
**CENTRE FOR RESEARCH ON
VIOLENCE AGAINST WOMEN AND CHILDREN**
CENTRE DE RECHERCHE SUR LA VIOLENCE FAITE AUX FEMMES ET AUX ENFANTS

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to End Woman Abuse and The University of Western Ontario

**A VAGUE AND
DANGEROUS DANCE:**

THE POLITICS OF JUSTICE
FOR DOMESTIC ASSAULT
VICTIMS IN A RURAL COUNTY

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Special thanks are also due to Lynn Celhoffer, local shelter director, for the leadership and vision that began this project, as well as her ability to create the "organizational space" in strained times for the logistics. Thanks also to the Tracking Project Committee, for unfailing support, and a great deal of patience, to the County Crown Attorneys office staff for document searches, and to the people who read and edited early drafts of this text, Sally Dobson, Susan Milne, Linda Thompson, Tanya Lewis, Gail Taylor, and Anna-Lee Pittman-Straatman.

Disclaimer

This report is based on the stories of women who were compelled into the court system as victims of their partner's assaults. It is written from these women's perspective. As such, it is a perspective seldom available in the province's consideration of how the court system is functioning in cases of domestic assault. Women point out that the process was so confusing that they are uncertain of the chain of events that led to the carriage of "justice" in their cases. They are, however, singularly unconfused about the fact that their participation as victim in the court process did not stop the violence, and that they are much less willing to participate again.

Confidentiality

The names of all participants, as well as their partners, family members and friends, have been protected with the use of pseudonyms throughout. Every effort has been made to make it difficult to identify the specific content of their stories.



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Abstract

Women who are victims of domestic violence face a difficult time when they enter the court system. It is an overwhelming experience and frequently occurs at a time when they are vulnerable and scared. These women may struggle to make informed decisions regarding laying or dropping charges or personal decisions regarding future life conditions including housing, employment, children, etc. This study explores the stories of five women who entered a rural court system as victims of domestic violence in search of justice and examines their perceptions of the process and recommendations for change.

Women were recruited into the study by social service workers small Ontario town. Research methodology included story telling, interviews, focus groups, and participatory social action. Local social service agencies and a Court Coordination Committee were given opportunity to learn from the women and to reflect, from a professional perspective, on ways that the judicial system can work in a more co-ordinated fashion to improve both the deterrence effect of the first charge and the safety of victims. This report includes examples from the women's narratives regarding their experiences in the court system.

Themes and recommendations developed from a workshop of participants who had read one another's stories are summarised and presented. Recommendations include better co-ordination throughout the court and legal system, to provide women with information so that they are better able to make good decisions and the court with information about related activities in other courts. Court and police officials must understand and accept that domestic violence is seldom only the unique incident where a charge is laid before the courts, but rather one in a series of incidents that shape the family relationships. Safety assessment and measures should be considered a priority, particularly as women are compelled into the roles of witness and victim and cannot choose not to participate. Effective deterrence of violence should be an outcome of the justice process and it is recommended that the system focus on changing men rather than women to stop the violence.

The women's themes shaped a parallel professional discussion and ultimately yielded a proposal for a process of co-ordination of services in a rural community to accomplish many of the same objectives as new domestic violence courts in urban communities. The report addresses the particular issues facing women and justice officials including Crown Attorneys and police in a rural community.



I am no longer strong enough to fight this man - [and] to fight this lawyer day in and day out. I can't do this anymore. It is destroying me. I went home and practised saying, I forgive you Peter, in front of the mirror. It was so hard at first - because of the crimes. I had to resolve it somehow. I couldn't [resolve] it through the courts, so I had to do it myself. I had to put it to rest. Finally I was able to say, I forgive you, and I meant it . . . I don't feel enraged about it anymore. I feel I was totally run roughshod over by the legal system. It was a total farce. I had no protection there at any point along the way. In the end, I don't feel there was a winner or a loser, I just feel that justice was not done. I feel like I've paid an enormous price.

Excerpt from Amelia's story

Introduction to the Tracking Project

Fifteen percent of married women in Canada report that their husbands are violent towards them. In almost half of the incidents reported to Statistics Canada in the national Violence Against Women Survey, the men used weapons and in 18% of incidents women were injured (Statistics Canada, 1993). The impact of the violence on the lives of women and children is profound. Beyond the physical impacts of assault, women in this study described the disruption of daily living; an inability to work because they feared for their children at home in their partner's care; physical and mental health problems, inability to sleep; and difficulty with concentration, memory and decision-making because of the extraordinary level of vigilance which they had to develop. They spoke of the difficulties of moving their children and parenting children who have been exposed to the unpredictable and violent behaviour of their fathers.

The court process fragments women's stories to preserve the focus to a single chargeable event and proven culpability around that event. Yet, from the last two decades of study on violence against women in families, we know that violence is a pattern, a chain of escalating events across a lifetime, with the potential for repetition across generations (Sinclair, 1985, Pressman, 1984). Statistically, the moment which appears to the courts as a first offence has probably occurred at least thirty times previously over the span of the relational story (Jaffe & Burris, 1981). For a justice intervention to stop or reduce the violence it must use this single

event as the crucial link to break the chain.

Robert N. Morris, Crown Attorney of Huron County, points out in his review of the system (1997) that much has been accomplished since the criminalization of domestic violence in the early eighties. Yet, he describes Ontario courts as a “system under scrutiny” suggesting that significant changes are required in the handling of domestic violence cases. The murder of Arlene May in 1996 sparked an inquest that yielded more than 200 recommendations that would substantially redirect the province’s justice system to a specialized and community-based approach to justice for victims of domestic assault (Chief Coroner, Ontario, 1997). A year earlier, the Toronto Star documented the failure of the court process to stop the violence in a dramatic review of one hundred and thirty-three charges laid in a single summer week (1996). This study explores the stories of six women who entered a rural court system as victims in search of justice, as did Arlene May, their perceptions and their recommendations for change.

The purpose of the project was twofold: to create case studies about the court experience of women who have been abused within the context of women’s life stories, and the development of patterns of abuse; secondly, to explore these stories combining the perspectives of women and court and social service officials to envision changes that could be made at the local level that would improve the experience and safety of victims.

The Makings of a Project

Our county is a rural community of some 60,000 people spread out across nearly 4,800 square kilometres of farmland, small rural villages, and towns. Its courts also serve the almost 20,000 residents of a small rural city, and a portion of a neighbouring county, including a First Nation Reserve. Little is known about the prevalence of domestic violence in rural communities, but some studies suggest that violent crime such as homicide, rape and assault are more likely to occur between acquaintances in rural communities and that high rates of intimate violence are found in less densely populated jurisdictions (Wallace, 1999).

For more than fifteen years, social service and justice professionals in the community have undertaken projects to create a joint approach and a systematic response to violence in

families. These projects have included collaborative training, protocol development and through this project, an ongoing Court Coordination Committee. A program for men who are violent in their relationships was established as a collaborative effort among a number of agencies. Like many communities in Ontario, we embraced the new charging policy of the provincial government in 1984, and worked across many sectors to improve investigation and the public relationships required to sustain the charging process. We worked with Dr. Peter Jaffe, Director of the London Family Court Clinic to help police and shelter workers understand the importance of charging abusive men, and with Ellen Pense of the Domestic Assault Intervention Project in Duluth Minnesota, to help envision a coordinated response between the service and justice systems. Parallel to the research project, an ongoing Court Coordination Committee was developed and became the bridge between the knowledge generated from the personal experiences of women and the public dialogue on changes sought in the justice systems.

