the U.T. Institute on Domestic Violence and Sexual Assault that focuses on research, pedagogy, and direct services. Professor Buel has served as Special Counsel for the Texas District and County Attorneys Association, providing domestic violence training, technical, and case assistance to prosecutors throughout Texas. For six years she was a prosecutor, most of that time in Boston and Quincy, MA., helping to establish their award-winning domestic violence and juvenile programs. Previously, Prof. Buel was a victim advocate, state policy coordinator, and legal aid paralegal.

As a domestic violence survivor, Prof. Buel has been committed to improving the court and community response to abuse victims. She was a welfare mother for a short time before working full time in the day and going to school at night for seven years to obtain her undergraduate degree in 1987. She then graduated *cum laude* from Harvard Law School in 1990, where she founded the

Harvard Battered Women's Advocacy Project, the Harvard Women in Prison Project, the Harvard Children and Family Rights Project, was a member of the *Harvard Women's Law Journal*, and for two years was an active member of the Harvard Legal Aid Bureau. Since its inception in 1994, she has been a member of the American Bar Association's *Commission on Domestic Violence*, and from 2006 to 2012, co-chaired the ABA Criminal Justice Section's *Women in Criminal Justice* Committee.

Prof. Buel has published more than 35 articles and book chapters, and written amicus briefs to the U.S. Supreme Court and the Inter-American Commission on Human Rights. She is currently writing a book for NYU Press, *RETHINKING ABUSE: A POSITIVE RIGHTS APPROACH TO GENDER-BASED VIOLENCE*. She narrated the Academy Award winning documentary, *Defending Our Lives* and is involved in human rights and anti-trafficking projects in Cambodia, China, Kenya, and the U.S. Although Prof. Buel has received over 35 awards (including the 2013 *ASU Centennial Professor Award*), she is most proud of her son, Jacey, a lawyer who is education director for a youth entrepreneurship center where he teaches indigent, high risk youth how to start and run their own businesses as a means of increasing their high school graduation rates and success thereafter. Contact: Sarah.Buel@asu.edu

Michelle Garcia is the Director of the Stalking Resource Center of the National Center for Victims of Crime. The mission of the Stalking Resource Center is to enhance the ability of professionals, organizations, and systems to effectively respond to stalking. The Stalking Resource Center envisions a future in which the criminal justice system and its many allied community partners will effectively collaborate and respond to stalking, improve victim safety and well-being, and hold offenders accountable.

Prior to joining the National Center, Michelle was a Program Specialist with the U.S. Department of Justice Office for Victims of Crime. She has twenty years experience working with victims of stalking, sexual assault and domestic violence and advocating for victims' rights on a local, state, and national level. Ms. Garcia has trained internationally on various topics, including stalking, sexual assault, domestic violence, dating violence, and dismantling oppression. She received her Master of Public Policy degree from the University of Chicago. Contact: mgarcia@ncvc.org

Honorable Judy Harris Kluger is Chief of Policy and Planning for New York State's Unified Court System. Since her appointment as Chief in March 2009, she has been responsible for working with judges throughout the state to study and develop policies and strategies to improve the delivery of justice in New York. In addition to her role in system-wide court reform and policy development and implementation, Judge Kluger oversees Problem-Solving Courts around the state. Problem-Solving Courts in New York State include more than 300 Integrated Domestic Violence Courts, Drug Treatment Courts, Domestic Violence Courts, Mental Health Courts, Sex Offense Courts and Veterans Courts. Since 2010, Judge Kluger has been managing the administration of a three million dollar federal grant awarded to the New York State Courts to collaborate with judges, hospitals and the bar to reduce the costs of medical malpractice litigation. Judge Kluger is also responsible for foreclosure procedures throughout the state and the development of the Adolescent Diversion and Human Trafficking Intervention Parts.

From 2003 to 2009, Judge Kluger served as Deputy Chief Administrative Judge for Court Operations and Planning (DCAJ). As DCAJ, Judge Kluger initially oversaw statewide implementation of Integrated Domestic Violence Courts (IDV). The Integrated Domestic Violence Court program is a sweeping reform of the state courts that builds on a one family-one judge model for domestic violence cases. Prior to her appointment as Deputy Chief Administrative Judge, Judge Kluger was the Administrative Judge of the New York City Criminal Court from 1996 to 2003. In that capacity, she oversaw all aspects of court operations at seven locations in the five boroughs of New York City. Judge Kluger developed specialized approaches for domestic violence and drug cases and brought a problem-solving and innovative approach to court operations and administration. Prior to that, she was a key member of the development team at the Midtown Community Court, the nation's first community court, where she presided from 1993 through 1996. This court received national acclaim for its innovative handling of quality of life crimes and began an era of development of problem-solving courts throughout the country.

Judge Kluger was recently appointed Executive Director of Sanctuary for Families where she will begin her duties in January 2014.

