

## THE CRIMINAL JUSTICE SYSTEM

*On July 17, 1999, Jackie Anderson called the Mendocino County Sheriff's Department to report that her estranged husband, David Anderson, was at her home, threatening her. Soon after Jackie ended the call, David dragged her to the basement of the home, put a gun in her mouth, and shot her. By the time that sheriff's deputies arrived at the scene, Jackie was dead.*

*Criminal records evidencing David's history of abuse against Jackie date back to 1992 when he was charged with four misdemeanors, including assaulting Jackie with a deadly weapon. David pled guilty to driving under the influence and resisting arrest, all other charges were dismissed, and he was placed on probation. In 1996, David was charged with misdemeanor battery against Jackie, as well as multiple misdemeanors and felonies for violence and threats against responding officers. David pled guilty to misdemeanor battery on a police officer, all other charges were dismissed, and he was sentenced to two years probation.*

*In June 1999, less than three weeks before the murder, David was arrested for hitting Jackie and threatening to kill her and her three children. That night, sheriff's deputies issued an emergency protective order to Jackie and recommended that felony charges of spousal abuse, false imprisonment and terrorist threats be filed against David. Instead, the district attorney charged David with only a probation violation and obtained a criminal protective order requiring David to stay away from Jackie and her children. Two days later, David was released on just \$2,500 bail.*

*On the day before the murder, sheriff's deputies were called when David showed up at the family home in violation of a restraining order. However, the criminal protective order issued by the court was, inexplicably, never entered into the sheriff department's computer system. Moreover, although Jackie obtained a*

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*civil protective order against David a few days earlier, she had not yet delivered a copy of the order to the sheriff's department. Consequently, sheriff's deputies failed to enforce either of these orders and no arrest was made. The next morning, David returned to the home and killed Jackie.<sup>1</sup>*

For centuries, the American criminal justice system turned a blind eye to domestic violence. While efforts to prevent and punish domestic violence date back as early as the mid-1600s,<sup>2</sup> movements toward the effective criminalization of domestic violence were short-lived and failed to overcome overwhelming societal perceptions that domestic violence was, above all else, a private family matter.<sup>3</sup> In fact, it was only thirty years ago that the first cohesive and comprehensive anti-domestic violence movement in our country began to take shape.

The criminal justice system has been the primary focus of historical and current efforts to combat domestic violence. In the 1960s, women's rights advocates, victim advocates, and policymakers across the nation began to raise public awareness about the seriousness of domestic violence and the need to hold batterers criminally accountable for abuse.<sup>4</sup> Heightened public awareness about domestic violence led to significant criminal justice reforms in the 1970s and 1980s that transformed domestic violence from a private family matter, to a public problem warranting intervention by the state.<sup>5</sup> For instance, laws specifically criminalizing domestic violence and allowing for warrantless arrests of domestic violence offenders became commonplace among states.<sup>6</sup>

With the creation and expansion of criminal domestic violence laws came increased reporting of domestic violence as a crime and increased investigation and prosecution of domestic violence. By the 1990s, most states, including California, supplemented laws criminalizing domestic violence with laws mandating law enforcement and criminal justice responses to domestic violence and establishing special criminal protections for domestic violence victims.<sup>7</sup>

As the criminal justice community grew more seasoned in handling domestic violence cases, reforms began to address specific frustrations that arose among criminal justice professionals when handling domestic violence cases. The past decade and a half, therefore, has been marked with criminal justice reforms aimed at remedying specific problems that inhibit the effective investigation and prosecution of domestic violence cases, such as lack of victim cooperation and persisting bias toward domestic violence victims within the criminal justice community.<sup>8</sup> These reforms include the development of written protocols for law enforcement's response to domestic violence, institution of "no-drop" prosecution policies, creation of specialized criminal courts dedicated to hearing domestic violence cases, and increased training requirements for law enforcement and criminal justice professionals.<sup>9</sup>

As a result of these targeted reforms, society has vested a substantial amount of authority and faith in the criminal justice system by making it the primary "system" responsible for responding to domestic violence. Thus, while the criminal justice system's response to domestic violence is only one of many responses that contribute to reducing the incidence of domestic violence homicide, it is clearly one of the most significant interventions to date.

### **Improving Criminal Justice Responses to Domestic Violence**

The criminal justice system consists of many different agencies and institutions (i.e., law enforcement, criminal courts, prosecutors, and probation departments), each of which have felt, and continue to feel, the impact of domestic violence reform. While there have been many changes in the way the criminal justice system responds to domestic violence, the overall goals of criminal justice reform have remained fundamentally the same over the past thirty years. These goals are (1) ensuring victim safety from repeated or escalated acts of violence or abuse and (2) ensuring batterer accountability for abusive criminal conduct.

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Domestic violence poses a serious threat to public safety. In our 100-Case Survey, a person other than the intended victim was either injured or killed at the time that the murder took place in 1 out of every 5 cases surveyed.

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In striving to achieve these goals, advocates and criminal justice professionals alike constantly struggle with the unique tension presented by the criminalization of domestic violence. On one hand, efforts to improve criminal justice responses to domestic violence are often grounded in the belief that domestic violence is a serious crime that should be treated by the criminal justice system as seriously as violent crimes committed against strangers. On the other hand, the intimate nature of the victim and offender's relationship in cases of domestic violence, as compared to stranger violence, often demands special considerations and protections from the criminal justice system.

