

SAFETY &
JUSTICE FOR ALL

SAFETY PROGRAM

EXAMINING THE
RELATIONSHIP BETWEEN
THE WOMEN'S
ANTI-VIOLENCE
MOVEMENT AND THE
CRIMINAL LEGAL SYSTEM



Ms. Foundation For Women

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SAFETY & JUSTICE FOR ALL:

EXAMINING THE RELATIONSHIP
BETWEEN THE WOMEN'S ANTI-VIOLENCE MOVEMENT
AND THE CRIMINAL LEGAL SYSTEM

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MISSION STATEMENT

The Ms. Foundation supports the efforts of women and girls to govern their own lives and influence the world around them. Through its leadership, expertise and financial support, the Foundation champions an equitable society by effecting change in public consciousness, law, philanthropy and social policy.

BELIEFS AND VALUES STATEMENT

Our work is guided by our vision of a just and safe world where power and possibility are not limited by gender, race, class or sexual orientation. We believe that equity and inclusion are the cornerstones of a true democracy in which the worth and dignity of every person is valued.

INTRODUCTION

Violence against women. Thirty years after naming this as a distinct form of misogyny, there is hardly a corner of the world where a movement is not underway to protect women from what are now unacceptable vestiges of tradition. And here at home, where this movement began, violence against women is publicly unacceptable, yet entrenched as ever before.

Important strides have been and are continuing to be made along the way, but even with intensive criminal legal intervention, we hardly seem any closer to ending violence against women:

- The majority of sexual and domestic assaults of women go unreported;
- Despite a wide range of criminal legal efforts such as mandatory arrests, no single strategy alone has been successful in saving women's lives across communities;
- Men's lives are being saved, whereas the number of women killed by intimate partners remains the same.

It is clear that the criminal legal system has been, and continues to be, a lifesaver for many battered women, including women of color. Women, even from the most disadvantaged communities, routinely seek the

help of law enforcement and courts when in crisis. With limited options, law enforcement is called in situations posing serious risk or harm.

Unfortunately, when state power intervenes, it often takes over. Many people who call for assistance end up having no say in the intervention once the legal system has entered into their lives. Heavy investment in the criminal legal system has had a disproportionate negative impact on the lives of people of color, further decimating poor communities and communities of color.

What, then, is the appropriate role of the state and, in particular, the criminal legal system in preventing violence against women? Are we over-relying on the criminal legal system? Have we gone too far or not far enough in developing and utilizing legal strategies for

Most intimate partner violence is not reported to the police. A striking four-fifths of all rapes, three-quarters of all physical assaults, and one-half of all stalking perpetrated against women are not reported to the police. These findings suggest that many victims of intimate partner violence do not consider the justice system an appropriate intervention. *

addressing violence against women? Would a questioning of legal intervention turn back the clock to the "old days" when the state would not intervene at all in abuse of

* Patricia Tjaden, Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence*, research sponsored jointly by National Institute of Justice and Centers for Disease Control, July 2000. Intimate partner violence for this study includes rape, physical assault, and stalking perpetrated by current and former dates, spouses, and cohabitating (same and opposite sex) partners. Among the reasons for not reporting included mistrust of the legal system intervention.

women within families and on the streets? Juxtaposing questions of fairness for men who are abusive alongside issues of safety for women may feel inflammatory for some who have worked hard to address violence against women. Yet, a growing number of advocates across the country are raising this issue.

What might it look like if communities had the resources for explore effective interventions that keep decision-making power within the community, and make it possible for women to stay? Where might we be if government accountability did not aim its efforts on criminal legal punishment, but instead centralized responsibility for basic needs and human dignity, and affirmed the human rights of all?

Can we prevent violence against women through a broader agenda that invests in education, employment, housing, and other basic needs? What might it look like if communities had resources to explore effective interventions

and services that would keep decision-making power within the community and make it possible for women to stay in their communities?

These are the central issues to be explored in this document as a starting point for discussion and advancing new strategies for violence prevention.

There is certainly a risk in scrutinizing current practice and investing in untested new interventions. Some of these efforts may fail, but without this exploration, there are no alternatives. We must chart a course for the 21st century that offers safety and justice for all.

No one policy affects all groups the same way in terms of decreasing violence. For example, a National Institute of Justice study shows that:

- Mandatory arrest policies are associated with saving the lives of more white women and black unmarried men;
- Increased legal advocacy resources are associated with fewer white women being killed by their husbands and more black women being killed by their boyfriends;
- Certain protection-order policies are associated both with decreased victimization of black married women and increased homicides among black unmarried intimates.¹

WHY THIS DOCUMENT?

We have come a long way over the past 30 years in addressing violence against women. Over the years, thousands of sexual assault survivors, battered women, and advocates working to end violence have come forward to identify sexual assault and domestic violence as distinct forms of violence designed to severely undermine women's power. Survivors and their advocates fought long and hard to create rape crisis programs and domestic violence shelters as a first line of defense in healing and keeping women safe. Together, the anti-rape and domestic violence movements have raised awareness and changed policies aimed at protecting survivors.

As little as 30 years ago, there were almost no services for sexual assault or domestic violence survivors. Today, thanks to the hard work of advocates and survivors, networks of rape crisis and domestic violence services exist throughout the country, providing a safety net for many women. For example, as a result of unwavering advocacy from these movements, the landmark Violence Against Women Act was passed in 1994. This federal legislation included over \$5 billion that funded—and continues to fund—a combination of criminal legal intervention strategies and direct services. Every state now has legislation to address violence against women. All of this hard work has been mirrored the world over, as women from around the globe made violence against women one of the major platform issues addressed at the Fourth World Conference on Women held in Beijing during 1995. The hard work of survivors and their advo-

caters has truly changed our landscape; no longer is violence against women ignored or condoned.

Yet, these achievements have also come at a price. In the attempt to secure safety and justice for women, the women's anti-violence movement has worked hard over the years to get the criminal legal system to respond to violence against women with the same seriousness as it does other crimes. Efforts have been aimed at increasing arrests and prosecution of batterers and rapists, and enhancing the penalties associated with these behaviors to save women's lives. These efforts have had mixed results that warrant closer attention.