The initial idea for this project was developed when a women's shelter called a meeting of social service and justice officials in July 1996 to consider the use of a small surplus that remained from funding a conference on women and family law the year before. The small surplus created an opportunity to gather people who had not been able to meet over the previous two years of intense change caused by funding cuts in both the social service and justice sectors. Their interest and willingness to explore new ideas was high, partly because the meeting followed on the heels of three significant events. The first was the death of Arlene May in Craigeleith, Ontario. The second event was the *Toronto Star's* public tracking and documentation of domestic assaults in 1996. The final event was the publication of a Court Tracking Project in Dufferin County (Family Transition Place, 1996), evidence that a community similar to our own could create ways to scrutinize the treatment of domestic assault in the court system. A project committee was formed from the initial meeting, including representatives from the men's program, women's shelter, Ontario Provincial Police (O.P.P.), Probation and Parole, a defence lawyer, and two women who have made the journey through the local courts.

The Committee intended this project to create an agenda for change in those areas of court operation that are within local control. We wanted to explore what could be seen about the

process of justice in the lives of women, from their own perspective, and then shift that knowledge into the professional sphere with the women's participation for strategic planning for action. In order to achieve these goals, women who had been through the court system were invited to tell their stories, consultations were held with the Court Coordination Committee regarding these findings, and the women were invited to develop some social action projects.

Participatory Action Research and Story-telling as Method

The experience of abused women has been increasingly interpreted by professionals over the twenty-five year life of the movement to end violence against women in Ontario (Struthers, 1995; Macleod 1988). During this time the movement has grown from a grass roots movement involving volunteers to a paid, educated and trained workforce (Macleod, 1988, 1989; Beaudre, 1985). More and more often, the people who speak to the issue in public venues are professionals interpreting the experience of women, rather than women speaking for themselves. Within the court system, some women have been creating a public voice as critic, with projects like the Metro Toronto Women's Court Watch Project (Amaral et al, 1997).

Qualitative research is the gathering and analysis of descriptive data from people about their perceptions of their experience. The commitment in this kind of research is not the demonstration of a single indisputable "truth", nor representation of experience generalizable to a larger population. Rather, it is the accurate portrayal of information in the subjects' terms, often in their own language. As such, it represents a unique perspective to the research topic, in this case, the point-of-view of women victims on their court experience (Denzin & Lincoln, 1994, Harding, 1987). Feminist research theory speaks of the recording of experience from the "margins" as a way to gain information from outside of the public conversation and to reach a greater understanding of the lives of women in society (Kirby & McKenna, 1989). Participatory or action research articulates a process that combines research, education and action (Hall, 1981). Its objective is to create ways for ordinary people to reflect on and analyse their own experience (Maguire, 1987). Feminist participatory research combines the objectives of both approaches by aiming to explicate the knowledge that resides in women's private lives—what is not seen or

spoken of in the public sphere. Further, participatory research seeks the active engagement of the “subjects” of research in articulating the knowledge gained through an analysis of experience to point the way toward new action.

Storytelling, framed within a feminist and participatory methodology was used to reveal women's knowledge of the courts. A story preserves the context of events in women's lives and permits some conclusions about the relative importance of one event to another, and of the overall impact of a justice intervention on the pattern of abuse in intimate relationships. As the project progressed storytelling also became a useful means of training legal professionals.

Sample Selection

Women were recruited into the study by social service workers representing a number of agencies including probation and parole, local women's shelter, men's program, Ontario Provincial Police and a lawyer's office. In addition, a public advertisement inviting participation was run in two city and area newspapers.

The protocol developed allowed for social service workers from each organization to select from their client list according to the following criteria:

1. Women who had been abused by an intimate partner.
2. Women whose partner had been charged at least once in criminal court and the case had reached disposition or withdrawal.
3. Women who were ready and able to tell their story to support a community change process.

These women were telephoned and, following a pre-set script the worker explained the project and invited their participation. The script described the project and set out the invitation along with the assurance that neither consent nor refusal to participate would jeopardize service from the agencies involved. If the woman was interested, a follow-up letter was mailed. Contact with the participant was initiated by the woman or the researcher, based on permission given to the agency contact by the woman. Eleven women responded, six women met the criteria and were interviewed and five stories were written.

Initial contact with the participants was made by telephone. The researcher explained the nature of the study, and advised women of the intended uses of the stories they would be sharing and ensured that eligibility criteria were met. Participants were informed that the interview would be approximately two hours long and would be audio taped. Each woman would receive a written narrative in the form of a “story” and have the opportunity to edit and approve the final text. Following the final edits, all audio tapes would be erased.

Each woman was advised of the risks of participating in the study including that confidentiality could not necessarily be ensured as women's stories could potentially be recognized. The consent form was read over the telephone in preparation for later signature. Women were advised that they could choose pseudonyms for themselves and for other members of their family. Other risks identified included the possibility of a woman's partner hearing about and objecting to her participation and; a professional taking part in the project or training who would develop a bias that might affect subsequent interactions with the women. The criteria that women's cases in the criminal court must have reached disposition was used in part to safeguard participants from this possibility being played out in the courts. Women were also advised of supports available to them through the women's shelter, including participation in the shelter's Legal Advocacy Self-help Group and access to the community counsellor.

Although a concerted effort was made to include members of the ethnic groups in the area, the sample consisted solely of white women. However, participants differed considerably in terms of social-economic status and education. One lived on a farm located on a rural concession road, others live or have lived in rural villages, and two now reside in a small rural city. One woman is a recent newcomer to the area, and others have long-standing traditional family ties.

The sample included only one woman who had never used a women's shelter or related services. Women with shelter experience were markedly more enthusiastic about participating and said during the risk assessment process that the story-telling would be worth the risk to them if it meant that another woman could benefit from their experience. Their approach to the project suggests a politicizing and activist orientation that may be related to participating in a feminist service based on empowerment, advocacy, and political change.

Interview Process

Women were given three interview questions on the telephone and asked to think about them before we met. These were:

1. Please tell me a little about your relationship with your partner.
2. What happened after the charge was laid?
3. Please describe your experience as you went through the court process. What would have made this process work better for you? What was missing? What would you change?

Women who participated in the study were extremely well prepared for the interviews, sometimes arriving with plastic bags full of documents. They began their stories at the beginning of their relationship and readily spun them through the development of the abuse, the court process, and the aftermath. The stories emerged in a form that was not difficult to thread together into a narrative combining the researcher's voice as listener and narrator and women's quotes as the first person voice. The women edited the stories and returned them, appearing moved and pleased with the results.

The Women's Analysis

Introduction to Participants

All of the women who participated in the study were assaulted by their partners. Charges were laid and each was involved in the court process. The women have chosen pseudonyms as follows: Patty, Amelia, Nicole, Ann, and Margaret. Partners of Amelia, Nicole, Ann, and Margaret were each convicted of offenses ranging from uttering a death threat to assault causing bodily harm. Both Margaret and Nicole's partners spent time in jail. For all of these women the assaults began in their relationship long before the event that led to the charges we documented. All of the men had some history of violence before the partnerships began. Four men had previous convictions and at least two of these had resulted in time in jail. These convictions included drunk driving and assault against the same partner or against someone other than his partner. All of the partners also had an unreported history of prior assault or demonstrations of violence toward another person. The women report that three of the five men were assaultive or abusive towards their children even though no charges had ever been laid against them for violence against a child.

In these women's stories, the first charge laid did not stop the violence, or increase safety for them or their children. The perceived positive impact of the court process was marginal at best and seemed to reduce the women's ability to call for help. In only one case, did it appear to alter the violence. This finding is contrary to the work of Peter Jaffe, on which our community and the province have based our understandings of charging as a deterrent. The difference may be incidental due to the small size of the sample or specific to factors related to the rural issues described in this study. Our study does, however, confirm suggestions made in the Toronto Star reports that women's safety does not increase following the charging process.

Meet the Women Who Shared Their Stories

Ann's partner was convicted of an assault that occurred when she was pregnant with their first child. The assaults continued, and he was never charged again. After three children, she finally left him and moved from her community. Only now is she starting to feel safer.

Amelia's husband was convicted of assault. He returned home and the assaults continued in a similar vein. Years later she began divorce proceedings, and laid subsequent charges through a Justice of the Peace for other assaults, but the Crown Attorney would not proceed. Amelia reported that the Crown called the charges a divorce tactic and an abuse of process.

