

DOMESTIC VIOLENCE REPORT™

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Redefining Safety: Do You Have a Safety Plan If a Victim Says “No” to Shelter?

by Kelly Dunne and
Marta Chadwick, Esq.

On March 26, 2002, William Cotter broke into the marital home and shot and killed his wife Dorothy, while their 12-year-old daughter hid upstairs under her bed, before turning the gun on himself. He did this despite a protective order prohibiting him from going to the home. Cotter knew Dorothy was scheduled to go to court the next day to extend her order.

As Dorothy's attorney and advocate, we knew this case was potentially lethal. We knew that Cotter had taken Dorothy hostage in the past, had strangled her with a telephone wire, and had threatened to kill her if she ever left him. Of the 25 factors used to determine danger in domestic violence cases, 19 were present. Unfortunately, other components of the system did not have the benefit of this information. At this time, danger assessments were not regularly done throughout the system, and we had no formal mechanism in place to communicate about high risk cases. Cotter had been before the court only five days before the homicide for violating the protective order. The court released him on a low cash bail because they had no idea the danger this man posed to his wife.

What could we have done differently? Dorothy had an experienced attorney and advocate working tirelessly on her behalf, the police were trained in domestic violence and

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GPS Monitoring Systems for Batterers: Exploring a New Paradigm of Offender Accountability and Victim/Survivor Safety

by Diane L. Rosenfeld, Esq. (with Kirstin Scheffler)¹

On September 18, 2006, John Woodring broke into a battered women's shelter in Jacksonville County, North Carolina in pursuit of his estranged wife, Bonnie Woodring, and shot her to death in the kitchen. Her 13-year-old son was staying in the shelter with her, but was not in the kitchen at the time. Bonnie had obtained an emergency order of protection against John a week before he killed her. The court hearing on the full order of protection was scheduled for the next day.

In court documents, she testified that she had been trying to leave the abusive relationship; that her husband had been convicted of previous domestic violence assaults against previous wives; that he had "attempted to choke" her when she tried to leave him; that he stalks her at work and "keeps tabs on me 24/7"; that she was in fear for herself and her child; that he choked her son; that he is intimidating; and that he threatened to kill her. The day she received the ex parte order, John attacked her so violently she needed to be hospitalized. Although the order of protection contained precise information about John's schedule and place of employment, law enforcement never arrested him, even after the retribution assault that landed her in the hospital that day.

Three months before her murder, Judge Danny E. Davis, the same judge who issued the order of protection in September, *denied* Bonnie's petition for an order of protection for "failing to prove the grounds for relief." In that petition, Bonnie described her year and a half relationship with her husband as "rocky, riddled with jealous rages, intimidation, pushing me down, threatening to kill me if I ever left him." Additionally, he had been physically abusive and intimidating to her children. Subsequent investigation after the murder revealed that he had a secret on-line identity in which he used and participated in on-line pornography and had several adulterous relationships. He also had a 15-year criminal arrest history of domestic violence involving two ex-wives.

Everything is wrong with this picture. How did we fail Bonnie Woodring? What, if anything, could we have done to prevent this tragedy? How can we, as a society, make the justice system take seriously the lethal threat of domestic violence, and how can we offer meaningful protection to women who suffer this abuse? Why did Bonnie need to flee and seek refuge in a shelter outside of her home in an attempt to save herself and her son from her husband's abuse? Why does home cease to be a shelter for a battered

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woman after she has been abused? Why couldn't the criminal justice system protect her while allowing her to remain in her own home and community?

Recent Massachusetts Legislation Provides First Step

The answer is that the criminal justice system is not currently set up to offer real protection to victims, to assist them in becoming survivors instead of victims, and to hold batterers responsible for their violence. Society needs a paradigm shift in how it addresses domestic violence. This article describes recent legislation passed in Massachusetts that signifies a first step toward building capacity within the criminal justice system to effectively respond to domestic violence. It then describes other necessary procedures and safeguards to offer a comprehensive plan to help women safely exit abusive relationships and to control, defuse, and eliminate future violence.