For many individual women, services and the legal system helped them escape violent relationships, decreased the violence in their lives, provided them and their children with increased options and opportunities and, for many, saved their lives. However, for others, involvement with the criminal legal system has not been a positive or helpful experience.

Law enforcement interventions vary widely from jurisdiction to jurisdiction, and individual experiences with the criminal legal system also vary tremendously. Some communities, such as communities of color, feel that law enforcement (often accompanied by other systems like child protective services) is too present in their lives. In these communities, the police tend to intervene frequently and, as a consequence, many get arrested. Women who experience violence may request assistance during a violent

episode, but find that they lose all control over the intervention once the system (be it criminal legal, child welfare, mental health, or welfare) enters their lives. Battered women are often arrested along with or instead of their abusers, and men of color are swept into the system far more frequently than their white counterparts.

Other communities, such as rural or affluent white communities, sometimes feel as though no one is being arrested for domestic or sexual violence. In these communities, even battered women or sexual assault survivors who want their abusers to be arrested are unable to persuade the police to carry out their duties in many circumstances. Arrests and prosecutions may come only after diligence and active monitoring on the part of women's anti-violence advocates.

With regard to sexual violence, sexual assault survivors are often re-victimized by the legal system as they are asked to recount their stories, but few perpetrators are ever prosecuted and convicted. In addition, men of color once again are much more likely to be charged and convicted, such as the five youth of color convicted of sexually assaulting a white investment banker in 1989, known as the New York City Central Park jogger case, only to have these convictions set aside in 2002 after a confession from the actual perpetrator.

Over \$5 billion has been allocated through the Violence Against Women Act, with the bulk of this money directed toward criminal legal responses and a smaller percentage allocated to services for survivors. The success is real, but is simply a drop in the bucket in addressing violence against women.

Ironically, the Bureau of Justice statistics report a 69 percent drop in the number of men murdered by intimates since 1976; in contrast, the number of women killed by intimates remained stable for two decades and declined after 1993.² During this period, many resources were directed at enhancing law enforcement response to domestic violence, but all these interventions did little to reduce homicides

of women by their intimate partners. Clearly, state role in the form of the criminal legal system is a response to, but not a solution for, preventing violence. So, what then, are the appropriate roles of the state and the criminal legal system in preventing violence against women?

Understanding the impact of the criminal legal system in addressing violence against women is the central topic for this document. This document is based on discussions in preparation for, during, and as follow-up to a Ms. Foundation-sponsored meeting, "Uneasy Allies: A Critical Examination of the Relationship Between the Anti-Domestic Violence Movement and the Criminal Legal System." Held in January 2002, the meeting explored the relationship between the women's anti-violence movement and the criminal legal system. In particular, the agenda centered on the issue of "over-reliance" on the criminal legal system in responding to violence against women. While talking about "over-reliance" is highly controversial, the issue is being raised by a growing number of advocates across the country. Many advocates see a need to assess the movement's ability to address violence while reducing, or even eliminating, the negative effects of criminal legal intervention and envision alternatives.

This report is a starting point from which to examine the complexities of the relationship between the criminal legal system and the women's anti-violence movement, as well as to envision solutions and strategies for preventing violence against women. It focuses on state intervention in the form of the criminal legal system; with the growing trend toward interlocking health, social services, and other systems; however, the scope and reach of state intervention extends far beyond the criminal legal system. This document explores the use of criminal legal strategies in addressing violence against women for the purpose of advancing new strategies for violence prevention. Far from comprehensive in scope, it does not imply failed strategies, nor is it meant as an indictment of individual advocates, prosecutors, or law enforcement agents or agencies.

This important work to address violence against women has its roots deeply embedded in concepts of human dignity and social justice for women. To begin tackling the thorny issues that stand in the way of safety and justice for women of all backgrounds is the

next step in the movement's evolution. We believe that to address these issues and to withstand the closest scrutiny is to move us closer to achieving our vision of ending violence in the lives of all women and girls.

WHAT IS OVER-RELIANCE?

Are we over-relying on the criminal legal system?* Have we gone too far or not far enough in developing and utilizing legal strategies for addressing violence against women? There are many points of view on what constitutes “over-reliance” and on the appropriate role of the legal system in ending violence against women. What follows in this section is an attempt to position concerns about over-reliance along a continuum. In reality, the nuances are far greater than outlined here, with no mutually exclusive points of view.

Over-resourcing:

To achieve a better response from law enforcement, which has traditionally been unresponsive to violence against women, the movement has devoted considerable energy to legal reform and to getting the legal-judicial systems to take the problem seriously. This has led to an over-emphasis on, or “over-resourcing” of, the legal system to the virtual exclusion of other alternatives. This point of view does not reject the current role of the criminal legal system, but hopes to address the imbalance of resources by developing strategies that complement the criminal legal reform work.

Over-extension of powers:

Those more critical of the legal system express concerns over the unintended negative consequences of a powerful and perhaps over-zealous law enforcement

presence, particularly in poor, immigrant, and communities of color. They posit that the very policies advocates have worked hard to implement may have had unintended, negative consequences for some survivors (for example, an emphasis on increased arrest has resulted in arrests of battered women in some jurisdictions). This point of view wants to “fine-tune” the system so that the laws will do what they were intended to do, and make only “appropriate” arrests.

Undue Compulsion:

Some see mandatory policies, such as mandatory reporting, arrest, and prosecution, as problematic and potentially lethal because they deter women who are already conflicted about using the system from seeking help when their lives may be in danger. Mandatory processes do not allow women to make their own decisions about how to address the violence in their lives, contributing to a feeling of powerlessness for battered women. Some feel that the system exerts control over women’s lives, comparable to the batterer.

Any Reliance Is Over-reliance:

Some feel that the criminal legal system is inherently unjust; therefore, strategies to address violence against women cannot involve the criminal legal system. Those who hold this viewpoint believe that turning to the criminal legal system is similar to substituting one evil for another and further supports a corrupt system designed to decimate communities of color.

