

Representing Victims of Police-Perpetrated Domestic Violence

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This article explores some of the extraordinary challenges of representing a victim of domestic violence whose batterer is a police officer. Though experts in domestic violence frequently remind us that domestic violence occurs across all socioeconomic, religious and cultural lines, many people still find it hard to believe that a prominent celebrity, business executive, member of the clergy, community leader or anyone with social status commits the crime of domestic violence. Family and friends, members of the police department, and even her attorney may naively offer the victim false assurance that “he won’t hurt you,” “he wouldn’t risk his career,” or that “he will abide by a court order.” Besides facing society’s disbelief and denial, the victim is likely to encounter overwhelming obstacles to gaining relief through the civil or criminal justice system.

In the twelve years I have worked exclusively with victims of police officers, I have continually been impressed with the consistencies and similarities of police victims’ stories. Their descriptions of their abusers’ “style” of battering reveals the influence of the officers’ training and the police culture. Their professional training, status and access to information serve to enhance their ability to control their victims. Tactics of coercion, manipulation, threats, the use of force, and the ability to call upon their professional networks are effective means of silencing their victims. Only a very small percentage of the victims with whom I have spoken have ever reported the abuse to the police or anyone else.

Police tactics

The abusive officer’s entitlement to authority in society bolsters and reinforces his sense of entitlement within his personal relationships. His very presence is a symbol of authority. Officers learn to use gestures, body language, tone and volume of voice to exert their authority. The officer who batters demands respect and unquestioning obedience and deference from his intimate partner. He is likely to interpret any conflict or disagreement as a direct threat to his dominant position. An abusive officer is capable of terrorizing his victim without using physical force; he simply employs the verbal and psychological techniques that he uses on the job to manipulate and coerce his victim to comply with his demands. The victim understands that if she resists his psychological and emotional coercion and continues to resist his control, he is capable of resorting to physical violence. He may escalate his behavior along the continuum of violence, using only the degree of force necessary to gain and maintain control. He may later defend his actions by stating that the victim was attacking him, was hysterical, or that he had to restrain her from hurting herself. He may remind her of his professional power by threatening to have her arrested, jailed or committed to a psychiatric facility. This non-physical coercion, of course, leaves no tangible evidence.

Even if the officer has used physical violence, it is unlikely that the victim ever reported it to the police or to her physician. Her perception of the possible consequences of the system’s intervention are often more frightening than her abuser’s violence. The officer may have told her that if she

called the police, they would not believe her word against his, that he would invoke the “code of silence” or that he would instruct them to arrest her. All too often, he is able to carry out these threats and the victim receives little or no assistance from responding officers. He may have warned her that if she called the police, he would lose his job, and they would lose their income, health insurance, and other benefits, including his pension. The victim knows he would hold her responsible for these losses and for destroying his career.

Effective lawyering for victims of officer-involved battering

The American Bar Association’s (ABA) Commission on Domestic Violence instructs attorneys who are representing a woman in a divorce or custody case, “to ensure you are ethically representing your client and to avoid malpractice, it is critical that you learn if she is a survivor and consider how this information affects your representation.”¹ By extension, it is critical that the attorney consider the special circumstances of the victim of a police officer and how those circumstances will affect legal strategies, possible outcomes and safety planning.

A victim may hope to get through the divorce process without disclosing the abuse, even to her attorney. The attorney should explore the issue by asking questions related to domestic violence in a non-judgmental way. The ABA recommends that the attorney explain to the client that certain questions are routinely asked, and then ask questions such as, “Do you feel safe at home?” and “Has your intimate partner ever hurt or threatened you?”²

To practice client-centered lawyering, an attorney must keep the victim’s safety the number one priority, which may present significant challenges when representing the victim of a police officer. The attorney must listen to the client and believe that she is in the best position to determine the optimal and safest legal strategy in her case. The client’s goals may frustrate the attorney, as they may appear contradictory. She may simultaneously want the court to protect her and to hold the abuser accountable, but not want to do anything that might jeopardize his career. This may be difficult for the attorney to comprehend and may go against the attorney’s personal opinion that the batterer has no business being a police officer. It may also be difficult for the attorney, who feels that the client is paying for his/her opinion and advice, to have the client refuse to follow that advice. Attorneys representing victims of police officers must be able to respect their client’s ability to accurately gauge their abuser’s reactions to legal strategies and the client’s pre-existing safety strategies.