At 17, Nicole was not only married with one child and pregnant with another, but the violence had already begun. Three years later she had four children, lived on a farm, and violence was firmly entrenched in her marriage. Seventeen years later, after many police visits and a single charge, she began the slow and expensive process of extracting herself from the abusive relationship. Nicole has forgotten how many times the police have come to her home, and retains only one clear memory of a charge laid when her husband left her badly beaten on the side of a concession road. He spent 15 days of a 30-day sentence in jail, calling her every day. When he returned home the violence escalated, though it was not aimed directly at her. Her belongings were destroyed, and one of her daughters was struck. Nicole is now divorced and has a restraining order, but she is constantly harassed by her ex-husband. Recently when she called police on a Sunday afternoon, she was told that it would take them two hours to respond.

Patty's partner was charged with uttering a death threat against her and her child. The charge was withdrawn in exchange for a peace bond. This man has been incarcerated for violence against others and has a long history of violence against Patty and her son. He continues to harass her when she meets him for unsupervised access visits with his son. One attempt to have police respond to written harassment failed because her husband did not refer to her by her own name. She no longer reports his harassment.

Margaret's husband has a long history of violence and alcohol abuse. He was convicted of a first charge, then a second, and finally a third assault against her. He finally sought addictions treatment on his own, and later was mandated by the courts. Margaret is committed to changing the pattern of their relationship, and they continue to live together.

None of these relationships ended following a justice intervention. Despite a frequent professional assumption that a charge could or should be the opportunity for a woman to leave

her relationship, it is clear from these stories that children and family economics create the need for long-standing ties. Each of these women continued in some form of relationship with her abuser long after the charge was dealt with. Patty, who had left her partner prior to his threat of her death, continues to negotiate custody and access terms. Amelia stayed in the relationship for a number of years. Several times she was attacked in a fashion similar to the event that produced the assault charge, which was so serious that police later said it should have been a charge of attempted murder. Ann endured increasing violence and harassment both after the charge, and long after she had finally left her partner. Nicole lives on the family farm where her husband visits daily to tend cattle as she negotiates a divorce settlement. She is still harassed, often on a daily basis. Margaret still lives with and loves her partner. Despite a second assault charge, she feels that they both are doing their utmost to end the pattern of violence in their lives, and to parent their four children.

New charges were not laid for Patty, Nicole and Ann, when the abuse continued. Their lives became a web of harassment where they came to believe that police could not or would not assist them. Margaret's partner was charged with assault a second time that resulted in his conviction. Amelia, unable to participate in the original court process because of the emotional paralysis induced by the assault, laid charges for three subsequent assaults through a Justice of the Peace. After two postponements because the summons had not been served, she located her husband herself and drove to a police station with the information to have him served.

Each of these women knew before they made commitments to their partners that the men they intended to share their lives with had been violent, although it was a violence directed at others. The ground was laid for domestic violence long before the events that lead to the courtroom, in the way that girls and young women are taught acceptance of the social stereotypes that support a traditional view of family and that violence of young men is often condoned and glorified as the hot-headedness of youth. These women fell in love with men who promised them a role in the storyline of marriage and family. It was only later in retrospect, that they noticed the warning signs of violence in their partners. Nicole, for whom the violence began when she was 17 expresses the expectations of family poignantly:

I have brothers and sisters, all older than me and they were all married with kids. I thought that is what you were supposed to do. You get married and you have kids. . . I look at my daughter who is 16, and I think, Oh my, another year, and I was married and had a kid.

No account of court intervention can begin without the acknowledgement that the destiny of marriage and family is still considered, in this rural community, as the most desirable goal for young women. The social and economic structures that create women's financial dependence in families contribute to keeping her in abusive partnerships long after she recognizes the abuse.

The charging process is a small but critical moment of challenge in the storyline of a happy marriage and family, a public moment of acknowledgement that the script is flawed, and many women pay the price daily with their bodies. Some pay with their lives. To fail to make this acknowledgement is not only a miscarriage of justice for individual women, but helps to perpetuate the myth that women need only to marry and have children to make their lives complete—and that in this respect, abused women have somehow failed.

Collective Data Analysis

The five women whose stories were told agreed to receive copies and to meet together to help develop themes and recommendations from the stories. Four of the five women and the researcher spent the day together in a local church meeting room, collectively analyzing their stories as research data. These women expressed a strong desire to find ways to make the court system work for themselves and for other women.

Themes were developed across the women's very different stories followed by recommendations that women wanted to make to those who manage and control the police and court. As they talked about the experience of reading the stories, women related how they felt about having a family story so different from the public storyline of a happy-ever-after marriage. They said they often thought they were the only ones having these experiences. In their stories they saw themselves minimizing their experience, appearing crazy, or in the wrong because they had either retaliated or had wanted to. The women pointed to a number of ways that the system

reinforces their own minimization and denial of the severity of abuse. A number of women were told: "It can't be that bad if you are still in the relationship". Offhand remarks by professionals within the system who may not know how to react to the difficult stories of women who experience violence can appear to be trivializing the violence.

Empowerment

When asked what it was like to read their story in the context of the others, this is how the women responded:

I cannot believe this is my life. The stories are so powerful. Although we don't have much power, there was so much strength. We're survivors. The stories were powerful, but we were not.

I cried as if it was yesterday. I am still in the middle of it. I couldn't handle it if this happened to my daughters. I don't have a good outlook on men...I am watching over my shoulder all the time.

I thought I was the only one, when I left. I started to think I didn't go through as much.

It opened my eyes that there is a lot going on that shouldn't be allowed. I wanted to jump into the story and smack the guy.

Three methods were used to draw women's information into the Court Coordination Committee discussions: researcher analysis, the women's themes and recommendations, and women using their stories to train court officials. Composite themes and the women's recommendations follow.

Themes Women Drew from Their Stories

A. Women lack information about the system, about options and penalties, which results in uninformed compliance with their lawyer or the Crown Attorney.

When a charge is laid, women are under immense pressure and expected to make quick decisions within a highly complex system for which they have no road map. Very often, experiencing financial as well as emotional crisis, women must either pay a lawyer for the information they need to navigate this system, or get it from the Crown Attorney.

The women questioned whether this complexity might conceal a randomness of outcome in the justice process. The women who had experienced more than one charging process said that they had difficulty finding the logical connection between events, the severity of the charge and its outcome. A judge would set the penalty and warn that it would increase if there was another incident, however, the women noted that this did not necessarily occur. They were confused by the variety of court orders that applied to themselves and their partners. Officials at the Court Coordinating Committee note that frequently access, restraining, and probation orders actually conflict with each other. At present there is no mechanism to track and coordinate orders originating from different points in the system.

The issue of random sentencing outcomes was raised with the Court Coordination Committee. The men's program has perhaps the best vantage point to see levels of consistency in the sentencing of assaultive men in the community as it has access to a substantial number of men and their court records. Through their contacts with abused women they have an understanding of the impact of the assaults. The director of the men's program notes that he can discern no pattern in the sentencing of the approximately 500 violent men referred to his program through the courts since its inception, validating the perception of the women in regards to the randomness of outcomes.

In 1994, the province provided policy direction to Crown Attorneys on the preparation of victims of domestic assault for court appearances. Because some cases in this project went

through the court prior to 1994 they cannot be judged by this policy. However, it is fair to say that none of these women felt adequately prepared for court. In their own analyses, they said that they did not understand the system well enough to be informed participants. Moreover, the local Crown Attorney's office suggested that they did not have the resources to meet the standard of this policy. The women's comments on their relationship with the Crown's Office offer valuable insight into how they could be better helped to be effective participants.

At the point of court involvement, the women reported feeling highly anxious and unable to take in information quickly. They needed time to consider the options put before them and discuss them with a friend or advocate before making a decision. They needed the legal language translated into lay-person's terms, and the options and consequences of breaches of these options clearly defined in written form.

