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If she doesn't want to prosecute, why should we?

Why prosecutors should pursue cases of family violence even when the victim refuses to cooperate or testify

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It's happened to all of us: A new assault family violence case packet or file crosses our desk—a violent assault, possibly even with a deadly weapon or strangulation attempt. The pictures show bruising and other injuries. We call the victim to make contact, get a statement, and start building our case. Her response? She asks how she can get the emergency protective order vacated so the defendant can come home. Or he's already there and she tells us she wants nothing to do with the prosecution; she won't testify and wants to know how to dismiss the charges. We look at the pictures and review the case, considering the challenges of trying it without her.

And we ask: If she doesn't want to prosecute, why should I? Why shouldn't I just save myself the time and effort—and the probable acquittal—and dismiss it? Translation: Why does she stay with the guy who hurts her? It's the same question those fighting against domestic violence have been trying to answer for decades. Why is it important that we proceed with prosecution despite the victim's lack of cooperation? Consider that 70 percent of batterers also abuse children, and children who grow up in homes where they witness domestic violence are at a higher risk for teen pregnancy, drug and alcohol abuse, truancy, and running away;¹ approximately 324,000 female victims of intimate partner violence are pregnant at the time of the abuse;² and intimate male partners perpetrate 40–50 percent of murders against women.³

This country struggles with intimate partner violence that impacts both men and women. The Center for Disease Control and Prevention⁴ showed that approximately 4.8 million women and 2.9 million men experience intimate partner violence every year, with more than 500,000 women requiring medical treatment.⁵ However, when we look at all intimate partner violence (as opposed to reported incidents), women make up about 85 percent of the victims.⁶ Finally, the CDC reported that intimate partner violence led to 1,510 deaths in 2005, with women making up 78 percent and men 22 percent of the victims. It is for this reason that our look at prosecuting an abuser will focus on male perpetrators and female victims.

Many factors

For individuals fortunate enough not to have experienced domestic violence, remaining in such a relationship and failing to prosecute is both frustrating and mind-boggling. However, there are psychological reasons, both internal and external, such as the “threshold effect,” learned helplessness, and financial issues that render a victim in such a relationship incapable of cooperating and impact her choice to remain in an abusive relationship.

Internal factors

A “threshold effect” occurs when a person experiences a little discomfort that slowly escalates. People are able to tolerate increasing amounts of discomfort if the discomfort is not too intense at the beginning. Most abusers do not begin at the physically assaultive level. There is a slow build-up where the partner is at first loving, then slightly jealous or controlling. Name calling, damaging objects, and pushing come later. Isolation from friends and family occurs slowly over time. Finally, threats, physical assaults, and even sexual assault (marital rape) are used to dominate and totally control the partner.⁷

This slow change in the relationship disrupts a victim's ability to effectively evaluate the relationship and see realistic options.⁸ For example, she may minimize the abuse by “forgetting” the bad times and focusing on the good, or she may view her abusive relationship as less intense as the one(s) her mother was in. Finally, the abuser may be seen as the key to social, educational, or professional goals, and the victim does not perceive there to be other eligible, non-violent potential partners. She becomes dependent upon her abuser for social and financial advancement.⁹

Another internal struggle for victims of abuse is “learned helplessness.” This process occurs when a victim experiences punishment or failure over and over. Eventually, the victim gives up trying and becomes passive and submissive. Prolonged abuse robs a victim of her ability to be effective in her life. Problem-solving skills become limited and real options are missed. The more a woman fears her partner, the less likely she is to leave.¹⁰ Other internal barriers include: (a) feeling responsible for the abuse, (b) past unsuccessful attempts to leave, (c) belief in being able to access help, and (d) confidence in being

able to determine one's own fate.¹¹

These internal protective factors found to increase a victim's ability to leave an abusive relationship quickly: (a) high self-esteem or self-worth, (b) positive social support, (c) healthy coping skills, and (d) high sense of perceived control; all of which are diminished or lacking in a prolonged abusive situation.¹²

External factors

It is vital for all of us to understand the fear that comes with leaving an abusive partner. Battered women routinely deal with being "stalked, harassed, beaten, and killed after they have ceased living with their abuser."¹³ "Leaving is not always a rational response to abuse" because separation tends to increase the abusers' violence.¹⁴ Berlinger reported that 70 percent of women murdered by their intimate partners are killed during the separation period. "The average victim leaves her abuser seven times before she leaves for good. Only she can determine when it's safe to leave."¹⁵ If we can create safety around leaving an abusive intimate partner (this includes police and DA office responses), women may leave those relationships much earlier.¹⁶

Other external factors that pressure a woman to stay include:

- (a) finding safe and affordable housing,
- (b) providing financially for children,
- (c) cultural or religious beliefs,
- (d) living in a rural community where leaving also leads to separation from family and friends, and
- (e) a lack of social services.¹⁷

Unlike other crimes, the victim has an emotional relationship, a history, and connections such as family and/or children with the defendant. A domestic violence victim's situation is complicated by those ties. When they do have children, because of the laws governing divorce and child custody in Texas (the presumption that it is in the best interest of the children to have contact with both parents), it is unlikely the victim will ever be completely free of the defendant. In addition, abusers often threaten the victim with taking custody of the children if she leaves. To further complicate the situation, the victim may be financially dependent on the defendant, need his medical benefits, or simply have nowhere else to go. In fact, it is very clear that financial worries are the number one reason why women stay, and this has been documented since the 1980s.¹⁸ When women cannot afford to house or feed their children, they stay with abusive men.