It is the lawyer’s responsibility to give the client a realistic assessment of her legal situation, educate her about the practical realities of how the legal system works, explain her options, and the potential outcomes and consequences of each option, so that she can make informed decisions. The attorney and client need to understand the nuances of dealing with the officer who batters and evaluate the wisdom of using standard remedies and strategies. The attorney can learn and explain the process of police department internal investigations, the abuser’s right to due process, and the possible impact of collective bargaining agreements.

Many victims with whom I have spoken understand they need an attorney who is informed on domestic violence issues and is tough enough to handle a police officer. Unfortunately, even

attorneys who think that they will not be intimidated by a police officer often find, to the detriment of their client, that they are mistaken. The attorney is likely to find him/herself dealing with an officer who is extremely dangerous, proficient at convincing others of the accuracy of his version of events, obsessed with winning at any cost, consistent in his denial of any wrongdoing, and comfortable and persuasive giving testimony in court. The abuser is able to undermine the victim's confidence in her attorney by repeatedly warning her that a judge and/or jury will believe his word over hers because he is a police officer, and that her attorney "doesn't know who he/she is up against."

Standard strategies often inadequate

The professional status, training and worldview of a police officer who batters differentiate this population of batterers from batterers in the civilian population. Officers' professional credibility allows them to explain, defend and summon institutional support and assistance from the very systems to which victims are theoretically supposed to turn to for protection. Civilians who batter do not automatically receive that credibility or deference. The attorney who understands how police use police authority, police training, and police cultural ethos to reinforce their power and control over their victim is better prepared to serve his/her client.

Many attorneys have come to realize that the remedies and legal strategies they normally use in civilian domestic violence cases are sorely inadequate or ineffective in cases involving police officers. They experience the power and impact of police, prosecutorial and judicial discretion as the authorities refuse to enforce laws and policies against a member of law enforcement. They are frustrated as they watch the batterer demonstrate his ability to repeatedly violate the law and court orders with impunity. Many attorneys end up admitting that they have "never seen anything like it before."

It may be unwise to focus on safety measures that rely on the police or the courts for enforcement. This reliance draws the police victim further into the abuser's personal and professional arena of power. In this arena, the abuser knows how things work, has personal and professional influence, and has access to restricted information. The victim and her attorney must carefully consider the possibility of the abuser's immediate reaction and possible retaliation, as well as the long-term implications of each step they take. The abuser's advantages require that attorneys rethink, reevaluate, adjust, or possibly avoid altogether the standard legal strategies and safety measures that they routinely employ in "civilian" cases, such as the victim obtaining an order of protection, reporting to the police, or going to a domestic violence shelter.

Officers' preemptive strategies

Officers who batter are becoming savvy in ways to circumvent the gun laws and police department domestic violence policies. More and more, we see batterers using preemptive strategies that shift the focus and blame to the victim. If the officer has any suspicion that the victim is going to seek help or pursue a legal action, he may block the victim's access to divorce lawyers by being the first to

contact them for information. If the victim subsequently calls the attorneys the batterer has already contacted, they will not be able to speak to her due to conflict of interest.

He may call the local domestic violence agency (where he may even be friends with the advocates and staff attorneys) claiming to be the victim and seeking to access services. This may prevent the agency from providing services to the real victim.

The abuser may meet (formally or informally) with his department's supervisor and confide that he and his intimate partner are having "trouble at home." He may warn the department that she may come in with "some sort of allegation" against him, inferring that she is lying, mentally or emotionally unstable, and/or trying to threaten his employment.

