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Paper Abuse: Documenting New Abuse Tactics

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As most victims/survivors, victim service advocates, and other professionals know all too well, it is naïve to think that abuse ends once a violent relationship is over. In fact, research reveals that battered women are at higher risk of serious injury or death following the termination of a relationship (Tjaden & Thoennes, 1998). In addition to the heightened risk of physical violence, many victims are also subject to other forms of abuse as well as stalking (Mechanic, Weaver, & Resick, 2000). “Paper abuse” can have debilitating consequences and needs greater attention. This concept incorporates acts that are routinely used by batterers against their former partners to continue victimization and includes a range of behaviors, such as filing frivolous lawsuits, making false reports of child abuse, and taking other legal actions as a means of exerting power, forcing contact, and financially burdening their ex-partners. Legal venues, including protection order hearings and divorce and child custody proceedings, are particularly ripe for paper abuse not only because they involve multiple meetings and hearings but also because these types of cases are often heard by multiple judges.

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The Dangers of Dangerousness Assessment

by Evan Stark, Ph.D., MSW*

This comment¹ responds to two related claims made in recent **DVR** articles, that preventing partner homicides (or potentially fatal violence) should be a major goal of community efforts to limit domestic violence, and that this goal is best pursued by using “dangerousness assessment” (DA), alternately termed a “lethality screen,” to allocate scarce justice resources (such as electronic monitoring or enhanced sanctions). My argument is that partner homicide (and severe violence generally) are very poor windows through which to assess domestic violence and that redirecting scarce resources based on DA is not only unwise but counterproductive. At best, it will have a very limited and no measureable effect on partner fatality or severe violence and no effect at all on the prevalence of partner abuse in communities. It is likely that redirecting resources to support women the DA identifies as high risk or to identify and manage so-called “high risk” offenders (as the **DVR** articles propose) will lead to an actual rise in coercive control, the most common and devastating form of partner abuse. The major reasons to reject DA are that the elements of abuse it identifies as high risk factors are sufficiently harmful in themselves to justify an aggressive response that includes significant sanctions regardless of their future consequences. So are the facets of coercive control the

DA minimizes or ignores. I remain agnostic about other claims in the articles, such as the wisdom of adapting GPS tracking.

The most widely used DA tool was developed by Campbell and her colleagues (2003) from a retrospective comparison of fatal and nonfatal cases involving partner abuse and refined in samples of near fatal violence.² Nothing I say is meant to minimize the elegance, originality and importance of this work, which I regularly use to show the risk faced by victimized women who kill their abusive partners. What concerns me is how it is being applied. According to a recent review in the *New Republic*, for example, the DA has been adapted by nearly all of Maryland’s police departments and to one degree or another in 14 other states and the District of Columbia.³

The DA was originally designed to help educate victims about their risk of being killed, though it is only slightly better at predicting fatal or near fatal violence than victims themselves.⁴ If it has yet to be shown that the DA has prognostic validity, however, this is the least important function it serves for courts or police. In the face of cuts, courts are looking to DA as a way to ration scarce justice resources in abuse cases that is consistent with institutional imperatives and community norms

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Violence Fatality and Near Fatality Review Boards. The importance of these Boards lies in the use of dramatic cases to open a window to case handling and systems issues.

9. Stark, *supra* note 5. Violence Policy Center, *supra* note 6. Catalano et al., *supra* note 6. For a summary of these data for 1993-2008, see opdv.state.ny.us/statistics/nationaldvdvdata/nationaldvdvdata.pdf. Based on the evidence from the National Crime Victim Survey (NCVS), researchers from the National Institute of Justice (NIJ) conclude that domestic violence has decreased by over 40% since 1993. Because of the way the NCVS collects its data, however, few researchers accept the NCVS as definitive and many interpret its findings to mean only that the most severe forms of domestic violence have declined.

10. We summarize the basis for intervention in E. Buzawa, C. Buzawa, & E. Stark (2012). *Responding to Domestic Violence: The Integration of Criminal Justice and Human Services*. Thousand Oaks, CA: Sage Publications.

11. M. Piispa (2002). "Complexity of Patterns of Violence Against Women in Heterosexual Partnerships," *Violence Against Women*, 8(7), 873-900. C. W. Lischick (2009). "Divorce in the Context of Coercive Control," in E. Stark and E. Buzawa, eds., *Violence Against Women in Families and Relationships*, Vol. 2. Santa Barbara, CA: Praeger, 191-224.

12. Francis Power Cobbe (1878). "Wife-Torture in England," *Contemporary Review*, 32, 55-87.

13. Hester, *supra* note 5.

14. For example, see E. Stark & A. Flitcraft (1996). *Women at Risk: Domestic Violence and Women's Health*. Thousand Oaks, CA: Sage Publications. Connecticut police identified injuries requiring referral for medical care in only 3% of the abuse incidents to which they responded by making an arrest. Connecticut State Police, *Annual Report on Family Violence Intervention Unit*, November 1991, p. 4.