Judge Kluger is an active member of numerous professional associations, committees and advisory boards and is a frequent speaker and panelist. In 1999, Judge Kluger received an award from the Mayor of the City of New York for outstanding leadership in breaking the cycle of domestic violence. In March of 2004, she was honored by the Lawyers Committee Against Domestic Violence with the In the Trenches Award. In October 2004, she received the Abely Award for Leading Women and Children to Safety. In January 2013, she received the Award for Excellence in Public Service from the New York State Bar Association.

Lisa Young Larance, MSW, LCSW, LMSW founded the Vista and RENEW Programs which provide gender-responsive intervention, advocacy, and support for women who have used force in their relationships. Her work focuses on meeting the needs of marginalized women and their families. She co-created *Meridians for Incarcerated Women*, a prison-based curriculum, in addition to launching and moderating the international "W-Catch22" listserv which provides resource sharing opportunities for advocates, members of the judiciary, practitioners, probation agents, and researchers. Ms. Larance's current work and publications address the critical need for context when understanding and addressing women's use of force. Ms. Larance and Shamita Das Dasgupta coedited a 2012 *Violence Against Women* special issue on battered women's use of non-fatal force which won the 2012 *Violence Against Women* Best Article Award. Contact: llarance@csswashtenaw.org

Dorchen A. Leidholdt, Esq. serves as the Director of the Center for Battered Women's Legal Services at Sanctuary for Families in New York City. The largest dedicated legal services program for victims of domestic violence and human trafficking in the country, the Center provides legal representation in family law, criminal, civil rights, public benefits, and immigration cases and

advocates for policy and legislative changes that further the rights of survivors of gender-based violence. In 2011, working in partnership with more than 400 pro bono lawyers, the Center provided legal assistance to more than 5,000 women, men, and children.

The Center has spearheaded state litigation establishing new legal precedent that expands the protections available to domestic violence victims petitioning for orders of protection and federal litigation preventing child protective agencies from charging battered mothers with “engaging in domestic violence.” The Center has successfully advocated for laws requiring New York State courts to consider evidence of domestic violence in custody and visitation cases, adding the crimes of stalking and strangulation to the New York State penal code, enabling domestic violence victims in same sex relationships to pursue civil protective orders, and creating the felony-level crimes of sex and labor trafficking. Through its Anti-Trafficking Initiative, the Center has provided direct representation to hundreds of victims of sex and labor trafficking and has trained thousands of law enforcement personnel, judges, and legal and social service providers on understanding human trafficking and assisting victims. Currently the Center chairs and provides technical assistance to the New York State Anti-Trafficking Coalition.

Ms. Leidholdt also serves as a member of the Board of Directors of the Coalition Against Trafficking in Women (CATW), which she helped found in 1988. An umbrella of grassroots organizations around the world, CATW has regional networks in Asia, Latin America, and Africa and participated in the drafting of the Palermo Protocol.

Ms. Leidholdt has presented nationally and internationally on issues of gender violence including testifying on the economics of human trafficking before Congress; speaking on trafficking to members of the UN General Assembly; training prosecutors in the State of Sao Paulo, Brazil; presenting to anti-trafficking leaders in Seoul, Korea; providing testimony about gender violence and impunity in the French Parliament; training local and federal police on gender violence in Mexico City; and presenting on the demand for trafficking to clergy, government officials, and social justice movement leaders in Rome.

Ms. Leidholdt has been an activist and leader in the movement against violence against women since the mid-1970’s, counseling and advocating for rape victims, organizing against the media’s promotion of violence against women through pornography and the media, serving on the legal team for the plaintiff in a precedent-setting sexual harassment case, and representing hundreds of women victimized by practices of violence against women, including domestic violence, prostitution and trafficking, sexual assault, female genital mutilation, the threat of honor killing, and the internet bride trade. She has lectured internationally on violence against women and has published numerous articles and book chapters and an anthology she co-edited with Dr. Janice Raymond. With Jill Goodman, she edited the Lawyers Manual on Human Trafficking and the 4th and 5th editions of the Lawyers Manual on Domestic Violence. She has taught Criminal Procedure at City University School of Law and teaches Domestic Violence and the Law at Columbia University School of Law.

In 1994, Ms. Leidholdt was awarded the United Nations Capitol Association Human Rights Award; in 1999, the New York City Bar Association's Legal Services Award, the Korean-American Family Service Center's Recognition Award, and the City of New York Award for "outstanding leadership in breaking the cycle of domestic violence"; in 2000, the New York University School of Law Public Interest Law Foundation Award for "outstanding contributions in public interest law" and the Lawyers Committee Against Domestic Violence "In the Trenches" Award; in 2002, the "Women of Power and Influence" Award by the National Organization for Women—New York City Chapter; in 2007, the League of Women Voters of the City of New York "Woman of Distinction" Award; in 2008, the New York State Coalition Against Domestic Violence's "30 Years, 30 Leaders" Award; and in 2009, New York University School of Law's Alumna of the Month Award.