He may call 911 during an incident and claim to be the victim of assault or battery. When the police respond, he may insist that fellow officers arrest her. He may petition the court for an Order of Protection. He may be able to elicit the sympathy of the judge regarding his vulnerable professional position, and may obtain not only an Order of Protection, but also possession of the marital home and temporary custody of the children. All of these strategies work to protect his status as a police officer.

Orders of protection

The attorney must listen to the client's reasons for wanting or not wanting a protective order, and respect that she is in the best position to predict how the officer will respond. If she believes that he is likely to view a court order as a sign of aggression or declaration of war, prioritizing her safety may require *not* obtaining a protective order. If she feels that an order is necessary because of child custody or some other consideration, the attorney should obtain information from the abuser's employer regarding the department's policy on protective orders against their officers. Though federal law allows an "official use" exemption for police officers, the abuser's department may have a policy requiring confiscation of an officer's service weapon while a protective order is in effect. Even if the department does not have a formal policy, the attorney should inquire as to possible ramifications the order may have on the abuser's employment status.

The attorney needs to consider whether the judge is likely to issue a permanent order upon the expiration of the emergency order; if not, it may be better not to obtain an emergency order. Whether or not the order poses a real threat to the officer's employment, the officer is likely to fight to vacate the emergency order and/or prevent the issuance of a permanent order. The officer is likely to deny the alleged abuse and attempt to destroy the victim's credibility. If the judge determines there are no grounds for a permanent order, this decision reinforces the abuser's sense of power to control the victim.

In the case where the abuser's attorney argues against a permanent order and is willing to "compromise" with a "mutual order," the victim's attorney must be aware that a mutual order implies mutual responsibility for the alleged abuse. The abuser can use the mutual order as a tool with which to further intimidate the victim by threatening to charge her with violations of the order

(for example, during the exchange of the children for visitation). Such a mutual order could have even graver ramifications in a custody dispute. Whereas an order entered against the officer would give the victim an advantage in the custody dispute, a mutual order could be viewed more negatively against the victim than the abuser. Although one would think a mutual order would have equal consequences for both parents, realistically mothers tend to be held to a higher standard.

Of course, any order of protection has little practical value without the cooperation of law enforcement to serve and enforce it. Instead of, or in addition to a court order, the attorney might explore the willingness of the abuser's employing department to issue an Administrative Order of Protection. This is a direct order from a supervisor to the officer stating that he is to refrain from particular conduct toward the victim.

Regardless of the type of order, it is critical for attorneys to realize that such documents are, in the end, only pieces of paper. Without enforcement, and without the battering officer's respect for the order, reliance on its value may prove deadly for the victim.

Department notification

If the victim is considering talking to the officer's supervisor or chief, the attorney can educate the victim about the officer's right to due process and explain what that entails. Victims sometimes incorrectly believe that they will be able to have a confidential discussion with the officer's supervisor, which is neither a realistic nor an accurate expectation. The department's responsibility for the officer dictates that it informs the abuser that the victim has contacted the department and the exact nature of her allegations, and that the department will then conduct an investigation. The victim should anticipate that the department will extend the officer a great deal of credibility and classify conflicting versions of events as "he said, she said" incidents. On the other hand, should the department find her complaint credible, the department is likely to confiscate the officer's department-issued weapons and strip him of his police powers pending further investigation. These actions serve to protect the police department from liability, but may also place the victim in grave danger from the abuser's retaliation.

Prosecution

Prosecutors rely on the cooperation of the police to investigate all crimes and apprehend suspects. Without an adequate investigation and proper handling of evidence the prosecutor's ability to competently perform his/her job would be decimated, making the prosecutor reluctant to damage the working relationship between the prosecutor's office and the police department. The conviction of a police officer for a qualifying domestic violence misdemeanor results in his inability to carry a weapon (*18 U.S.C. § 922(g)*)³. If the prosecutor does pursue charges, he/she typically reduces the charge to disturbing the peace, criminal destruction of property, or reckless conduct to avoid triggering the gun law.