According to policy, the Crown Attorney's role includes at least one interview with the victim shortly after the charge is laid, in order to gain an understanding of her fears and concerns, and to prepare her as a witness. Specially trained Crown Attorneys in each jurisdiction are to be designated as Domestic Violence Coordinators to act as a resource for other Crowns. Noting that victims are frequently ambivalent about the charge, the policy states: "Additional care in listening to their [the victims'] concerns and explaining the process, though time consuming, is necessary to the conduct of the case" (Province of Ontario, 1994, p. 3). Crown Attorneys are encouraged to arrange days out of court to accommodate interviews with victims and to obtain additional part-time Crown Attorneys to assist if necessary (*ibid*, p. 10). However, it appeared that the resources to meet these policy standards were not made available in this community.

Given the absence of Crown interviews with abused women in some cases, and their extreme brevity in others, the Crown Briefs prepared by police became the sole source of information about the ongoing domestic violence as the context in which the particular charging event took place. The women in this study suggest that significant events such as prior charges and incarceration records as well as reported assaults that did not result in charges may not have been known by the courts at all stages in the proceedings.

Despite concerns in Ontario about the state of police and court information systems, the

Crown Attorney's office has a duty to "ensure that the criminal justice system operates fairly to victims of crime" (Crown Policy Manual: Statement from the Attorney General and Deputy Attorney General, 1994). Ensuring the fair operation of the system implies a leadership role for the Crown Attorney's office with respect to information gathered in the Crown interview and the expectations set for other players in the justice system. The degree of concern exhibited by the Crown in the relational history of the family, as well as the recognition of the variety of charges that may result from domestic violence, sets a tone which influences the quality of information prepared by police in the Briefs. Patty's story helps us to see how she believes that understandings about domestic violence and the system's lack of formal record keeping created a gap in knowledge about her history, and influenced the outcome of the charge when the decision to withdraw a death threat charge in exchange for a peace bond took place during an brief interview with the Crown Attorney.

Crown Attorneys are clearly directed in policy with regard to withdrawal of charges, as follows:

Withdrawal of the charges is not appropriate unless exceptional circumstances exist. Crown counsel may be approached by either the accused's council or the victim with a request that the charge be withdrawn. Prior to any withdrawal, Crown counsel must consult with the Crown Attorney or Domestic Violence Coordinator...Except in the most unusual circumstances, peace bonds are not appropriate remedy as an alternative to assault charges. (Province of Ontario, Crown Attorney's Policy Manual, SP-1, Section 5, 1994).

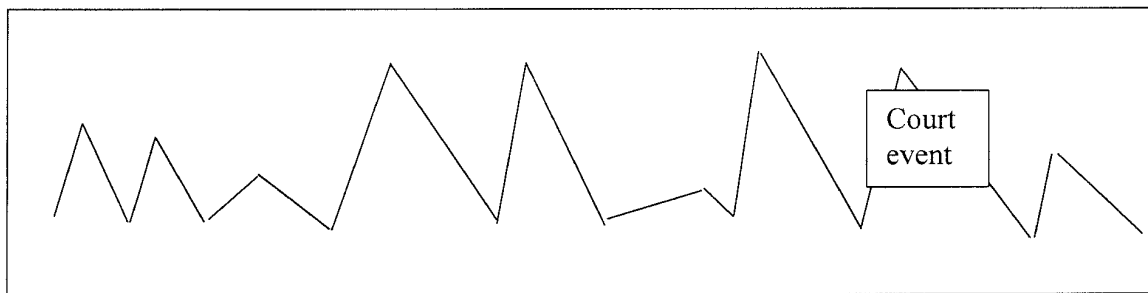
Exceptional circumstances might be understood in many ways, as the man being of good character, the marriage a long and faithful one, or a claim by the victim that the assault was a one-time or first-time event. Given the statistical context of 30 assaults before the first charge is laid (Jaffe & Burris, 1981), this would be characteristic of very few women's histories despite the appearance of no previous offenses. Patty's hidden history of enduring years of violence was not revealed, and the charge was exchanged for a peace bond.

It is striking that women in this study emerged from the courtroom experience very

unclear about what had happened. They did not distinguish between criminal and family court in their discussions, appeared confused about their functions and, about the information flow between the courts and police. The system seemed incomprehensible and the outcomes random rather than reasoned and deliberate. Judges, lawyers and Crown Attorneys sometimes appeared to have no knowledge of previous charges or court orders. Some of the women wondered if self-representation could be a way of getting more of their story heard in court. However, another woman pointed out that women can not adequately represent themselves because they do not know the rules and are often frightened about going to court at all.

B. A lifetime of abuse is reduced to a single court event.

Learning how to think about this issue is a necessary task for those whose work in justice sectors is part of the integrated community process of criminalizing violence in families. The result of decontextualizing women's private stories in the courts is profound. A single event is fragmented from her daily reality of threats, fear, and assaultive and abusive behaviour and becomes one episode on which the "full weight" of the law will focus.



A lifetime of abuse is reduced to a single court event

There are only three mechanisms to evaluate whether the event was representative of others, was more or less severe, and how predictive it might be of future assaults. The first is the Crown Brief, if information about previous police involvement is included. The second is the result of the Crown Attorney's interview; and the third is the women's testimony if she is called

to testify. The Crown's knowledge of the victim's experience is essential in that it forms the basis for decisions as to whether the case proceeds or if there is to be a plea bargain. Based on this knowledge, the Crown Attorney may also recommend that the judge order a pre-sentence report or that the police obtain a victim impact statement. If the Crown Attorney is not aware of how this single incident fits within the context of a woman's life, her needs as a victim will not be recognized by the system, and her safety can be seriously jeopardized at a critical moment. If the point of reference is not the span of continuing violence in a woman's life but the charge, then the assault may be viewed by the court as an isolated occurrence. In this case, the public image of a perpetrator is someone who has been accused of a single outrageous act, is innocent until proven otherwise, and is often partnered by a woman who appears "overwrought" and cannot make up her mind about whether she wants the charge to stand or not. From the Court's point of view, abused women may seem hard to understand, difficult to believe, and sometimes a little "crazy." At the data analysis workshop, women pointed out that from *their* point of view the court process was very hard to understand, difficult to believe in, and so random as to seem crazy, in turn, to them. Patty's story offers some insight into the process.

Patty's Story

Patty was separated from her husband and living at a women's shelter when her partner made death threats against herself and her son. The interview with the Crown Attorney was held on the court date. Patty believes she was being asked to make a quick decision about whether to testify or exchange the charge for the perceived protection of a court order. As Patty explained:

The Crown Attorney asked me what I wanted to do: go through a trial where it was his word against mine or put him on a peace bond. To me, I would have liked to go to trial, but what if he would have got nothing? So I said the peace bond. You guys know what you are doing, I don't. Did the peace bond work? No.

The Crown Attorney explained the peace bond to Patty, and she understood that she was being asked to make a decision that would result in the charges being withdrawn.

From what I understood, it was that he was not allowed to talk to me, he was not allowed to give me the finger, you know – that was about it. It didn't say how far he had to stay away from me.

Patty believes that the Crown Attorney did not know of the six year history of violence preceding the charge, or of the charges against others, including assault causing bodily harm, assault with a weapon, uttering a death threat, or that he had served time in prison as a result. She also believes that the Crown Attorney did not know that John regularly threatened and physically assaulted an older son, or, that Patty had often sought assistance at women's shelters across Canada.

He kind of said to me, Well, you know, what is this person like? Basically how I took it was I was supposed to judge, make this call, and I didn't want to testify. I wanted him to go to jail, but I didn't want to have stand on that stand. I would be so terrified that he would get away with – what he got away with.

Without extensive and thoughtful questioning, the Crown Attorney could not be aware that Patty had sought justice against another perpetrator through the court system many years earlier, and that experience had shaped her reluctance to testify. As she explained:

The charge was rape... and he got away with it. It was like I was made the so-called "bad person". That's what they put me through.