Ms. Leidholdt hold a masters degree from the University of Virginia and a law degree from New York University School of Law, where she was a Root-Tilden-Snow scholar. Contact: Dorchen@sffny.org

Christine Sisario serves as the Director of Technology at the Center for Court Innovation, overseeing the development and roll-out of all technology projects including custom web applications for problem-solving court case management, numerous public websites and online learning initiatives. She manages the Center's staff of application developers, project managers, and webmasters, working in partnership with the New York State Unified Court System on technology enhancements and innovations to better assist courts with data collection related to problem-solving practices. Ms. Sisario has also directly served as project manager for two computer systems used by over 80 Integrated Domestic Violence and Criminal Domestic Violence courts in New York State, focusing on the unique needs of these courts to enhance victim safety and track offender compliance with court orders.

Prior to joining the Center, Ms. Sisario worked for the New York State Office of Court Administration on statewide network design and roll-out and, in the private sector, on worldwide project management assignments. Ms. Sisario received a BA from SUNY Geneseo, and a Master of Public Administration from Marist College. In addition, she possesses a number of technical certifications and distinctions. Contact: CSISARIO@nycourts.gov

Rebecca Thomforde Hauser is the Associate Director of Domestic Violence Programs at the Center for Court Innovation in New York, NY. As the Associate Director, Ms. Thomforde Hauser assists jurisdictions nationally and in New York State to plan and implement Domestic Violence, Integrated Domestic Violence, Sex Offense and Youthful Offender Domestic Violence Courts. At the Center, Ms. Thomforde Hauser provides training to judges and court stakeholders on a variety of domestic violence issues, facilitates site visits to model courts, and provides on-going technical assistance to courts and stakeholder agencies. Additionally, Ms. Thomforde Hauser is the Batterer Accountability Coordinator for the state of Vermont, overseeing the certification process of batterer intervention programs, providing training and technical assistance to batterer programs, working with the Department of Corrections in Vermont to craft policies and procedures that enhance victim safety and offender accountability, and reporting to Vermont's Council on Domestic Violence.

Before coming to the Center, she was a Victim Witness Advocate at the Suffolk County District Attorney's Office in Boston, providing crisis intervention, case management, and court advocacy to domestic violence victims as well as other victims of violent crimes. While in Boston, she also worked at Safe Havens: The Interfaith Partnership Against Domestic Violence, creating curricula and coordinating a year-long training domestic violence education program for clergy and laity from Christian, Jewish, and Muslim congregations throughout the greater Boston area. She graduated from Earlham College, where she received a Fulbright Scholarship, and Boston University School of Theology. Ms. Thomforde Hauser lives in Vermont with her husband and their two sons. Contact: rthomfor@nycourts.gov

Deborah D. Tucker is Executive Director for the National Center on Domestic and Sexual Violence. The National Center on Domestic and Sexual Violence provides and customizes training and consultation, influences policy, promotes collaboration and enhances diversity with the goal of ending domestic and sexual violence. Visit their award winning website at www.ncdsv.org. Debby has been dedicated to ending violence against women since becoming a volunteer with the first rape crisis center in Texas in 1973. She then served as Assistant Director for ARCC and was co-founder and Executive Director of the Austin Center for Battered Women. She facilitated these two agencies combining and becoming SafePlace in 1997.

In 1982, she became the first Executive Director of the Texas Council on Family Violence. Under her leadership, the TCFV grew to be one of the largest state coalitions with over 50 staff providing training and technical assistance, public education and advocacy and initiated the National Domestic Violence Hotline, 1-800-799-SAFE. She was the founding Chair of the National Network to End Domestic Violence during its development and passage of the Violence Against Women Act in 1994. The military community has long been an area of focus for her and for NCDSV. She served as Co-Chair of the U.S. Department of Defense Task Force on Domestic Violence.

Ms. Tucker received the National Network to End Domestic Violence's *Standing in the Light of Justice Award*, *The Sunshine Peace Award* from Doris Buffet and was awarded the Marshall's *Domestic Violence Peace Prize*. She has been honored by the National Association of Social Workers and the National District Attorneys Association. In 2012, the National Association of Schools of Public Affairs and Administration presented Debby with the Alfred M. Zuck Public Courage Award. Contact: dtucker@ncdsv.org

Mike Williams serves as the Chief Clerk of the Bronx County Family Court. His previous titles include Court Clerk Specialist for the Office of the Self Represented in Kings County Family Court, Assistant Deputy Chief Clerk of Self Represented Services in Kings and Queens Counties (2001 - 2010). Mr. Williams commenced his career as a Court Officer in 1989. He is a Brooklyn College Alum. He was co-author the online DIY Child Support Modification Petition Program for New York Family Courts; one of the most utilized forms on LawHelp Interactive, Mr. Williams was the recipient of the UCS Merit Performance Award and the NYC BAR's Kathryn A. McDonald Award. He lives in

New York and is the married father of two beautiful children Kaitlin (14) and Jonathan (10). Contact: mwilliams@nycourts.gov