Prosecutors may anticipate a show of solidarity by the accused's fellow officers that may intimidate the victim and send a message to the prosecutor, witnesses, judge and jury. Prosecutors

may also anticipate terrified and “uncooperative” witnesses in the case who are likely to change their testimony or recant their statements. Many times prosecutors do not pursue cases they believe they cannot win.

Flight from the abuser

Domestic violence victims are at serious risk of physical harm after they have left their abusers.⁴ The abusive police officer will view the fleeing of the victim as the ultimate defiance of his professional and personal authority and control over her. Police officers are trained to pursue suspects who flee from them, and advocates and other professionals must always consider this professional mind-set when they discuss the victim’s plans to leave the relationship. Officers are trained in investigation techniques, have access to official channels of information, and pride themselves on being able to find anyone anywhere. They tend to go to great lengths to hunt down their victims. Frequently, officers use their professional network to help them find their victims by convincing them that the woman has disappeared with his children, is a danger to herself or others, or has committed a crime.

Divorce and custody battles

The batterer may perceive the victim’s filing for divorce as the ultimate betrayal, and a lengthy legal battle over *his* property, money, and the children may ensue. He may be determined to have the last word and be obsessed with winning. Victims’ attorneys complain that departments stonewall the court’s orders for their employees’ financial information and provide loopholes that allow officers to misrepresent the amount of their income. Many officers are creative in hiding property and other assets and accounts.

Significant research⁵ indicates that “high conflict families are disproportionately represented among the population of those contesting custody and visitation.”⁶ Police officers who batter, like other batterers, typically threaten to win sole or joint custody of the children as a way to maintain control over their victims. They use the children as pawns or hostages while they make demands regarding assets and reduction of or release from child support obligations. They know that the costs of a custody battle can be astronomical, and that the victim does not have the resources to endure the fight. Many victims report that their abusers have connections with attorneys who charge them lower fees as a professional courtesy. The victims do not have these advantages and quickly find themselves drowning in debt incurred by fees for their own attorney, a Guardian ad litem (GAL), psychiatric evaluations and expert witnesses. Batterers are able to coerce their victims into settlements that leave them impoverished to avoid losing custody of their children.

Many states encourage judges to grant joint custody, grant sole custody to the “friendly parent” (the parent who is willing to foster a relationship with the non-custodial parent), yet require judges to consider domestic violence in determining custody. Unfortunately, these three factors often conflict and according to many experts, “domestic violence is often the first to fall by the wayside.”⁷ Allegations of domestic violence are particularly problematic in custody disputes involving police officers because of the secrecy, denial and cover-up by abusive officers and the lack of documentation of abuse. Many abusive officers demand liberal visitation that accommodates their

erratic schedules, causing hardship to the victim and the children. If supervised visitation is ordered, it is extraordinarily difficult to determine a safe place to exchange the children, as the victim may not feel safe doing the exchange at the local police department.

Most of society, including victims, believes the myth that mothers do not lose custody unless they are “unfit” or mentally unstable. This erroneous belief leads them to seriously overestimate the benevolence of the court and seriously underestimate the danger of losing custody. They are not aware that the “American Psychological Association reported that abusive fathers were at least twice as likely to dispute custody as nonabusive men”⁸ and that “approximately 70% of contested custody cases [in the United States] that involve a history of domestic violence result in an award of sole or joint custody to the abuser.”⁹

Fathers’ rights groups instruct fathers’ attorneys on how to charge the mother with the scientifically debunked “Parental Alienation Syndrome.”¹⁰ Despite some state legislatures banning the use of this false syndrome, many courts still accept it as a valid scientific theory and use it to base their award of custody to battering fathers. Some courts also still believe that many mothers raise false allegations of child or domestic abuse in a custody battle. Victims’ attorneys should impress upon their clients the seriousness of making allegations of child abuse against the father, particularly allegations of child sexual abuse. Battered women’s attorneys must warn their clients that alleging abuse, even when true, may actually result in the court giving the abuser custody. Police officers understand how the system works and know that allegations of physical and sexual child abuse are very difficult to prove, especially against a member of law enforcement.