* We use the term *criminal legal system* rather than *criminal justice* in recognition that the system disproportionately singles out people of color for punishment and is therefore not a system of “justice.”

HOW DID WE GET HERE? AN HISTORICAL CONTEXT

Beginning in the 1970s, women began speaking publicly about sexual assault as a problem and demanded public accountability. Rape crisis centers were created to offer counseling for survivors and build awareness of the problem. Activists worked hard to successfully reduce “victim blaming” of survivors by society at large and law enforcement officials and prosecutors specifically.

Out of this early rape crisis movement came the identification of domestic violence as another common experience for women. In the 1980s, and still today, battered women and their advocates worked hard to stop men from violating their female partners with impunity. Efforts focused on advocacy and policy change to

With the best of intentions for preventing women from falling through the cracks, an interlocking coordination of systems discouraged women from seeing each sector as a separate option, and made them fearful of getting swept into processes with no control over the outcomes. For these women, all roads led to the criminal legal system from any entry point.

sensitize the public and public institutions to the plight of battered women and their children. The idea was to unleash the formidable forces of the state to save women’s lives, support women’s claim to justice and safety, and eliminate police discretion to arrest in incidents of violence against women.

It was largely through the efforts of battered women’s advocates that the state was held accountable for safe-

guarding women and children even when their abusers were related to them. As a result, pro- and mandatory arrest policies proliferated, often taking away the discretion to arrest from police officers who routinely arrive first at the scene of family violence. The intention of these policies was to lessen the impact of individual biases within the system and standardize criminal legal procedures. Advocacy efforts were initially targeted at eliminating the traditional “cooling off” walk around the block or “winking” acceptance of abuse behind closed doors, replacing these with an explicit, official obligation to intervene by arresting the abuser. Domestic violence was criminalized and sanctions increased, as did measures to hold the batterers accountable for their actions and deter future violence

through batterers’ intervention programs. These efforts, however well intended, have had the effect of strengthening state power over individuals and communities.

While activists worked to protect women from intimate abuse, the state became engaged in expanding definitions of crime as a result of public fear about lack of safety. The media fanned this sense of national insecurity by underscoring violent urban crimes and rising crime statistics. This “tough on crime” environment was ripe for policy changes regarding mandatory minimum sentences, increased criminalization, and citizen participation in crime control while concerns voiced by advocates about the disproportionate impact on communities of color went mostly unheeded.

During the 1980s, women's anti-violence activists began increasing efforts to make the criminal legal system more sensitive and responsive to violence against women. Over time, in some communities, advocates and law enforcement began collaborating on numerous projects. For example, battered women's advocates were placed directly within police precincts and prosecutors' offices. Government funding supported these and other efforts in communities across the country, facilitating an even greater expansion of coordinated responses to battered women and sexual assault survivors across the health, service delivery, and criminal legal systems. In many communities, progress was (and often still is) measured by how many arrests were made, how many women left home permanently after seek-

ing shelter, and how many systems became part of a coordinated approach.

Closer ties between women's anti-violence organizations and the criminal legal system further solidified the concept of accountability as a function of the criminal legal systems, limiting community members to roles as either passive witnesses or active perpetrators rather than potential partners in preventing violence against women. With the best of intentions for preventing women from falling through the cracks, an interlocking coordination of professional systems discouraged women from seeing each sector as a separate option, and made them fearful of getting swept into systems where they could not control the outcomes. For these women, all roads led to the criminal legal system from any entry point.

WHAT DOES THE RESEARCH SAY? A BRIEF REVIEW

What do we know about the effects of criminal legal intervention on increasing the safety of individual battered women and their children and on reducing overall domestic violence against women? The rate of women's victimization (assaults and murders) by intimates appears to be about the same as it was in the 1970s. The assault rate rose between the mid-1970s and 1994; since 1994, victimization of women by intimates has gone down 15 percent (to a level just slightly above the 1970s level). However, this drop in domestic violence assaults is far less than the overall drop in violent crime since 1994, which has seen a reduction of 31 percent.³

Although many studies exist that attempt to document the extent of violence, there is little evidence of the effects of particular policies to deter it. For instance, very little work has been done to document the benefits and burdens of mandatory arrest and no-drop prosecution policies and even less assesses these policies from the perspectives of immigrants, poor women, and women of color.⁴ From available studies, it is clear that

the benefits and burdens of mandatory policies are distributed unequally.

A National Institute of Justice (NIJ) study⁵ shows the following:

1. Mandatory arrest policies are associated with fewer killings of white women and of black unmarried men;
2. Increased willingness of prosecutors to pursue protection-order violations is associated with increases in homicides of white married intimates, black married intimates, and white unmarried women;
3. Increased legal advocacy resources are associated with fewer white women being killed by their husbands and more black women being killed by their boyfriends;
4. Certain protection-order policies are associated both with decreased victimization of black married women and increased homicides among black unmarried intimates, and;
5. No one policy affects all groups the same way in terms of decreasing violence.*

The move toward mandatory arrest in the middle and late 1980s was based in large part on Sherman and

Berk's (1984) study of the effects of arrest in Minneapolis, Minnesota. Their conclusion was that for some (but not all) men, arrest had a deterring effect and reduced the likelihood of repeat violence. Later studies (including some unsuc-

Does a higher rate of calling the police in African American communities indicate a greater trust in the criminal legal system or does it reflect a lack of other options? In some communities, the police may be filling a gap, similar to emergency room use in poor communities, as the provider of last resort when few alternatives exist to resist violence.

* For a careful review of the social science literature examining correlations between mandatory interventions and the likelihood of repeat violence, see Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention* (1999).

cessful attempts to replicate the 1984 research findings) have come to different conclusions; some even demonstrate, for a large number of men, a positive correlation between arrest and increased levels of violence.* In short, we do not yet understand what works, where, or why.