When asked what she would have decided if the Crown Attorney had given her a choice, where it was clear that he would support a decision of going to trial instead of accepting the peace bond:

I would have said, OK, let's go. I don't think he should have given me the option. When he explained the peace bond to me he said that it would work because if he didn't listen to it he could go to jail anyway. I thought, OK, he's not going to follow it anyway so he'll go to jail. I don't know how the courts work. It was an easy out. I didn't have to get on the stand. I don't think he should have done this. When I went to court I was ready. I was scared, but I was ready. And then he says you can either go in there and charge him, his word against your word and see what the outcome is, or you can go for a peace bond. The easy way out. The feeling I had was that he wanted me to go for the plea bargain. I don't know how I got that feeling, but it came from him.

C. Women become reluctant to call police following the charging process, and believe police are more reluctant to respond

As a community, we have assumed that charging practices were increasing the safety of women, as set out in Dr. Jaffe's research and extensively cited in the 1994 Crown Attorneys' Policy on domestic assault. These women's unwillingness to call police after their negative court experience is cause for alarm. The court's inability to intervene effectively in domestic assaults may actually increase, rather than decrease, the danger of a woman's situation.

After the first charge, these women no longer saw the court as an ally. The sense that justice was not done arose not only because the women's safety either did not improve or worsened as a result of the charge, but also from the fact that they did not feel their stories were told or taken into account in the process of court resolution. This loss of faith was critical to their inability to view the court system as a viable route to justice. These women entered the system with the belief that the courts regard domestic violence in the same way as any other form of violence, and that there are protection measures that work. They emerged from their experiences with the sense that the system did not comprehend or would not respond appropriately to their situation. Ultimately, they felt they were on their own in relationships they had no choice but to continue due to family economics and children.

Women's comments regarding court outcomes:

Mine should have been an attempted murder charge. In the end it made absolutely no difference to him, but my life was shattered.

I would never do it again, because it (the system) doesn't work.

If I had to do it again, I would simply wait until the kids are grown, and then pack my bags and leave.

I fear charging him again.

A discussion regarding this issue with the local Court Coordination Committee supported the suggestion that women who have been through the courts have stopped calling police. In small towns police work is done amongst neighbours. One small-town chief on the Committee suggested that officers on his force seldom received second calls from homes where they have laid domestic assault charges. They were under no illusion that the violence had stopped. They were aware of a woman's frustration and despair throughout the court process, often knew her as a neighbour and sometimes as a relative. They recognized her reluctance to call police for help again as fear that another charge would be laid.

This rural perspective suggests police data on repeat offences, measured as occurrences or charges may offer an unrealistically optimistic view of the success of charging policies. A major American study of police interventions in domestic assault cases corroborates this point of view: repeat incidents are the rule rather than the exception, with the majority of women who were interviewed having experienced at least one more abusive incident since the original incident six months earlier (Hirschel, Hutchison, Dean & Mills, 1992).

Women in this study said that after the first charge, if they did call police, they found them more reluctant to respond. They believed that police were less likely to respond after they knew their story, understood that they had returned to an abusive man, and knew how violent their partner was. Anne believed that the police were less likely to keep coming when she kept calling for help. Yet if the women did leave, and obtained a restraining order, police often appeared unwilling, or unable, to enforce the order. The women in this study said they

Anne's thoughts

I've found that if the police know that you have been abused in the past, you leave that person and you go back, that they are slower to respond each time. They don't want to get involved. Unless you plan on staying away from him, they don't really want to help you. Jason was severely flipping out, and he'd only had a couple of drinks. He was throwing everything off the TV, smashed a lamp and just was going nuts. His brother... said you better get out of here, because he's going to kill you.

I walked down to the next farm house and called from there. Of course I was trying not to say anything, so that the neighbours wouldn't know what was going on. I said my husband was flipping out, that he'd been abusive in the past and I needed a cruiser there right away. It had to be a good 35 to 40 minutes before they responded, and we only lived five minutes out of town. It was the same detachment that had laid the charge before.

understood the frustration they sensed from police. The pattern of domestic assault is such that women return to their abusive partners many times before they are able to make a permanent break and, that over the course of time, the violence escalates. In their analysis, they suggested that the dwindling police response to repeat calls both reinforced and mirrored their own ongoing minimization of the danger they lived with.

While policing in small towns offers the opportunity for police to be familiar with repeat offenders, it also causes some discomfort for victims who know the officers who are responding to their calls. Amelia tells of a police officer who was called by a neighbour. He stood at her bedroom door, asking to see her and verify that she was all right. This is good policing, but her shame at knowing him made it impossible for Amelia to call again.

Amelia's story

Well, I've known that person all of my life. I grew up here. I said, I'm fine. Just leave me alone. It was the embarrassment. I felt I would be the topic of conversation in the coffee shop the next day. I was really embarrassed.

For Margaret, small town familiarity takes a different twist in her inability to call again for help. Her family has been engaged in the system for decades. She was a ward of the Children's Aid Society, and they have monitored her parenting. She knows members of her small

Margaret's concerns

He's suggesting that I'll end up being nothing. That I'll amount to nothing, because I'm a loser for being with [Robert] . . . He turns around and Bang!, he's right on me, right on me. . . He phoned my mother, Like if you have any stuff on him, give it to me. He wouldn't stop harassing my mother. There is a fine line to me where a cop can stop. Actually it should be a thicker line. [He was] way over, way over.

I just chickened out. It's a cop. What can I do? If I do something, he is going to harass me even more. Right? Who'd want to take a chance?

city police detachment, and they know her and her husband, and his court history. Comments and

actions from a local police officer have left her reluctant to continue to call when necessary. Knowing one officer's attitude towards her and her family leaves Margaret uncertain about the willingness of the police service to protect her and the honesty with which they might record the events of her life. She was advised by her counsellor to lay a complaint about the officer's behaviour, but she is caught between her need for justice and her fear of the people who are supposed to provide it.

Only in Nicole's experience did the threat of a probation breach and her partner's return to jail provide her with a slight measure of increased safety. She paints the picture of a man who, during his probationary year learned to limit his violence and for some time afforded her some increased safety. But then the violence began again, only in a different form.

Women's tendency to minimize the abuse is recreated by the system when her story is not heard, understood or believed. Yet even when the story does become more fully known, it seems to further limit the response by the system.

D. The voices of men emerge more strongly than women's in the system. Men seem able to manipulate the system, to "pull the blinders over people's eyes" and carry more credibility than the women.

Feelings of fear and unease were prevalent in the women's experiences with the court. This is perhaps understandable, given the circumstances which surround their day in court, but in the data analysis workshop these women also suggested strongly that they were not perceived as credible, and sometimes misunderstood and treated disrespectfully. It must also be considered that what women experience is also the result of a lack of understanding or acceptance of current theories and beliefs about domestic assault, within the framework prescribed by provincial policy.

The women suggested that the power in the courtroom was held by the lawyers, the Crown Attorneys, and by their male partners who knew the rules and exercised powerful voices. They said it felt like a "men's club" and pointed out that men have more ability to speak clearly in a public forum. These women said they felt their victimization acutely and personally and often broke down and cried in court. They found this embarrassing, and perceived that it reduced

Nicole's story

It was pretty good, because he knew he couldn't touch me or he'd go straight back to jail again. They told him the next time, he'd be there for 6 months, not 30 days. . . I don't think he really hurt me in any way, during that time that I can remember. It just kind of went back to normal, except that he never hit me or anything. He might throw stuff. . . He picked up my coffee table one time and threw it up . . . about eight feet up . . . it hit the wall, just smashed into it.