Recently passed legislation in Massachusetts (House Bill 30, "An Act Relative to Enhanced Protection for Victims of Domestic Violence") provides judges with the option of ordering offenders who have violated an order of protection to wear a Global Positioning Satellite (GPS) monitoring device. The bill allows the court to establish, as a condition of probation, geographic exclusion zones which can include the victim's residence, place of work, the children's schools, or other places that

she frequents. These GPS devices track the offender's movements to ensure that he is obeying the terms of the orders of protection. If an offender enters geographic exclusion zones set by the court while wearing a GPS device, both the authorities and the victim are automatically notified. If the court finds that the offender violated the order of probation, it can order imprisonment, a fine, or both. The bill also allows the court to require the violator to pay the costs associated with the monitoring, which is estimated to be about \$10 per day. The Probation Department will administer the program.²

The GPS legislation is a first step toward imposing sanctions on a batterer that are specifically tailored to his behavior. GPS technology serves as part of a graduated sanction that enables probation officers to respond immediately to any violation. This technology will also aid in recognizing stalking activities that might otherwise be undetected by the victim and/or law enforcement officials. Moreover, it facilitates law enforcement response by pinpointing the location of the offender and by proving violations so that a court can order more stringent sanctions.

The most successful implementation of the new GPS legislation would use the sanction as part of a comprehensive approach to domestic violence prevention. This approach includes mandating the use of dangerousness assessments in all domestic violence cases, as well as the use of alternative sanctions, such as batterer detention facilities.

Dangerousness Assessments

Additional legislation pending in Massachusetts would require a uniform dangerousness assessment protocol to be used by all police departments when responding to a domestic dispute. Dangerousness assessments are easily administered questionnaires that help law enforcement identify high-risk cases of domestic violence. Years of study of domestic homicides by experts such as Dr. Jacqueline Campbell of the Johns Hopkins Medical School have revealed that several consistent lethality factors are present in domestic homicides and attempted murders.

Because domestic homicides take place in the context of abusive relationships, analyzing features of domestic violence attacks and patterns in a relationship can help us predict the chance of future lethal attacks. A dangerousness assessment is a tool with which to red-flag cases with lethality indicators so that the criminal justice system can more closely monitor the situation, and be responsive to any signs of increased danger. The dangerousness assessment must be conducted and reevaluated on an on-going basis as the nature of the danger an offender poses to a victim can also change at predictable trigger points, such as court dates, the expiration of an order of protection, or a new intimate partner relationship involving the victim/survivor.

Lethality indicators include whether the abuser has threatened to kill the vic-

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tim, whether the abuser owns a weapon, whether the victim is attempting or has attempted to leave the abuser, strangulation, violence to children or pets, and previous violence or threats to the victim. Suicidal threats by the abuser also indicate potential lethality to the victim. Screening for all these (and other) factors can be easily done by first-responders in law enforcement when called to a domestic violence scene.³

The importance of the criminal justice system investigating potential lethality of a domestic violence assault cannot be underestimated. Dangerousness assessment and risk management protocols will help judges, prosecutors and probation officers to determine which domestic violence cases are appropriate for GPS monitoring of the offender. These tools enable a coordinated community response, including law enforcement, victims' services, batterer's intervention and courts, working together, to identify who may be at greatest risk of being further victimized at the hands of their batterer, also helping to decide who is the primary aggressor, if such a determination needs to be made.

Leaving and Retribution Assault

We know from the past 25 years of the battered women's movement that leaving is the most dangerous time for a woman. Battering is about the exercise of power and control, and leaving signifies a loss of control to the batterer. Men don't batter because they want the woman to leave—rather, they do it often in part to keep a woman in her place, i.e., within his access and under his guard. Thus, when we develop policies, laws, and practices to stop domestic violence, we must incorporate our understanding of these underlying dynamics. When a woman seeks an order of protection, she is both taking a step toward leaving her batterer and asking those who work in the criminal justice system to help her. She is placing her life in their hands. We must treat this time as the potentially volatile and dangerous period that it is for her. If leaving is the most dangerous time for a battered woman, then that is the precise time when the criminal justice system must offer her the most protection it can to prevent further predictable assaults and to keep her safe.