15. N.J. Glass & J.C. Campbell (2004). "Risk for Intimate Partner Femicide in Violent Relationships," 9 *DVR* 30-33, [Joan: need months & yr]

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In this often lengthy process, histories of abuse can be ignored, forgotten, or distorted by the abuser. Victims are also often legally required to participate in these proceedings and, when they do, may have few resources for protecting themselves. We suggest this element of forced contact restricts victims' access to protection and creates ongoing hassles, burdens, and frustrations. Thus, despite the lack of physical violence, paper abuse should be recognized as an example of continued victimization.

Legal Protections as Abuse Tactics

One common protection designed to provide legal relief and allow formerly abused women to regain a sense of control over their lives is the civil remedy of an order of protection (also known as a restraining order, protection from abuse order, or temporary restraining order (TRO)). As civil orders do not rely on criminal proceedings or convictions, they provide

a potentially useful method of protection, covering a range of relief measures, such as orders of "no contact" by phone, email, or in-person; surrender of guns; and "stay away" orders. In addition, they can specify who retains residence of the house or car, restrain the parties from wiping out shared bank accounts, specify rules of child visitation or school pick-ups, and/or limit access to the residence and place of employment.

However, research has found that for some victims, the court process acts to continue abuse because of the feelings of intimidation, humiliation, and embarrassment it may evoke (Ptacek, 1999). We argue that although on the surface protection orders have the potential to provide some significant benefits to battered women, an unintended side effect is that they open the door to further harassment under the guise of procedural equity.

Our interest in this issue of paper abuse developed as we worked on a larger project (the Women's Resiliency Project (WRP), Miller, 2009-2011).

This research is designed to explore the factors that contribute to women's resiliency and ability to live violence-free lives and involves interviews with women two years or more away from an abusive relationship. The interviews are semistructured, and 10 women have been interviewed so far, with each interview taking approximately two to three hours. In these early interviews, we heard stories from victims that clearly illustrated the pervasiveness and harm of paper abuse. Even without direct prompting, respondents raised concerns about the widening scope of legal tactics their abusers used against them. In addition, the lead author has met with the Delaware Coalition Against Domestic Violence (DCADV) Survivors' Task Force on many occasions over the past several years, running informal focus groups in which participants discussed intimate partner violence (IPV) and women's responses and experiences with the system. During these sessions

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as well, the issue of paper abuse was raised with great frequency. Interviews with four community legal aid attorneys from two of the state's three counties confirmed the women's stories about their abusers, who "... attempt to control everything by filing bullshit litigation" (male legal aid attorney, southern Delaware, personal communication, October 17, 2007).

As we talked with groups of survivors or interviewed survivors individually, the women frequently and angrily raised the cumulative and debilitating effects of paper abuse. Paper abuse often characterizes the protection order process. In many jurisdictions, offenders are able to file cross-complaints or cross-petitions for protection orders. This mechanism is intended to protect

Despite their appreciation for the availability of civil options, the women experienced civil protection orders as tools in the abuser's arsenal calculated to wear them down, whittle away their self-esteem, and create hardships as they worked to negotiate their lives absent of men's violence, power, and control. The women had to endure the constant stress of going back to court, which entailed taking time off from work, orchestrating transportation and child care, and bringing children with them to court if child care options did not materialize. Not insignificantly, they also had to confront their abusers face to face.

Women were constantly thrust back into their former positions of being verbally challenged and attacked, causing them to relive situations from which they wanted to distance

against a former intimate. This distinction makes it extremely important for advocates and other professionals working with domestic violence victims to document paper abuse because it can easily be overlooked and justified as individuals' legitimate attempts to exercise their legal rights.

Although we often look to the criminal justice system or policy for solutions, protection orders may not be the best option for victims of paper abuse. First, protection orders are a civil court process. The purpose of making protection orders part of the civil system was to allow for equal access to protection without legal representation. This goal is not always realized, however. Research into the granting of protection orders has shown that a variety of factors, including the ability to craft a narrative around themes and temporal order as well as providing specific details that meet the legal definitions of abuse are important in determining whether protection orders are granted by the courts (Durfee, 2009). As legal definitions and processes are often complex, victims without attorney representation may not be able to make a case that meets the legal definition of abuse. There must almost always be some type of demonstrated physical abuse or substantial proof of stalking or harassment for the courts to perceive a threat to the woman's safety. If none exists, then the likelihood of criminal justice intervention becomes almost non-existent.

Paper abuse differs from "traditional" stalking in that the offender is exercising legal options rather than performing criminal acts against a former intimate.

victims in cases where offenders may file for a protection order against the victim as an abuse tactic. In some cases, after an offender is notified of the petition for a protection order against him, he will file a cross-petition to continue to harass the victim.