Over time, Nicole's husband learned to work around the court-imposed limit on aggressive behaviour directed against her, replacing it with violence against objects in their house and finally, against their daughter. When asked if her life with Mark was any different in the years following his conviction and probation; she replied:

No, only it got where it happened more often, but not as bad because the kids were older and the kids would then step in . . . He's mellowing out over the years, but at the same time, he doesn't want to—he's not going to do anything to me, because he knows I am going to put him back into jail. I'd say to him, Go ahead hit me, and I'll phone the cops and you'll be in jail. If I was to say that to him, he wouldn't touch me. If I was to sit there and take it, he would. Then, in turn, he found other ways, like tearing up the yard, letting the cattle out on the yard all day. If I plant a tree, he would break it off. It got to be other things. I think it was easier when he was physically abusing me, because when he was doing all these little things, it got to the point where I just didn't care. Do what you want to do, just leave me alone . . . At least if he beat me up, it's like, OK you beat me up to-day, it's done tomorrow, you know? There is at least another couple of weeks before he hit me again. So then it was alright.

the impact of what they said compared to what their partners had to stay. They felt that the judge did not want to hear the emotional side of the story, further reducing their ability to participate.

It seemed that the man's employment status contributed to his credibility in court, though it is not recognized that the professional potential of women is severely constrained by violence at home. During her struggle to bring her husband to account, one woman was told: "This man is [a professional]—why do you want to stir things up?" Her husband was seen as a reputable man, even though he had also occasionally been violent in his workplace.

Alcohol was a factor in each of these five stories, but not in the same way. For four women the abuse escalated when their partners drank. For the fifth woman the danger came when he stopped. They suggested that men who drink appear very different in court than when they are

drunk and assaultive at home.

Patty: "I sit back and don't speak what's on my mind. I don't get it out. He gets it out."

Amelia: "To be honest he (my husband's lawyer) could have asked me anything. I said, I don't have a problem with anything. Just do what you have to do. I wasn't able to fight it. I couldn't have cared less. I basically went into mental shut-down I guess. I couldn't function."

In their analysis, the women in this study said that it is often the recognition that abuse is harming their children that prompts them to try to take stronger action for change in their lives. This raises the important question of how the system models and provides for the protection of the children of abused women, and supports them to use the charging process as a change point for their children's well-being.

Previous research with assaultive men in this community (Struthers, 1991) reinforces this theme, suggesting that educating both women and men on the impacts of domestic assault on children can be a key motivator for change. The emotional consequences of living with an assaultive parent are substantial, to say nothing of the potential for physical harm. Research suggests that young men and women tend to follow family patterns of perpetrating and tolerating various forms of abuse (Jaffe, Wolfe, Wilson & Gluscarzk, 1984). The system could be proactively using the charging process to assist women to make decisions that would enhance the welfare of their children, and men to make concrete steps toward behaviour change.

The most significant issue here for women is the lack of congruence in the outcomes of Criminal Division and Family Court. This incongruence not only sends a confusing message to women and men, who may for the first time be realistically assessing the impact of violence on their children, but is also placing children in increased risk.

Lack of coordination between family court and criminal court

1. Women indicate that custody is their main priority, overriding their interest in conviction, property entitlement and anything else that comes before the courts. Some women suggest that lawyers take advantage of this fact in negotiations to broker away the criminal charge in return for a better chance for custody. When the Crown's office was asked about this practice,

it was revealed that if a women approaches the Crown with such a deal, he assumes she has had the benefit of independent legal advice and will likely accede to her request and drop the assault charges.

2. Criminal charging information and histories of assaults against children are often not included in Family Court deliberations over custody and access. There is a lack of information coordination between the two systems that impacts the court's ability to make decisions about the safety of children. People within the system note that the orders from the two courts are sometimes in conflict.

3. If children who witness violence are regarded as victims of domestic assault and therefore seen at risk, the Children's Aid Society should be exploring their ability to mandate assaultive men into treatment should the criminal system fail to do so.

4. Several accounts highlight the failure of police to report to the Children's Aid Society when a child is involved in the assault either directly or indirectly, although this reporting is required in the Child and Family Services Act.

F. Women's safety was not consistently considered during the court experience.

Women spoke of the incongruence of sitting near the men who had threatened their lives in the court room with little security. They wondered what would happen if he had brought a gun. One woman's husband sat down next to her, creating an appearance of normalcy she felt unable to challenge without creating a scene. They had not spoken for months, and despite a court order that he stay away from her, he was not challenged. Why, she wondered, should he suddenly be considered "safe" within the courtroom?

Because women in more danger of assault during the period of time following separation (Statistics Canada, 1993), an event that may be triggered by an assault charge and restraining order, the courts carry a tremendous responsibility for ensuring the safety of women at the pivotal moment of public naming of he violence. As victims, women's participation in the public process is mandatory, yet they perceive a reduced response from police and difficulty in having information that might increase their safety included in the process.

Nicole's story

I bought myself a marble rolling pin, and I have a baseball bat, and he's just not going to do it no more. That's the way I feel about it. And if the OPP force won't help me, then I have to help myself. I'm not going to kill the guy or anything like that, but he's not going to hurt me or my kids anymore.

I. The financial costs of seeking justice through the courts and legal system were prohibitive.

Most women who leave abusive men suffer economically, and legal fees are a hardship. The more orders or variations she must seek to end the harassment, the higher her legal fees, and the more reluctant police response becomes.

These women believed that Crown Attorneys and lawyers sometimes acted as gatekeepers of carefully and expensively prepared information that appeared not to be read or considered in the proceedings. The women in this group had difficulty believing that the lawyers were truly working in their interest and feared the cost of question or challenge. Amelia notes that the quarrel over purchasing her house from her partner was generated entirely by the lawyers. In the end, it was settled by a friend with a single phone call, but Amelia is still paying off \$10,000 in legal fees. Nicole is considering representing herself. She has spent a great deal of money on her lawyer, enough to educate a daughter or to begin a Registered Retirement Savings Plan (RRSP).

Margaret's husband was ordered into a separate residence and only had supervised access to their children. Margaret, left alone with four children, had to leave her job to manage both the children and the supervision. She was eventually billed for overpayment due to a Welfare Department error in which they changed the basis for entitlement from a family to two singles. The overpayment was eighty dollars, a substantial loss in that particular month.

H. Court orders did not offer a viable solution.

Women say court orders themselves can become a source of abuse in two ways. The first is that women, rather than the system itself, must often monitor the orders that are designed to ensure their safety. Secondly, court orders can, in and of themselves become an instrument of

financial abuse, as their partners manipulate women's need to continually seek variation with harassment that falls just short of activity that the police will act upon.

A Probation and Parole Officer of the Court Coordination Committee pointed out that women often said they were not aware of court orders that prohibited their partners from returning home; nor of their release from custody. Women often said they had no idea where their husbands were, or when they might return after police escorted them from their homes to lay charges. In the extraordinary circumstance of uncertainty and fear of waiting for an abusive man's return, we have come to name women's uncertainty as ambivalence and lack of decision-making ability.

It is odd that we cast a woman's willingness to take her husband back under these circumstances in terms of ambivalence, when the charging process has heightened her risk (Statistics Canada, 1993), her choices are limited and she is vulnerable and afraid. It is a moment that is filled with danger, and her safety is not managed by the system. That she "permits" him back into the relationship should be no surprise, whether she is motivated by fear, persistence of love for her partner, or economic necessity, she has few other choices.

The women found that the more their story was known to public officials, the less the system seemed to respond. These women suggested that police come to regard them as a nuisance when they continued to call to report violations of restraining orders and peace bonds. These orders, they say, are not worth the paper they are written on.

Effects of restraining orders

Nicole's restraining order was intended to keep her husband at a distance. When she called the police, she learned that it would take hours for them to arrive at her farm residence. In court, her husband sat next to her, giving the impression that all was well. No move made to enforce the order even there. She chose not to create a scene.

Anne dealt with the physical harassment of herself and her children-harassment that extended to her friends, when her husband deliberately ran into her friend's truck. When she asked police about getting another restraining order, she was told that the only thing this would accomplish was to make him angry, and that if he hadn't "done anything to her yet", she should wait with her request.

Police had an assault charge to serve on Amelia's husband. Despite the fact that he had a Firearms Acquisition Certificate and a drivers license, they could not locate him. It was Amelia who staked out his location, watched him go inside, and drove to the nearest O.P.P. detachment to demand that he be served.