Bonnie Woodring's case is a tragic example of what happens when the criminal justice system fails in this mission. In her first application for a temporary order of protection Bonnie had told the court that her husband had threatened to kill her if she left him, that he had previously assaulted her and her children, and that he had a criminal history of domestic violence assaults. Instead of identifying the lethal danger that her husband posed to her, Judge Davis found that she failed to even meet the criteria for an order of protection in the first place. When Bonnie finally did receive an order of protection months later, she returned home only to be assaulted so severely by her husband that she had to be hospitalized.

I refer to this as "retribution assault" to indicate the punishment batterers often inflict on their victims after the victims seek help from the criminal justice system. When battered women seek help, it offends the batterer's sense of entitlement, and invariably goes directly against a threat he had previously issued, provoking a reaction along the lines of "I told you never to get an order of protection, now I'm really going to kill you."⁴

Because of the danger of retribution assaults, courts and law enforcement must recognize the battered woman's plight. Orders must be served immediately, and signs of anger or resistance by the accused offender may well indicate risk of further assault. Law enforcement must take this seriously. Moreover, a violation of an order of protection must itself be considered as an increased lethality indicator. Such violations show the batterer's disregard for legal authority, as well as his belief that he is above or outside of the legitimate control of anyone else telling him what he can do in his own castle.

Sometime soon after Bonnie Woodring left the hospital, she went into a battered women's shelter with her son. John had already violated the protection order in the first beating the day she received it, and he continued to violate it through contacting her via email and trying to reach her at work. As noted above, Bonnie's husband killed her the night before they were scheduled to return to court for a hearing on a permanent order of protection. As this story illustrates, and the data confirms, court hearings are extremely dangerous times for increased risk of violence by an offender.⁵

These kinds of stories may make us feel helpless. But now imagine the judge at a domestic violence court hearing looking at a document that reads in large, bold letters "Dangerousness Assessment/Risk Management Tool," a document that contains red flags pointing to information about the potential lethality of the situation in front of him. With this information prominently available, a judge would be unlikely to deny an order and would be far more likely to issue an order of protection with a greater number of additional safeguards. Hopefully, judges would use the dangerousness assessments to impose appropriate and meaningful sanctions on the offender. In conjunction with GPS monitoring and increased sanctions, alternative containment options should be available.

Batterer Detention

Batterer detention is appropriate in some situations to contain the batterer's movements, protect the victim, their children, and society at large, and hold him responsible for his abuse. Detention facilities should be created for this purpose that offer all the services necessary to change battering behavior and are based on a coordinated community response to domestic violence.

To ensure that all relevant stakeholders in the domestic violence community have bought-in, the formation and functioning of these facilities should include the participation of judges, prosecutors, probation officers, victim advocates, and social service providers specifically trained in batterer intervention. Such facilities should include not only batterer intervention programs but work-release on GPS monitoring and enforced child support payments so that a battered woman who may be economically dependent on her abuser does not have to choose between forcing her children to go hungry and suffering continued abuse.

Next Steps

Programs that are responsive to this danger are emerging. For example, in Newburyport, MA, a high-risk assessment team is currently using dangerousness assessments in their domestic violence response with impressive results. (See Dunne and Chadwick, this issue). Their team approach is an outstanding exam-

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ple of community involvement and close collaboration among law enforcement and advocates who are committed to providing real safety to victims by holding the offender accountable for the violence. They are also already using GPS electronic monitoring of some of their high-risk cases, and have not reported any re-assaults.

Shifting the paradigm to impose offender accountability commensurate with the crime opens new doors of possibility for transforming victims of domestic violence into survivors. If the batterer's movements are contained, and the victim does not need to seek shelter services, this may lessen the enormous pressure on shelters to provide this type of support. Shelters would not be eliminated, but with more resources at their disposal, battered women's advocates could focus their attention on providing other desperately needed resources to meet the many needs of survivors struggling to achieve empowerment.

Economic independence is crucial for all women, but even more so for battered women—micro-credit lending programs are just one example of the kind of creative use of resources that a reduced need for shelters might inspire. Job retraining could be organized and offered where appropriate as well. We could even create a network of corporations who offer such programs to assist battered women in their transformation from merely surviving to a truly thriving life.