Fathers’ rights groups also coach fathers on how to produce evidence that they have been the “primary caretaker” of the children. They recommend that fathers obtain affidavits from teachers, coaches, friends, neighbors and family members testifying that he is a good father. A police officer can include testimony from the chief of police, the mayor and other prestigious and respected members of the community. He may use his professional standing and relationships to garner the support of the GAL, mediator, custody evaluators, psychologist and child protective service workers who may find it difficult to believe that a police officer can be a batterer. Some of these professionals may share the abuser’s worldview and values, some think that domestic violence is a myth, and others simply believe that women typically make false allegations of abuse. When proof of the abuse is right before their eyes they may ignore, dismiss, minimize or rationalize the behavior—often by holding the woman responsible for the abuser’s behavior. As a result, women and children are left without legal protection as the courts refuse to give them protective orders and grant abuser’s liberal visitation privileges and/or custody.

Abusive officers have been known to access official police channels of information to run background checks on anyone with whom the victim associates. Should the background check reveal that someone the mother associates with or is dating has a criminal record, the batterer can use this against her in a custody dispute. He might say that the mother’s new partner or a friend is a danger to his children. Officers can also harass the victim by manipulating fellow officers to conduct “wellness checks” on the children and their mother, issue citations for interference with visitation, and/or make reports of suspected child abuse/neglect to child protective services.

Safety concerns

Many victim advocates and other professionals, who have worked with victims of domestic violence, know that professionals who represent or assist victims of domestic violence can also be targets of the perpetrator. It is not uncommon for the officer who batters to intimidate and threaten the GAL, the victim's and his own attorney, the custody evaluator, therapists and anyone else involved in the case. In recognition of this, the ABA Commission on Domestic Violence states "...if their safety is at risk while you are representing them, your safety may be at risk as well."¹¹ A police officer may represent himself in the case, forcing the victim's attorney and staff to negotiate with him. This gives the officer ample opportunity to intimidate opposing counsel, flaunt his personal and professional connections to judges, clerks, bailiffs and other attorneys. Few attorneys consider that an officer who batters has a range of intimidation tactics available, ranging from something as subtle as a sudden flurry of traffic tickets to the extreme of a false arrest.

The attorney can recommend that the client contact a domestic violence agency. Ideally, the agency contacted would have an advocate trained in officer-involved domestic violence. In the situation where the victim is distrustful of local advocates because of possible connections to her abuser, the attorney can recommend contacting her state's coalition against domestic violence, the National Coalition Against Domestic Violence, or the National Domestic Violence Hotline. Information on police domestic violence is also available for victims and advocates on the Abuse of Power Web site¹². Technical assistance for attorneys and advocates is available from the author through the Battered Women's Justice Project.

Conclusion

The International Association of Chiefs of Police (IACP) acknowledges victims of police officers are "especially vulnerable" because of their abusers' status within law enforcement circles and because "an abusive officer may escalate behavior to extreme acts of violence such as abducting the victim, taking hostages, and committing homicide and/or suicide"¹³ when he feels his power is threatened. IACP also acknowledges that these victims may feel powerless because of the "formidable obstacles" they may encounter when seeking police assistance. Police agencies and judges may misuse their power of discretion to avoid implementing policies or enforcing the law against one of their own. When they do implement policies or enforce the law, they may place the victim in greater danger than before the system intervened.

In the end, victims typically report that the abuser "did everything he said he'd do" and "it all went the way he said it would go." Their attorneys are typically as amazed as their clients are at the twists and turns these cases take because of the batterer's ability to manipulate the system. The attorneys are stunned by the outcomes and their inability to predict or prevent the systemic abuse. Police officers who batter will continue to enjoy the protection of the legal system as long as attorneys, judges and other professionals involved in criminal and family court cases refuse to believe that some police officers do batter their intimate partners and their children. Attorneys who represent victims of domestic violence at the hands of police officers owe it to their clients to educate themselves on the dynamics of this insidious problem.