A 2001 Bureau of Justice Statistics report indicates that intimate homicide rates are down, especially and dramatically, homicides of men, with rates dropping most significantly for African American men.▪ However, the reality is that we simply do not know what impact, if any, criminal interventions have had on either the rates of domestic violence generally or on the much smaller number of intimate partner homicides.♦

Much of the research is, like the Bureau of Justice Statistics (BJS) report described above, national in scope and quantitative in nature. The racial and ethnic divides are along a simplistic black/white dichotomy. A handful of studies are qualitative, local, and focus on a single jurisdiction. Although such investigations can be very useful, it is important to take the local legal culture into account before attempting to generalize lessons from them. For instance, in some areas protection orders are issued routinely by criminal courts at the time of an accuser's initial appearance; in others, orders are available only on the complainant's application and then from a separate court. In some areas, charges are filed on a victim's application and then police decide whether an arrest is warranted. In still others, virtually all domestic violence cases begin with an

on-site arrest. Thus, strategies that reduce repeat assaults in one jurisdiction may have very different results in another.

Undoubtedly, we still have much to learn about the relationship between criminal legal interventions and battered women's safety. Additional and more focused research needs to be conducted to further explore the correlation between criminal legal intervention and short- and long-term safety. Furthermore, researchers must move beyond urban areas and the black-white binary paradigm to include a fully nuanced assessment of the impact of interventions in the lives of women of color, immigrant, and poor women.

While racism and other factors may make women of color reluctant to invoke the criminal legal system, some research indicates that women of color call the police more frequently than white women. The Bureau of Justice Statistics reports that Black women report victimization in general at a higher rate (67 percent) than Black men (48 percent), white men (45 percent), and white women (50 percent).⁶ Assuming the accuracy of this higher rate of reporting victimization, what does it mean?▼ Does a higher rate of calling the police in African American communities indicate a greater trust in the criminal legal system or does it reflect a lack of other options? In some communities, the police may be filling a gap, similar to emergency room use in poor communities, as the provider of last resort when few alternatives exist to resist vio-

* Sherman himself has concluded that arrests benefit some women, but actually have an escalating effect on batterers who are unemployed or who "live in socially disorganized neighborhoods." For discussion of his conclusions and of the NIJ studies showing a small but generally short-lived deterrent effect of arrest, see Coker (2001, p. 815). Miller & Krull (1997) note with regard to Sherman and Berk's 1984 study, "[b]esides relying on one study, conducted in one urban setting, its heavy reliance on offender behavior data, especially police data, to claim that arrest works best to deter recidivistic domestic violence is indeed problematic" (p. 236). Also see McFarlane, Wilson, Lemmey, & Malecha (2000).

■ The Bureau of Justice Statistics (Fox & Zawitz, 2001) reports that there has been a decline in homicide of intimates, especially male victims. (Intimates are defined to include spouses, ex-spouses, boyfriends, and girlfriends.) The number of men murdered by intimates dropped by 69 percent since 1976. The number of women killed by intimates was stable for two decades and declined after 1993. The number of intimate victims in each race and gender group has fallen. Between 1976 and 1999 the number of white females killed by intimates rose in the mid-1980s, declined after 1993, and in 1997 reached the lowest level recorded over the past two decades. The number of intimate homicides for all other race and gender groups declined over the period; black females killed by intimates dropped 53 percent, black males by 78 percent, and white males by 55 percent (Butterfield, 2000; Fox & Zawitz, 2001).

♦ According to the Bureau of Justice, women experienced 900,000 incidents in the US in 1998, of which 1,317 women died in domestic violence related homicides (Rennison & Welchans, 2000).

▼ Rates of reporting events are separate from the important question of whether rates of domestic violence actually differ according to race and ethnicity, and whether, if they do, the rates remain different once researchers control for social and economic status. For a summary of studies, see Maboney, Williams, and West (2001), pp. 164-166.

lence. Many practitioners have used such statistics to support their argument that criminal legal intervention is not problematic for women or communities of color. With a dearth of data and differing interpretations of the data that does exist, additional research, including more qualitative information, is clearly called for.

More information is needed in many areas. New and sensitive research about the effectiveness of the criminal legal system, for example, is desperately needed. However, such exploration will be complicated since there is no agreement on how best to define the criminal legal system's "effectiveness." Surely, the measures must go beyond the number of arrests made to include

the reported satisfaction rates of complainants and the recidivism rates of those arrested for domestic violence.▼ Are we capable of designing instruments that measure protection of victims or accountability of batterers? Should we measure success in comparison to and in contrast with the general violent crime rate? However studies are designed, some characteristics will be essential. For example, the differences in long- and short-term effectiveness must be taken into account when measuring efficacy; some studies must be local and precise to test the generalizability of the national quantitative analyses; and all must be designed to investigate the intersections of gender, violence, criminalization of the poor, and communities of color.

▼ *Recidivism may be measured by whether or not additional calls are received from the same households. Yet, there may be other reasons for the absence of additional calls. For example, battered women who are arrested for fighting back or using violence of any sort may never call the police again. Women who are further harmed after their abusers are arrested may be fearful of escalating violence. Research must not simply count calls to police to infer recidivism rates.*

WHAT HAS IT MEANT TO BE SO INVESTED IN CRIMINAL LEGAL STRATEGIES?

The legal system is the institution in our society that has been least affected by the civil rights movement. ... From arrest to sentencing, the criminal justice system treats people differently based on their race. A person of color is more likely than a white person to be stopped by the police, to be abused by the police during that stop, to be arrested, to be denied bail, to be charged with a serious crime, to be convicted, and to receive a harsher sentence.”⁷

Can a DNA database be used to protect more men of color from false accusations or will it serve as a tool to catalogue men of color, furthering public intrusion into their lives? What needs to be done to ensure that this next technological wave of criminal legal tools advances the cause of justice in the name of protecting women?

To engage in a critique of the criminal legal system, we have to underscore racism as an underpinning of the system. Racial bias permeates the legal and other state systems, with disproportionately devastating effects on communities of color, poor, and immigrant peoples.