Homicides Send Message

Although the percentage of domestic violence cases that escalate into homicides are small compared to the overall number of women who are beaten and abused by

their partners every year,⁶ the homicides have enormous symbolic importance. Every time a man kills a woman in a domestic relationship, it sends a terrorizing, threatening and ominous message to battered women that this could be their fate if they make a misstep. And in case battered women don't get that message directly, batterers often inform their victims about the murders, threatening along the lines of, "Go get your order of protection, you see what it did for her." In this way, the tragedies of other families only increase a batterer's terrorist-like control of his victims.

The frightening implications of domestic violence homicide are even more shocking in Bonnie's case, which demonstrated that even a shelter may not be able to protect a battered woman from her husband's murderous violence. Bonnie's murder underscores the critical need to reexamine our current responses to domestic violence and to develop an assessment program for victims of violence to help them get their lives on track. The least we can do is value a woman's life when she seeks help from the justice system, and to take seriously the imminent danger she may be in.

Further, we absolutely have to hold the offender accountable and contain his actions. Promising new tools to achieve this goal include the mandatory use of dangerousness assessments by trained law enforcement personnel; the use of GPS monitoring of offenders where appropriate; and batterer detention facilities to provide work-release, offender management, and batterer intervention. All these improvements are within our grasp. With battered women's lives on the line, we have no excuse for not doing everything in our power to save them.

effective and felt less safe than did the women in the other groups.

Women's Situations. As expected, a lower percent of the women in the MV group met the criteria for lifetime and current PTSD or reported current depression. Surprisingly, there were no differences in women's substance abuse or dependence by group, nor in their help-seeking behavior: 91% of the women used the criminal justice system, 86% used informal resources, and 53% used formal ones.

All of the women experienced "high economic and mental health burdens,"

Endnotes

¹ The authors wish to thank Leah Satine, Harvard Law School, Class of 2007, Roberta Oster Sachs, and Kara Lowenthal, Harvard Law School, Class of 2008 for valuable editorial assistance and input on this project.

² The Massachusetts Probation Department already monitors Level 3 Sex Offenders on a GPS program. The GPS technology makes even more sense in a domestic violence context, as there is a readily identifiable victim whom the system can protect. The Probation Department supported this legislation, and only needs a budget appropriation to begin instituting the program for domestic violence offenders.

³ For example, in some jurisdictions that use dangerousness assessments, police use flashcards on which the questions are printed.

⁴ Affidavit of Dorothy Guinta Cotter, filed in Essex County Court, before she was killed by her estranged husband William Cotter, in Massachusetts in 2002.

⁵ For example, in the Dorothy Guinta Cotter case, William Cotter killed her the night before the court hearing. See Dunne and Chadwick, this issue.

⁶ Around three women a day are killed every year by an intimate partner. Estimates of women beaten by an intimate partner range from two to four million per year in the United States. On average, more than three women are murdered by their husbands or boyfriends in this country every day. In 2000, 1,247 women were killed by an intimate partner. Estimates of women beaten by an intimate partner range from 960,000 incidents of violence against a current or former spouse, boyfriend, or girlfriend per year to three million women who are physically abused by their husband or boyfriend per year. (<http://www.endabuse.org/resources/facts/>).

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ual insistence. Similarly, 47.1% of the MV group, 82.4% of the SV group, and 89.7% of the SVS group reported injury.

While more women got no-contact orders when there was severe violence and stalking (SVS group), there was no difference in the rates of violation of any orders among the three groups after controlling for age, rural and/or ethnic residence, race, duration of the relationship, and serious threats. However the women in the SVS group rated their orders as less

and it is clear that their protective orders were not sufficient to protect them, particularly the SVS group. The study reports that only half of mental health and victim service representatives felt that services should be different for stalking victims than for victims of intimate partner violence. Curiously, few had suggestions about what additional services that would help beyond the need for enhanced attention to safety. Clearly greater training of professionals is needed as well as more protections in DVOs and much stronger enforcement of these orders. ■