Nicole no longer reports her husband's breaches of a non-drinking condition when his children visit. Because he lives with his parents, Nicole suggests that he is now his mother's, rather than her responsibility.

K. The delay between laying of a charge and the court date provides opportunity for women to be further coerced into dropping charges.

It takes between three to four months for a domestic assault charge to reach a trial date in this county, at the time of writing this report. When most of the women in this study had their day in court, however, the wait was between eight and ten months. Anne and her husband Jason's story helps us to understand how this delay between charging and court appearance builds reluctance to proceed in the victim and can foster the dramatic re-commitment to the relationship that brings the woman back to the Crown's office to ask for charges to be dropped.

The delay between offence and charge and court date leaves women in a vulnerable position. During the wait, Anne was actively lobbied to change her position by her partner and his family. Financially and emotionally the pressure can be immense on abused women. Ultimately, it was she, not her partner, who made changes in behaviour, as she became more

Anne's story

The police intervened in a brutal assault early in their marriage when Anne was pregnant with their first child. Jason had kicked her, dragged her across the floor by her hair, and threatened her with guns. The police asked her if she wanted him charged, and she said yes. They held Jason in custody over a long weekend. He was beaten up by other inmates and admitted to hospital. He phoned Anne numerous times saying: "Look what you did to me."

The following Tuesday, Jason was released on his own recognizance without posting bail. He went to live with his father, who had been entrusted with the care of the considerable number of guns seized from their apartment. A restraining order was in place, but Jason and his family used the six weeks between the incident and the court date to pressure Anne into asking the Crown Attorney to drop the charges so that Jason would not have a criminal record. He begged her to let him come home, and blamed her for the situation he was in.

By the time the six weeks were up, Anne like many abused women, had changed her position and approached the Crown Attorney to drop the charges. He followed policy and did not, but the net effect of the public process during this period was for Anne to seek relief from the charging process, rather than for Jason to move forward to solutions to his violence.

tolerant of the abuse, and less hopeful that the judicial system would help.

Women's Recommendations

1. The system must be better co-ordinated

1.1 A representative from each part of the system should be responsible for the co-ordination of that part with the rest of the system.

1.2 The time gap between events should be shortened (ie., between probation meetings, between the charge and the case, between court date & participation in the men's program).

1.3 There should be consequences for breaches of probation and other court orders.

1.4 Information should flow better through the system, including between family and

criminal court. Protocols should set out who has access to information and how access is obtained. Information should not be kept secret, particularly when women's or children's safety is at stake.

- 1.5 Court orders should use language that makes clear the boundaries that the court sets and not be open to interpretation.
 - 1.6 Police should respond to the spirit of the protection order, not use the language selectively as a way to avoid enforcement.
 - 1.7 Police should receive training on the use of harassment charges and the enforcement of court orders.
 - 1.8 Assessments regarding custody and access need to contain clear steps, and then be followed through. Language requiring counselling is not enough when abuse specific counselling or the men's program is required.
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- 2. Help women to understand the system, so that they become more able participants**
 - 2.1 Women should be told about what they can do to initiate enforcement or if in actuality, they are required to monitor and enforce court orders against their partners.
 - 2.2 There should be someone in the system whose job it is to help women understand and move through the processes and procedures. This could include a volunteer program using women who have "been there" as advocates for women in the system.
 - 2.3 Information pamphlets on how the system works should be better distributed, available not just at the shelter, but also through the Ontario Provincial Police (O.P.P.), doctor's offices, lawyer's offices, and other public locations.
 - 2.4 When women are asked to make choices by the Crown, police or in family court, there should be time to consider the choice, an advocate to consult, and an explanation of the legal language and the consequences of the decision provided in writing.
 - 2.5 A course should be offered in the community that educates women about going through the court system and to make an informed decision about self-representation.

3. The apparently random outcomes of domestic crimes need to be addressed by the courts. Judgements need to be more focussed on bringing an end to the violence.

- 3.1 There needs to be a place in the process for a woman to say what her life has been like with this man, beyond the single incident he is charged with.
- 3.2 The penalty must fit the “whole” crime, and deal with the pattern of violence in the relationship, not only with the single incident that has resulted in a charge.
- 3.3 The court must reduce the 2nd, 3rd, and 4th chances for abusers, and make the first penalty a real deterrent to repeat offences.
- 3.4 Penalties that remove men from the house (jail or no contact orders) must be seen also as respite for abused women. It is necessary for her to regain some balance in her life so that she can consider if she wishes to have the man return, or take measures to prevent it. Thirty day jail sentences reduced to 15 days with the opportunity for daily phone contact, do not give women enough respite from the abuse to determine an independent course of action.
- 3.5 Individual pre-sentence “counselling” with each partner making recommendations on what is needed could create a judicial “solution” with more potential for change in the relationship.
- 3.6 There should be more use of police statements and photo evidence.
- 3.7 Plea bargaining in assault cases should be eliminated.

4. The system must focus on changing men, rather than women, to stop the violence.

- 4.1 Women’s voices, the feminine perspective on domestic violence, must be more clearly heard in the courts. The court needs to hear what happened, but also how it affects the family, and what sentencing the woman believes would help.
- 4.2 Crown Attorneys and police must take a clear stance that domestic violence is wrong, and that there are no valid reasons for why a man assaulting his wife.
- 4.3 More women working in the system as lawyers, judges, and Crown Attorneys are required to even the gender balance and create a more balanced atmosphere in the court

room.

4.4 Rehabilitation for men must be considered in a systematic way. The following are suggested for abusive men:

1) Intensive therapy, possibly including work with abused women who can speak to the impact of that experience and the victim's perspective. Help to consider how the man's violence affects his family, his co-workers, his job, his children and himself.

2) A shelter/jail or half way house arrangement for which men would permit a combination of treatment and incarceration. Supervised access to children could take place here.

4.5 Support payments awarded should take into account the impact of abuse on women's ability to hold good jobs, and the need for them to make up for time lost while living in an abusive situation.

4.6 The courts need to acknowledge the preventative aspect of justice and recognize the intergenerational cycle of abuse, specifically:

1) The courts should move faster on abuse cases where children are involved,

2) Family court decisions need to take into account the impact of abuse of their mother on children when awarding access and custody,

3) "In the best interests of the child" should be clearly defined to include learning not to repeat the violence, over the traditional interpretation of having access to both parents,

4) Family court should provide a place for children to voice their own concerns about their safety.

Discussion of the Women's Themes and Recommendations

The work of this research study has sharpened this community's critique of the court system. We have moved from the vague sense of unease inspired by isolated stories to being able to identify thematic concerns of the carriage of justice for abused women. The women in this study did not become safer as a consequence of the charging process; there was no reduction in the violence, nor an end to their violent relationships until long after the charge. These findings challenge the assumptions on which the charging policies of the province are based. Charging as a means of public criminalization of private violence has not been systematically evaluated from the perspective of the women who are its victims. Some of the questions raised by this study for further evaluative research include: Do safety and deterrence outcomes vary from court to court, and, if so, what are the factors that influence the effectiveness of the process? What impact does the constrained nature of a court system in a rural area have on the system's ability to account for women's safety and, how is the rural experience different from the relatively well-serviced and coordinated urban locations which most influence policy?

Women's Safety

The loss of faith in the court system experienced by the participants and in particular, their suggestion to advise other women against criminal justice intervention poses a serious challenge to the public perception of justice in cases of domestic assault. We know that violence escalates shortly after separation (Statistics Canada, 1993), increasing risk of injury and, perhaps, the likelihood of murder. As separation may well be triggered by the laying of a charge, the court has a significant moral obligation to the safety of women who are compelled to participate in a public process, as victim, at such a high-danger point in their lives.