In the 1970s, a greatly expanded criminal legal system was the shortcut solution to address public attention to mounting social ills and public policy dilemmas. Drug addiction, tenuous immigration status, homelessness, non-payment of child support, prostitution, and other survival strategies of last resort for those with very few economic options have

become part of the ever-widening net of behavior considered as criminal activity. For some, expanding categories of crime was viewed as an expedient way of addressing social problems. It was simpler to pass a law criminalizing a behavior because this strategy did not involve an outlay of cash, as prevention, education, or other services do. Yet it came with long-term social costs.

Implications for Poor and Communities of Color

■ Mass incarceration of poor men and men of color:

Criminalization of social problems has led to mass incarceration of men, especially young

men of color, decimating marginalized communities. Young men of color are arrested in great numbers, making them highly vulnerable to being prosecuted and incarcerated for domestic violence crimes.* Existing research confirms that domestic violence arrests involve disproportionately high numbers of poor men, African American men, and Latinos.⁸ Moreover, at every point of interaction with the criminal legal system, such as the arrest and prosecution process, men of color are treated worse than their Anglo counterparts.♦

This country has a long history of racist accusations against men of color for raping white women. African

* Policing strategies that have focused on increasing misdemeanor arrest rates have had a disproportionately harsh impact on minorities (Harcourt, 1998). For a discussion of the related phenomenon, the effect in one urban area of a history of prior arrest in terms of increased likelihood of being prosecuted and incarcerated for a domestic violence crime, see *Comparing the Processing of Domestic Violence Cases to Non-domestic Violence Cases in New York Criminal Courts* (Peterson, 2001).

♦ For a further analysis of this phenomenon in New York State, see *New York State Judicial Commission on Minorities* (1991). While this report documents the phenomenon in New York, it is reasonable to infer applicability in other jurisdictions based on statistical information on the racial makeup of prison populations across the country.

American men have been particularly demonized, from cases such as Emmet Till to the present day youth exonerated in the Central Park jogger case. In this context, establishing a DNA database is gaining momentum, and is likely, once again, to have greater significance and impact on the lives of men of color. While a DNA database may seem to offer irrefutable evidence of guilt or innocence in some cases of sexual assault, the question of whose DNA will be collected toward examining which cases needs to be raised. Can such a database be used to protect more men of color from false accusations or will it serve as a tool to catalogue men of color, furthering public intrusion into their lives? What needs to be done to ensure that this next technological wave of criminal legal tools advances the cause of justice in the name of protecting women?

■ *Criminalizing poor women and women of color:*

The criminalization of social problems combined with rigorous enforcement and stiffer penalties has led to the perception of poor women as prostitutes, child abusers, drug addicts, or otherwise “criminal” people. Women’s resources for escaping and surviving abuse are so limited that they may resort to illegal activity to reduce the violence in their lives or gain the material resources they need to survive. In this context, over 2 million women are arrested each year, with the number of women in prison tripling between 1980 to 1990 and more than doubling again between 1990 and 2001.⁹ One-third of women in prison report a history of child sexual abuse; and 20 to 34 percent report abuse by an intimate partner and have multiple abuse histories. Some studies cite even higher rates than these.

Over 2 million women are arrested each year, with the number of women in prison tripling between 1980 to 1990 and more than doubling again between 1990 and 2001. One-third of women in prison report a history of child sexual abuse, and 20 to 34 percent report abuse by an intimate partner.

Battered women from marginalized communities tend not to trust the legal system’s ability to dispense equitable justice. While many women of color call the police in domestic violence situations, the racism of the criminal legal system also makes many other women of color reluctant to call for help when they need it.* Over the years, more battered women are being arrested in domestic violence situations, even when they act to defend themselves or when their batterer commits the violence. For example, in 1999, as many as 35 percent of domestic violence arrests in Concord, New Hampshire were of women, 23 percent in Vermont, and 25 percent in Boulder County, Colorado.¹⁰

The role of the criminal legal system in women’s lives needs to be recognized in all its complexity. It is not just that women are sometimes not helped by the criminal legal system—some women are actively harmed, such as when victims are inappropriately arrested. Advocates report increases in arrests of women in many police departments after they have adopted tougher policies on domestic violence.¹¹

Some women are arrested as a result of false accusations by their batterers who have learned that they can manipulate the criminal legal system against their partners. Other battered women are arrested for harming or killing their abusers when they were actually defending themselves or their children against their abuser’s violence. Despite the fact that these women acted in self-defense, many of them are convicted and sentenced to long periods of incarceration. During the court process, battered women charged with crimes find their experiences of battering challenged. They are often further victimized when prosecutors argue that they cannot really be “battered women” because they don’t fit the stereotype of a “good victim.” Unfortunately, many myths and misconceptions about battered women continue to pervade the criminal legal system.

* *Much qualitative evidence exists that suggests that due to racial loyalties, as well as a general distrust of criminal and social institutions, women of color may be reluctant to involve the police in their private lives (see, e.g., Crenshaw, 1991; Richie, 1996; Rivera, 1994).*

Although not a criminal legal issue, it is ironic when battered mothers are charged in family and civil courts with failing to protect their children from witnessing domestic violence. This practice occurs in various forms, with varying outcomes, and may include temporary loss of child custody. In communities across the country, battered mothers are held responsible for the violence perpetrated against them when their children

One out of every four children of color are placed on a fast track of institutional life through the child welfare system when the adults in their lives are incarcerated or otherwise deemed unfit.

either witness or are present during the abuse. Most often, battered mothers are charged with “neglect” or “failure to protect,” implying that they contributed to the abuse. Some states have passed laws that criminalize child witnessing as a way to protect children; even when legislation is directed at batterers, many women are charged as well. They are held accountable for the actions of their abusers when the abusers themselves are not similarly charged.