Finally, and this may be surprising to many, care for pets is a consideration of women in abusive relationships.¹⁹ Some victims have witnessed cruelty against or the death of a pet at the abuser's hands. Threats to harm a beloved pet are not uncommon. Many women experience grief at being separated from their pets, and that it is worse for childless victims.²⁰ If children are present, they are often worried

for the pet's safety putting additional stress on the adult victim. Victims may lie to their children or even take the children back to the home to verify the safety of the pet even though this could prove to be dangerous. Sixty percent of pet-owning victims reported that the concern over leaving a pet impacted their decision to leave, and 88 percent said leaving a pet delayed the decision to leave.

Seeing that justice is done

Texas Code of Criminal Procedure art. 2.01 makes it our job and duty to pursue justice. Further, under art. 5.06 it forbids us from requiring proof that a "complaining witness, victim, or defendant is a party to a suit for the dissolution of a marriage or a suit affecting the parent-child relationship before presenting a criminal allegation to a grand jury, filing an information, or otherwise proceeding with the prosecution of a criminal case."

Therefore, we cannot require a victim to leave her abuser as a condition of or prerequisite for pursuing criminal charges. That does not mean we should disregard the victim's preference, especially when she informs us that she has no interest in prosecuting and will not cooperate, significantly increasing the difficulty of proving our case. However, while it is necessary to evaluate each case with a critical and discerning eye—and certainly not every assault family violence case is a righteous case worth pursuing. Dismissing a family violence case solely because the victim is too afraid of retaliation, too weak due to psychological conditioning, or too trapped financially to cooperate is not doing justice and not doing our jobs.

If there is evidence—pictures, 911 calls, medical records, and/or other witnesses—that would enable us to proceed without the victim's testimony, or treating her as an adverse witness, we should. The defendant is counting on us to dismiss the case when the victim files an affidavit of non-prosecution. In fact, he is likely pressuring her to do so and promising her anything he thinks will convince her to "drop the charges" against him. If we proceed anyway, the defendant may take a plea—if not before trial, then when the victim responds to the subpoena and shows up at trial. When we proceed in spite of the victim's initial refusal to cooperate, she has the opportunity to change her mind before the case goes to trial. This often happens when the defendant returns to his old ways and assaults her again or fails to make good on the promises he made in exchange for filing that affidavit.

Finally, the reaction of the legal system is important, and there could be consequences to our inaction. Especially in strangulation cases, the victim may not survive the next assault as strangulation is an indicator of lethality. One of the children could be injured or, in more extreme situations, if we do not make an effort to hold the defendant accountable, the victim may see death (his or hers) as her only escape. If women do not believe they will be believed or protected by the legal system, they may very well be taking their lives into their own hands by leaving.²¹ In addition, though no prosecutor likes to lose, when we make the effort, we send a message to the victim. We tell her that the defendant's actions are not only unacceptable but criminal, and we are willing to stand up for her. Knowing this could alleviate

some of her fear and motivate her to seek out assistance through other avenues or to cooperate the next time it happens. And we all know it will.

Endnotes

- 1 Berlinger, J. (1998). "Why don't you just leave him?" *Nursing*, 28(4), 35-39.
- 2 Berlinger, J. (2004). Taking an intimate look at domestic violence. *Nursing*, 34(10), 42-46.
- 3 Berlinger, J. (1998).
- 4 Center for Disease Control and Prevention (CDC; 2009). Understanding intimate partner violence. Fact Sheet. Retrieved on 6/28/2010 from www.cdc.gov/violenceprevention/pdf/IPV_factsheet-a.pdf
- 5 Berlinger, 2004.
- 6 Ibid.
- 7 See Berlinger 1998 and 2004; see also Stork, E. (2008). Understanding high-stakes decision making: Constructing a model of the decision to seek shelter from intimate partner violence. *Journal of Feminist Family Therapy*, 20(4), 299-327, and Few, A. L., & Rosen, K. (2005). Victims of chronic dating violence: How women's vulnerabilities link to their decisions to stay. *Family Relations*, 54(2), 265-279.
- 8 See Few & Rosen; see also Shaffer, M. (1997). The battered woman syndrome revisited: Some complicating thoughts five years after *R. v. Lavallee*. *University of Toronto Law Journal*, 47(1), 1-33.
- 9 See Few and Rosen.
- 10 Kim, J., and Gray, K. A., (2008). Leave or stay?: Battered women's decision after intimate partner violence. *Journal of Interpersonal Violence*, 23(10), 1465-1482.
- 11 Stork, E. (2008). Understanding high-stakes decision making: Constructing a model of the decision to seek shelter from intimate partner violence. *Journal of Feminist Family Therapy*, 20(4), 299-327.
- 12 See Few and Rosen.
- 13 Shaffer, 1997, p. 12.
- 14 Ibid.
- 15 Berlinger, J. (2004), page 38.
- 16 See Kim and Gray.
- 17 Shaffer, 1997.
- 18 Kim and Gray, 2008.
- 19 Strand, E. B., & Faver, C. A. (2005). Battered women's concern for their pets: A closer look. *Journal of Family Social Work*, 9(4), 39-58.
- 20 Id.
- 21 See Berlinger, 1998 and Shaffer, 1997.

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