Battered women with children are particularly vulnerable to paper abuse since offenders routinely use the courts to wage war against custody arrangements, child support arrangements, and visitation rights. As judges who hear protection order cases may deny custody to the abuser in temporary orders but are often unwilling to deny permanent custody, the decision is frequently left to family courts, which can still grant visitation rights even if custody is denied (Harrell & Smith, 1996; Rosen & O'Sullivan, 2005). If judges in family court do not have a full understanding of the history of the abuse, it is often easier for the abuser to make allegations against a woman's ability to parent. If allegations of child abuse are introduced as a way for a batterer to challenge her fitness as custodial parent, schools and social services are typically notified.

themselves and move forward with their lives. Being back in court answering to the offender's demands created a feeling of powerlessness in the women as well as a sense that the state was not really acting in their best interests, and, in fact, was implicitly supporting offenders.

Battered women often report that violence that does not result in injury is far more debilitating than physical battering. Some of this violence is committed through stalking and other nonviolent tactics, including paper abuse. Paper abuse shares some commonalities with "traditional" stalking, such as unwanted calls and letters or visits to the victims' homes to obtain evidence to be used in court—all of which harass, threaten, and intimidate the victim (Melton, 2007). Paper abuse, like "traditional" stalking, is usually associated with psychological and physical abuse and is a continuation of intimate partner abuse (Logan, 2000; Mechanic et al., 2000).

However, paper abuse differs from "traditional" stalking in that the offender is exercising legal options rather than performing criminal acts

Analogous Situations

The criminal justice system often treats domestic violence as a distinct category, separate from other forms of violence against women. In some cases, this can be beneficial because this distinction allows for the use of unique legal alternatives for protecting victims of domestic violence. However, this distinction can sometimes minimize the seriousness of these offenses as violence becomes reframed as a generic civil dispute between two former partners. Filing various motions and countermotions is a common legal strategy used in civil procedures in the federal courts. Often, the goal of filing such motions is to frustrate, harass, or anger the

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other parties and to exacerbate their hardship by necessitating the spending of excessive time, money, and effort to respond to them. However, Rule 11 of the Federal Rules of Civil Procedure clearly states the conditions for proper filings, such as:

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law ...

In fact, attorneys can be sanctioned if they “submit pleadings for an improper purpose or that contain frivolous arguments or arguments that have no evidentiary support” (Lectric Law Library, <http://www.lectlaw.com/def2/s110.htm>). Rule 11 provides an important precedent that can be used as a basis of documentation and inclusion of paper abuse in other civil proceedings such as protection orders.

Policy Recommendations

Advocates are commonly the first to document new methods and tactics of abuse and to find solutions for protecting and assisting victims. More information is needed about the extent of paper abuse, how it is being used, and its effects on victims. Although it is sometimes difficult for advocates to follow victims after the immediate harm has been removed, it is important to advise victims to document any ongoing abuse that happens after a victim has left the relationship. A recipient’s gut level reaction to receiving an intimidating text message, voicemail message, or email is to quickly erase it, but if the threats were saved, they would create a virtual paper trail that could be used in court to demonstrate an abuser’s shift in tactics from physical to psychological threats. Court and judicial recognition of paper abuse as a legitimate form of victimization that occurs after the relationship ends could bolster women’s ability to renew their protection orders after their

original orders have expired, especially if renewal decisions over-rely on evidence of continued physical violence. By having tangible evidence, women would be in a better position to convince judges that they should have their orders renewed despite a lack of physical violence.

As paper abuse is similar to other forms of abuse, adding paper abuse to the Power and Control Wheel, commonly used by practitioners to assist victims, would allow the connection to be better understood and more fully articulated. By acknowledging the issue, it will be easier for practitioners and victims to document incidents so as to create a paper trail. Training on this particular aspect of battering will help all advocates, attorneys, and judges to identify when it occurs and to effectively document incidents. Attorneys, in particular, should be informed and educated about paper abuse. Applying Rule 11 for documenting and preventing the filing of frivolous claims may be a useful legal strategy for preventing further emotional and financial abuse of victims.

Conclusion

Talking with victims of intimate partner violence provides important insights into the forms of abuse they experience, particularly after the physical violence and/or relationship ends. This research highlights the importance of one type of abuse that has not been part of our previous understanding of IPA, yet is enormously significant for victims. Paper abuse often involves abusers’ use of multiple frivolous court complaints that can range from cross-petitions for protection orders to filings for child custody and child support. As the criminal justice system fails to recognize that the threat of intimidation and violence often continues long after the victim and offender are separated or divorced, it has missed this form of abuse that continues, often long after the physical violence. Advocates, criminal justice professionals, and others who work with victims of intimate partner violence should strive to document these types of abuse to develop a more complete understanding of the problem.

Recognizing these procedural tactics as an extension of traditional

IPA tactics, documenting such incidents when they occur, and validating victims’ experiences with paper abuse and technology-assisted abuse will facilitate a more comprehensive response to IPA. A fuller understanding of how paper abuse functions will contribute to more efficacious assistance to victims’ success in living their lives free from all types of abuse.

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