■ *Children of color are institutionalized:*

Extensive adult interface with the criminal, civil, and family court systems, such as those described above, has enormous implications for children. Poor children and children of color are placed in foster care or otherwise tracked within the child welfare system in significant numbers. In the *Nicholson v. Williams* landmark lawsuit against the New York City Administration for Children’s Services, it was revealed that the city routinely removed children from their mothers in situations of domestic violence. Poor children and children of color are placed on a fast track of institutional life through the child welfare system when the adults in their lives are incarcerated or otherwise deemed unfit. In New York City, African American children are twice as likely as white children to be taken away from their parents following a confirmed report of abuse or neglect. One out of every four African American children in foster care remains there for five years or more, in contrast to only one in 10 white children.¹² For many families of color, exposure to this system is tantamount

to a life sentence of public intrusion and manipulation, rather than a welcomed source of assistance or support.

For girls, involvement in the criminal legal system is highly correlated with abuse histories. The American Correctional Association reported that 54 percent of incarcerated girls had been sexually abused, 61 percent physically abused, with a majority having multiple

abuse histories. Abused girls of color are more likely to be processed by the criminal legal system as offenders while their white counterparts have a better chance of being treated as victims and referred to services.¹³

Initially referred to the juvenile system as abused, neglected, and in need of supervision, girls of color leave the system as offenders. Many of them are destined for institutional scrutiny and intervention at each developmental step along the way, including the adult prison system. This rite of passage from child to adult is further accelerated by practices that treat adolescent offenders as adults in court.

■ *Immigrants Are Criminalized:*

Immigrants fear repercussions vis-à-vis their immigration status. In particular, immigrant women dependent upon their partners for their own immigration status are reluctant to confront violence. For example, a battered spouse waiver was created in 1990 to allow immigrant battered women married to U.S. citizens or permanent residents to self petition for permanent residency, and provisions included in the 1994 Violence Against Women Act created even broader protections in a variety of situations. Yet, many immigrant women lack the necessary documentation needed to access these remedies¹⁴ and they also fear even greater risk if their applications are rejected. In addition, battered immigrant women arrested for fighting back may risk deportation themselves and may also lose other protections afforded by domestic violence legislation in such situations as child custody cases.¹⁵ Similar parallels exist for immigrants who are detained, often without due process or legal representation, through the Immigration and Naturalization Service (INS). Immigrants and their families caught in this net have little recourse for action. Batterers can and have been deported, with mixed senti-

ments from their partners. In the wake of September 11, INS has greatly expanded its activities and, as a result, immigrants, including immigrant women, are fearful of any contact with this agency.

■ *Communities Are Decimated:*

The consequences of interventions aimed at ending violence against women have further decimated poor communities and communities of color, especially when batterers of color are incarcerated, victims are forced to leave their own communities when they seek shelter, children are removed, and immigrants deported. Given these realities, who remains in the community and what level of safety and quality of life can be achieved in the absence of the whole community? Institutions of all sorts, but primarily those with oversight functions, such as probation departments and child welfare systems, are part of everyday life for many poor families and communities of color. In this situation, the locus of control is institutionally based, rather than community driven.

Implications for the Movement

Most intimate partner violence is not reported to the police. A striking four-fifths of all rapes, three-quarters of all physical assaults, and one-half of all stalking perpetrated against women are not reported to the police. These findings suggest that many victims of intimate partner violence do not consider the justice system an appropriate intervention.¹⁶ Despite the great need as evidenced by long waiting lists at many battered women's shelters and sexual violence programs, a large percentage of women never turn to service organizations. While shelters, crisis services, and legal remedies are crucial for those who choose to (or are able to) access them, the movement knows very little about the far greater number of women who instead utilize more informal helping networks.

What do women who are battered and sexually assaulted need to increase their safety and options? For many survivors, the violence in their lives may seem secondary to their need for economic sustenance, opportunities for advancement, and dignity as mothers and human beings. For some women, criminal legal inter-

vention can be very helpful. However, for many it can be extremely problematic, especially when they are unable to limit its scope and reach. When communities experience an overall negative relationship with the criminal legal system, violence against women is often viewed as just one of the many reasons for the incarceration of men. As such, criminal legal remedies may not have the effect of elevating the status of women so much as devaluing men within the community.¹⁷ Battered women often seek reclamation, rehabilitation, redemption, and restoration, rather than incarceration, for their partners, and these go well beyond the scope of the criminal legal system. Ironically, some women whose goal is to seek justice from the criminal legal system wind up experiencing quite the opposite, especially in situations of sexual violence.

■ *Narrow focus hampers coalition building:*

The frame of the anti-domestic violence movement has narrowed through its partnership with the criminal legal system and its focus on service provision and advocacy. The movement became linked to the victim's rights movement, whose agenda seems to emphasize retribution rather than safety and support for women. As a result, the women's anti-violence movement is viewed with caution by many working on social justice issues such as housing, labor, education, and even civil rights, and resulted in its loss of integrity in many progressive circles.

In contrast, women of color organizations generally do not confine their community-based work to domestic violence, but often link their anti-violence activities to related issues that affect their communities such as war, racism, police brutality, welfare reform, inter- and intra-community relations, as well as leadership. The dominant stream of the domestic violence movement has often dismissed these activities as too distracting, and has feared their potential to split the movement along class and color lines.

■ *Not enough tools:*

In the absence of other responses, the forces of violence against women propel survivors and advocates toward the state. At this point, the criminal justice sys-

tem's presence is so woven into the fabric of society that most of us cannot envision what society would look like otherwise. For example, while immigrant groups are vocal about state injustices toward them on residency issues, many nevertheless advocate with the state to protect the rights and safety of trafficked women. The practical and immediate needs of ensuring women's safety often compel us to invite the state into our lives knowing full well that this pact may include unintended consequences.

■ *Loss of independent voice:*

Government funding has also played an important role in the progress and direction of the anti-domestic violence movement. Governmental support to domestic violence and sexual assault agencies, as important and crucial as it is, has profoundly affected the trajectory of the work. The current emphasis on law enforcement as the principal remedy was impacted dramatically by state monies channeled to domestic violence agencies through the Department of Justice, starting in the 1970s. Heavy reliance on government has also guided the movement away from autonomy and community reliance, watering down the political analysis that seems central to the movement in the early years. The budgets of most women's anti-violence organizations applying for funding from the Ms. Foundation are overwhelmingly government based. In these circumstances, gender politics are often glossed over and replaced by an individualistic "service provision" approach. While government must be accountable on issues of violence against women, including supporting core services and activi-

ties, the heavy influx of government funds may have co-opted the women's anti-violence movement by nurturing dependency on the state.