Despite recognition in Ontario Crown Attorneys' policy of domestic assault as an escalating pattern of violence in families, the court system is structured to consider only the single event that led to the charge. When there is no room for women's stories to be heard, the context of ongoing assault is lost, and with it the link to past events as well as potential for future harm. The Crown Attorney carries a critical responsibility for helping the court to view the

charging episode as one link in a chain that extends backward and, all too frequently, forward. Although the policy sets out clear guidelines, there is currently no mechanism by which to monitor whether the practice and judgment of Crown Attorneys is consistent with policy. The large areas of discretion carried by Crowns on behalf of public interest, permits a wide variance in how women are dealt with, whether their stories are heard and documented in victim interviews, and how the charges are disposed. The women in this project pointed to a continued lack of understanding of the issue of domestic violence that negatively impacted on their treatment at the hands of justice professionals. In a system where gender bias is recognized (Eichler, 1997; Crown Policy Manual, 1994), some form of systemic monitoring seems essential to women's safety.

Information Sharing

In rural communities with very small Crown offices, like the one in this study, it appears that resources are not adequate to carry out the comprehensive information-gathering dictated by the policy, which contributes to women feeling marginalized and silenced by the process. In the struggle to understand their confusion within the court system, these women helped us to see the random disorder created by inadequate information sharing between its various components. This lack of communication causes serious contradictions in orders from bail hearings, different courts, and probation and parole. The women pointed out that the current situation leads to a perception that the system is not functioning as a whole, and supports an unacceptable degree of backroom "brokering" of charges between lawyers and Crown Attorneys. In addition, information sharing between the criminal court and family court needs to be improved in order to further ensure women's safety.

Restraining Orders and Alternatives

The delays between charging and dispensation can constitute a time of frantic relational activity in families, in which family members exert pressure on the woman to request that charges be withdrawn. The intergenerational nature of abuse dictates that many family members will use abusive tactics during this period of "persuasion". At the same time assaulted women do not have clear information about the legal avenues open to them, or even what their obligations

are, under the law. The women say that they, and other women they have met in shelters, did not know where their husbands were after removal from the house, when they might return, or even if a restraining order was placed, entailing a legal obligation on their part to deny him access. In the confusion, women perceive themselves as having no other choice than to re-enter their relationships on terms even more subordinate than before. Viewed from this perspective, the construction of women's ambivalence becomes more clearly linked to the system's failure to create safe alternatives for her at the moment of intervention, than the more usual psychological interpretations of battered women's syndrome.

Police Response

These women make it clear that they are reluctant to call police following the first charge, and believe that police are less willing to respond. The nature of this rural community does not in itself create the increasing reluctance of women to call police but renders the process of women losing faith more visible. The reticence to call police and risk the laying of a second charge is due to participants' experience of the relational consequences of the first charge. Small town police know this too, because they know these same women as community members, as relatives and as friends.

Role of the Crown

Respectful and well-informed dealing with women as victims must be the foundation on which to build a system that works better the victims of domestic assault. Changes that would provide Crowns with access to more complete and accurate information, as well as the time required to sensitively interview and document women's information, would go a long way to improving their passage through the courts. The heart of change would seem to reside in issues of attitudes and understanding of the perspective of women as victims, and adherence to the framework for domestic assault set out in provincial policy. The women in this study reveal a system that turns back on itself as the outcomes of charging do not meet the expectations of either women or police. Public and professional trust is lost, and the strategy of criminalization of domestic violence is not consistently sustained in the courts.

From Inquiry to Action

Participatory research is a systematic process of inquiry, reflection, and action. The voices of victims in the courts create a critical perspective from which to consider change. Because there is seldom access to these women's voices, what they know represents an addition to the public dialogue on the effectiveness of the court process in reducing domestic violence. The court processes are primarily shaped by the public players – lawyers, judges and government officials. Behind the silence of victimized women lies new information, and it is from new information and perspectives and change can emerge.

I. First Change Intervention Process

In a parallel process of professional discussion at the Court Co-ordination Committee, we began to address how the service and justice systems could work together through the deliberate shaping of a first charging process to focus the system on the twin goals of deterrence of men's violence and the safety of women. Using what women told us of their experience in the courts, the committee, with extensive consultation, has designed a model process of integrated court, police and social service activity.

This model, called the First Charge Intervention Process is a rural equivalent of the urban domestic assault court, tightly co-ordinating the efforts of social services, police and judicial system to the twin objectives of safety and deterrence. The model fast tracks victims and abusers into immediate education and support within the crisis period created by the first charge. It introduces a safety plan constructed by women that can be used at the bail hearing for setting conditions of release. There is also provision for a relational forum, based on family conferencing models incorporated into the formal court process between charge-laying and dispensation. This forum provides an assaulted woman or her advocate with the opportunity to tell her story and speak to the multiple impacts of a life of violence on herself and her children. The outcome of this forum is neither restitution, nor restoration of the family, but the opportunity for the man to voluntarily create a change plan that may include the soft measures a court might impose, such as an abusive men's group, alcohol counselling, but with no promise of judicial

outcome. Rather, the process involves the abusive man in a parallel and voluntary relational process that creates an early opportunity for change during the waiting period between charge and dispensation.

This model has undergone extensive community consultation resulting in a high degree of consensus regarding need and design. Provincial interest has been expressed in making this rural model more portable in application as a cost-effective alternative to domestic assault courts for small communities. A forum of about twenty women of experience, including the women from this project, has been convened to advise on methods of accountability.

II. Justice and Provincial Policy Directives

The second site of action addresses the links between attitudes and beliefs regarding women and family violence, and the discretionary role of the Crown Attorneys. This project has given us a unique opportunity to glimpse the relationship between manifestations of justice and the way in which beliefs, knowledge or fiscal constraints may mean that justice gets played out differently in different communities and at variance to provincial policy directives. Several women from this study and the researcher were invited to participate in the work of Ontario's Joint Committee on Domestic Violence, advising the Attorney General on the implementation of recommendations from the May-Iles inquiry.

III. Change from Victims to Social Activists

The third site of action to emerge from this project is the inclusion of women participants in the public dialogue that is shaping change. Four of the six women now respond to invitations to speak in other professional settings such as training events where they are regarded as experts. Women from the project have gathered others to start a women's lobby group called "Phase Two". Still in its infancy, this group is planning its own court monitoring process. They are studying the recommendations of the May-Iles Inquiry, and learning about the mechanisms of the court that they did not understand as victims, to prepare them to document the process as research. Two of these women now sit on the Court Co-ordinating Committee. Five of the six women are currently involved in a process to determine the principals that lie behind the idea of accountability to women's experience in the charging process.

The women, too, have changed in this process. Amelia is pursuing the professional career that the effects of the abuse once made impossible. Nicole has participated in public training, and in an especially powerful moment she listened as Crown Attorneys read her story aloud, taking on her voice in an effort to learn from her experience. Anne has finally managed to move to another community, where she lives in greater safety. Patty has gained custody of her son, and designed the Phase Two group's logo of a red flag containing the words of the May-Iles Inquiry Report:

Until we, as a country stand up and declare a ZERO'TOLERANCE, this problem will not only continue, but in this jury's opinion, will escalate. It is our belief that every person has an equal right to be protected from abuse.

Margaret also works with the group, and has recently organized a community memorial service to remember yet another murder suicide victim. A number of the women have become volunteers in the new victim assistance service. The women note with pride that through their participation in this research as subjects, they have grown into activists.

The hallmark of good participatory action research might be measured by the longevity of the resulting social action. It is far too soon to know the end of the story of this project. When we asked women from the Tracking Project to meet and comment on the First Charge Intervention Process as part of the community consultation, they sounded a warning as to how the process of systemic change can be subtly co-opted into serving the good of the system rather than the good of the women. It is clear that a substantial attraction of the First Charge Intervention Process at a provincial level lies in its potential to streamline a strained court system as much as to increase women's safety. It is so far a moot question as to which agenda will emerge a priority, and if our community will sustain the public conversation that honours women's understanding of their court experience as invaluable input, or if their voices will be made silent again.

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