About the Author

Diane Wetendorf is an advocate, trainer and consultant specializing in police-perpetrated domestic violence. Currently a consultant to the Battered Women's Justice Project, Diane is the author of *When the Batterer Is a Law Enforcement Officer: A Guide for Advocates*; *Police Domestic Violence: A Handbook for Victims*; *Advocate and Officer Dialogues: Police Perpetrated Domestic Violence*; *Abusive Police Officers: Working the System*; and *Crossing the Threshold: Female Officers and Police-Perpetrated Domestic Violence*. Diane has presented at the National Center for Women and Policing, the International Association of Chiefs of Police, the Behavioral Science Unit of the F.B.I. National Academy, state domestic violence coalitions, and numerous conferences. She serves as expert witness in Canada and the U.S. Her website is www.abuseofpower.info. For more information on obtaining training or technical assistance, please contact Diane at (847) 749-2560 or e-mail dwetendorf@dwetendorf.com.

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Endnotes

¹ American Bar Association Commission on Domestic Violence, "Tool for Attorneys to Screen for Domestic Violence." <<http://www.abanet.org/domviol/screeningtoolcdv.pdf>>.

² Ibid.

³ U.S. Department of Justice, United States Attorney's Office, *United States Attorneys' Manual*. "Restrictions on the Possession of Firearms by Individuals Convicted of a Misdemeanor Crime of Domestic Violence." <http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm01117.htm>.

⁴ Indiana University School of Law—Bloomington, Law Protective Order Project. "Separation Violence" <http://www.law.indiana.edu/pop/domestic_violence/>.

⁵ Leadership Council on Child Abuse and Interpersonal Violence, "Abuse and custody disputes: Scientific and Legal Issues" <<http://www.leadershipcouncil.org/1/pas/1.html>>.

⁶ Stephanie Dallam, "Are 'Good Enough' Parents Losing Custody to Abusive Ex-Partners?" <<http://www.leadershipcouncil.org/1/pas/dv.html>>.

⁷ Mary Ann Mason, *The Custody Wars: Why Children are Losing the Legal Battle and What We Can Do About It*. (New York: Basic Books, 1999), 152-153.

⁸ American Bar Association Commission on Domestic Violence, "10 Myths About Custody and Domestic Violence and How to Counter Them." <http://www.abanet.org/domviol/custody_myths.pdf>.

⁹ Peter G. Jaffe, Nancy K.D. Lemon, Samantha E. Poisson, *Child Custody and Domestic Violence: A Call for Safety and Accountability*. (Thousand Oaks CA: Sage Publications, 2003), 90.

¹⁰ Leadership Council, "What Is Parental Alienation Syndrome (PAS)?" <<http://www.leadershipcouncil.org/1/pas/faq.htm>>.

¹¹ ABA, "Tool for Attorneys to Screen for Domestic Violence."

¹² Abuse of Power (Information on police- and firefighter-involved domestic violence): <<http://www.abuseofpower.info>>.

¹³ International Association of Chiefs of Police, "Discussion Paper on IACP's Policy on Domestic Violence by Police Officers." <<http://www.theiacp.org/documents/pdfs/Publications/domviolconceptpaper.pdf>>.

Additional Resources

Lundy Bancroft and Jay G. Silverman. *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*. Thousand Oaks CA: Sage Publications, 2002.

Battered Mothers Custody Conference resources:

<http://www.batteredmotherscustodyconference.org/Essential_Information.htm>.

Battered Women's Justice Project: <<http://www.bwjp.org/>>.

Stephanie Dallam and Joyanna Silberg. "Myths That Place Children At Risk During Custody Litigation" *Sexual Assault Report*, Jan/Feb 2006: 9(3), 33-47.

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