■ *Loss of Power in Communities:*

During the movement's initial stages, activists focused on immediate safety for women and attitudinal changes in the community. Since communities had not protected battered women or sexual assault survivors, advocates did not regard the community as an important resource for keeping women safe. For this reason, the movement did not turn to the community as a partner when it sought perpetrator accountability. Advocates believed instead that community attitudes needed to be transformed through education and that behavior change could be achieved through legislation. In this context, advocates looked to the government to secure safety and justice for women.

As activists increasingly demanded that the public take the problem more seriously, the government responded with a focus on criminal legal reform as its primary intervention strategy. These strategies focused on after-the-fact punishment as a means of securing safety and deterring future harm. What might it look like if communities had the resources to explore effective interventions that keep decision-making power within the community, and make it possible for women to stay in their community? Where might we be if government accountability did not aim its efforts at criminal legal punishment, but instead centralized responsibility for basic needs and human dignity, and affirmed the human rights of all?

EXPLORING ALTERNATIVES

Is a Little Reliance OK?

The goal of the collaboration between the women's anti-violence movement and the criminal legal system is to hold individual rapists and batterers accountable and ensure women's safety. Is it possible to create a criminal legal system that maintains its protective functions while eliminating the oppressive ones? Can the system offer responses according to local or even individual circumstances and needs? Systems advocacy by the women's anti-violence movement has been based on the belief that the system can be corrected.

Would finding alternate routes to the goal of safety wean us away from over-relying on the legal system? Indeed, instituting alternatives such as victim restitution, community sanctions, and offender reformation might fulfill the goal of securing women's safety without serious state intervention. Whether this is possible while maintaining the current relationship between the anti-domestic violence movement and the criminal legal system is a central question.

Divest or Dismantle?

Many anti-violence critics argue that the criminal legal system is itself a violent system, and therefore a non-solution to ensuring women's safety. In this view, divesting from or dismantling the system itself are the two choices. Divesting involves disengaging from partnership with the criminal legal system, abandoning the use of mandatory legal practices such as mandatory reporting, arrest, and prosecution policies. Divesting recognizes that sexism, racism, xenophobia, and homophobia must be eliminated to even begin to shape a broader, comprehensive justice system.

Pursuing such a course of action necessitates meaningful relationships with groups working on other social justice issues. There is certainly a risk in taking resources from current practice to invest in untested new interventions. Some of these efforts may fail, but without this exploration, there can be no alternatives.

If, instead, the belief is that the criminal legal system is essentially flawed and incapable of administering justice, the only alternative left is to dismantle it. Choosing this route means developing an adversarial relationship with the state and legal system, joining the growing movements challenging the prison system. This course of action has implications far beyond addressing violence against women, yet offers no obvious mechanisms for keeping women safe. For this reason, activists desiring the complete dismantling of the criminal legal system recognize that the discussion must be grounded in reality.

The criminal legal system has been a lifesaver for many battered women, including women of color. Women, even from the most disadvantaged communities, routinely seek the help of law enforcement and courts when in crisis. They also want the intervention to end when it is no longer needed. Unfortunately, when state power has been invited into, or forced into, the lives of individuals, it often takes over. Many people who call for assistance end up having no control over the intervention once it has entered their lives.

What Are Community-Based Alternatives to the Criminal Legal System?

Many communities are not safe havens for women. In fact, the battered women's movement turned to the

criminal legal system for women's protection in part because communities had failed to support and safeguard victims and did not hold perpetrators accountable. Therefore, we cannot assume that turning to the community will automatically enhance social justice and safety for women. New models of community engagement are clearly needed.

Many individual battered women depend on the police officer to show up at their door when they are in crisis. In this context, what alternate structures can be offered to protect women from violence? What is a new scenario for keeping women safe?

What is significantly different now for us to believe that community intervention would be effective at this time? Is it feasible to expect individual and collective accountability from the community? With all the work that has occurred over the last 30 years, is there an updated starting point or frame of reference within the community for effective intervention and prevention? What would a community need to organize and undertake issues of social justice, safety of women, and accountability of batterers?

Many organizations in communities of color and marginalized communities have in fact, been created to develop responses that specifically address the realities of their communities. These organizations attempted to create their own safe spaces within their communities, but have not been able to operate in a vacuum. Many of these organizations still grew out of the larger movement and resources for community-based efforts have always been more limited.

Building on the work of the past 30 years and utilizing community assets such as creativity and determination, preventing violence in the lives of women and girls is possible on a grassroots, community level. Violence will not end overnight, but communities can be empowered with tools to change the roles that men, women, and children play and to protect those most vulnerable. Implementing such a new concept will

necessitate strategies, tactics, and actions that have not yet been conceived of or designed. In the same way that engaging with the state brought unintended consequences, we need to be cognizant of potential consequences of these alternatives, ensuring ethical and non-harming strategies.

While many are interested in community approaches, some question whether structures themselves are problematic.* Some argue that formal structures consolidate power and establish hierarchies that ultimately foster oppression. Can we even conceive of non-structural but effective alternatives? While a community is not a formal structure in the same way as the legal system, can it ever be an adequate substitute for the legal system to battered women? Many activists argue that we must invest more resources to prepare communities to prevent violence before it begins. But, even if we organize such a nonstructural entity, can we really trust it with women and children's lives?

In considering community responses, particular questions and challenges arise:

- What should be done with dangerous men, including men who would kill?
- What is an effective alternative to incarceration?
- How can we ensure neighborhood safety?
- What would community-based response alternatives and prevention look like?
- What models of working outside the criminal legal system are being tried in other countries, or even in local communities, and what is their experience?
- Is a vision for community strategies too naïve and idealistic to keep women and children safe? Even if we acknowledge that certain communities have been devastated in large part by criminal legal intervention, would lessening emphasis on legal recourse to domestic violence redress this situation?

As individuals, we are rooted within the community. For many, especially people of color, it provides the lifeblood of existence. A disempowered community weakens its members, whereas an empowered one becomes the

* A structure has a specific mission, purpose, and chain of command. It also has a clear focus that may lead to unambiguous and concentrated actions. Alternately, a non-structural entity would have none of these and may also become diverted by many competing interests and demands.

source of their strength. A victim and her abuser live in the community and this is where the security of women inevitably rests. Even though communities may not yet be ready to support and guarantee safety for women, the onus of ending violence belongs here.

Community organizing is a slow process, and resources are not readily available. The state will not lend its financial support to build communities that might ultimately oppose its centralized power. The decision to invest in our communities must be well informed and carefully weighed, accompanied by a readiness to accept the challenges of such organizing.

What Are Some Examples?

Some groups are beginning to explore what community interventions might look like. They are mindful of the need to ensure the safety of individual women as these new efforts are tested. These interventions include:

- Community squads to intervene with batterers;
- Alternative 911 that rushes community residents to a crisis scene;

- Alternative accountability such as restorative justice, reparation, penalty through community work, etc.;
- Community groups overseeing children's safety; and
- Popular education through alternative means (e.g., street theater, music, media, men teaching men, etc.).

This list, while incomplete, is a place to begin to visualize what communities can do to create a future without violence in women's lives.

What is a new role for government?

Centralizing the ownership for ending violence against women within communities is not the same as absolving government of its obligations to protect women. Envisioning a new role for communities necessitates a shift in governmental role. Rather than the narrow, punitive focus of criminal legal strategies, the idea that government must assume broader responsibility and accountability for guaranteeing the basic human, economic, civil, political, and cultural rights of all human beings, is a key theme for the 21st century. This is the next step in evolving our sophistication as a human race to secure safety and justice for all.

OVERARCHING QUESTIONS AND ISSUES

Most certainly, efforts to address violence against women were intended to protect women, not to cause harm. Nonetheless, unintended negative consequences have resulted, especially from efforts aimed at reforming the criminal legal system. Such efforts have justified increasing criminalization and punitive sanctions, and not necessarily against batterers or sexual assault offenders only, as we have seen with the increased arrests of battered women. Likewise, these efforts have eroded the rights of defendants, including accused batterers and sexual assault offenders.

Given these complicated and often contradictory realities, women's anti-violence advocates grapple with numerous questions. Discussions on reducing criminal legal responses may seem misguided and even potentially dangerous to many who have worked hard to gain legal intervention and improve system response. The criminal legal system has only recently begun to pay serious attention to domestic violence, sexual assault, and other forms of violence against women in some communities. Would a questioning of legal intervention turn back the clock to the "old days" when the state did not intervene at all? At the same time, we must recognize that women from various communities do not receive consistent or fair protection from law enforcement and that most women see the criminal legal system as a last resort. To summarize, some questions that bear further exploration include:

- How do we keep vulnerable individuals, especially women and children, safe and yet hold batterers and sexual violence offenders accountable without calling for longer, more punitive sentences?
- How do we meet the needs of victims without eroding judicial fairness and the due process protections of accused persons?
- What are effective alternatives for women and children's safety both within and outside of the criminal legal system?
- What are the ramifications for women's anti-violence organizations and survivors themselves of any shift in practice and policy development?
- When does reliance on the criminal legal system become over-reliance? How much reliance is acceptable? At what level do these interventions and resources turn into "over-reliance?"
- Would reducing the role of law enforcement in situations of violence against women provide a convenient excuse for some law enforcement officials to "do less?" Would "disengaging" from the criminal legal system absolve the state of its responsibilities toward a segment of its citizenry? Even considering "less stringent criminal legal responses" to violence against women may send a message to offenders that violence against women is no longer a crime or is a less serious one.
- What should be done when offenders in some communities are neither criminalized for violence against women, nor suffer long jail sentences?
- Given the inherent racism of the criminal legal system, is it possible to utilize the system without further damage to communities of color?

- What, if anything, of the criminal legal system do we want to maintain? What parts of the legal system do we want to dismantle, modify, or replace?
- What effect would a movement to lessen the reliance on the criminal legal system as the way to end violence against women have on related issues?
- If we believe that the criminal legal system is not the answer to the problem of woman-abuse, what should replace it? What are the alternate visions of advocates promoting reduced involvement of the criminal legal system?
- What kinds of resources would enable communities to explore effective interventions and services that keep decision-making power within the community?
- Can we achieve prevention of violence against women through a broader agenda that invests in education, employment, housing, and other basic needs?

VISIONING THE FUTURE OF WOMEN'S ANTI-VIOLENCE WORK

Reshaping the future opens up the possibility of transcending more insulated goals and activities and seeing the efforts to end violence against women as an integrated part of a broader social justice agenda, prioritizing coalition building with other anti-oppression groups. Such work must invest energy in flattening out the power structures as well as sharing a common platform with disempowered groups, abolishing a separation between victim and expert, working hard with those whose daily work does not bring them face to face with violence, and forging new understandings of and new solutions for violence against women.

Women's anti-violence agencies and their staff must reflect the desire for this kind of change and mirror the complexity of multiple issues that women grapple with in their lives. This directional shift will involve even

greater personal and collective sacrifices from activists. Such a change in course will also visit consequences upon individual women and their children. New leadership must be developed to move in this new direction, perhaps found in women of color whose set of experiences with multiple oppression might chart a different course for the anti-violence movement. Safety for women must be considered within a larger context that centralizes peace, liberation, and justice for all.

As we anticipated, after two days of conversation, participants in the meeting ended up with more questions than solutions, perhaps even more frustration than inspiration. We hope that this document will encourage many crucial conversations among women and men working to end violence in society within the broader context of safety and justice for all.

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