Indeed, while victims of stranger violence seldom suffer future violence from their attackers, many victims of intimate partner violence continue to have personal contact with their perpetrators even after seeking help from the criminal justice system. This is particularly true if the victim lives or has children with the abuser. Consequently, domestic violence is one of the few crimes for which local agencies have developed multidisciplinary response teams, consisting of specially trained victim advocates and mental health professionals, to provide support, counseling and information to victims at the scene of a reported domestic violence incident. These special intervention services help victims better prepare themselves to leave an abusive relationship and seek assistance for domestic violence.

Compounded with the tensions caused by the victim and perpetrator's intimate relationship is the reality that domestic violence is generally not perceived as a "public crime." While society has grown to view domestic violence as unacceptable criminal conduct, most people perceive the threat of harm posed by domestic violence as being limited to the safety of the individual victim of abuse. Unlike other violent crimes, such as car-jackings and muggings, domestic violence is not viewed as a threat to the safety of the public at large.

This attitude may make it difficult to convince criminal justice agencies to devote scarce resources to maintaining or expanding specialized programs and

services for domestic violence crimes. It may also make it difficult to generate widespread support for sweeping criminal justice reforms aimed reducing the incidence of domestic violence and domestic violence homicide in our state.

What is worse, these public perceptions are patently untrue. In our survey of 100 cases of intimate femicides in California, a person other than the victim was either injured or killed at the time that the murder took place in 1 out of every 5 cases that we surveyed. A total of 16 children and 11 adults were killed in addition to the 100 female murder victims. The collateral victims in these cases included children, siblings, new intimate partners, co-workers, neighbors and friends.

Finally, there are those who feel that the criminal justice system is simply ill-equipped and unsuited to take such a primary role in responding to domestic violence. Given the high rates of domestic violence and domestic violence homicide that continue to occur in our communities, advocates across the country have questioned whether the heavy reliance on the criminal justice system has been misplaced, and whether other approaches, such as active "community policing,"<sup>10</sup> would be more effective in reducing the incidence of domestic violence in our society.<sup>11</sup>

Indeed, U.S. Department of Justice statistics show that victims of domestic violence have not benefited equally from criminal justice reform. In fact, these statistics suggest that advancements in the area of domestic violence have primarily benefited men. From 1976 to 2000, the number of Caucasian male victims of intimate partner homicide in the U.S. decreased by 54 percent<sup>12</sup> and the number of African-American male victims decreased by 77 percent.<sup>13</sup> In contrast, while the overall number of women killed by an intimate partner declined by 22 percent from 1976 to 2000,<sup>14</sup> the proportion of all female murder victims who are killed by an intimate partner has steadily increased since 1995.<sup>15</sup> Moreover, as with male victims, the rate of decline in intimate murder among female victims over the past thirty years has varied by race. The

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number of Caucasian female victims steadily increased from 1976 to 1989, at which time the number dropped significantly from 1,007 to 883 victims.<sup>16</sup> Although the number of Caucasian female victims reached an all time low of 761 in 1997, this number has been increasing in recent years.<sup>17</sup> The number of African-American women murdered by an intimate partner, on the other hand, decreased significantly from 1976 to 1977, remained relatively stable from 1977 to 1993, and has been steadily decreasing in recent years.<sup>18, 19</sup>

These statistics suggest that criminal domestic violence reforms have affected different communities in different ways. In fact, while California has been a leader among states in implementing such reforms, the number of women of color killed by intimate partners in our state has steadily increased in recent years.<sup>20</sup> Although this increase may be partially attributed to general population increases among racial and ethnic minorities in California, the rising number of murders may also reflect a failure on the part of the criminal justice system, as well as other legal and community systems, to address the needs of victims in certain racial and cultural communities. In fact, although women of color constitute approximately 20 percent of California's population,<sup>21</sup> they accounted for 67 percent of female victims, and 59 percent of all victims, of intimate partner homicide in California in 2002.<sup>22</sup>

One possible reason for the above disparities is that our criminal legal system is grounded in the belief that "fairness" and "justice" are best achieved by applying bright-line rules to every case. Criminal justice professionals are conditioned to view criminal matters in "black and white" terms. The uniform application of policies and protocols in domestic violence cases, however, often discounts the unique needs and experiences of domestic violence victims and their batterers.

The nature and dynamics of domestic violence, the reasons why women stay in abusive relationships, and the reasons why men perpetrate violence against their intimate partners are extremely complex and vary greatly from

victim to victim. As these complexities often dictate which criminal justice approach is the most effective and safe for a particular victim, criminal justice responses to domestic violence need to be flexible enough to account for such differences.

Moreover, criminal justice professionals are only human. Law enforcement officers, prosecutors and judges share the same biases and misconceptions as the general public when it comes to domestic violence. These biases can seriously affect how criminal justice protections are applied in individual cases. For example, if a law enforcement officer believes that African-American women are aggressive and instigate altercations with their intimate partners more often than women of other races, the officer is likely to engage in completely divergent responses based upon whether the alleged victim of domestic violence is, or is not, an African-American female.<sup>23</sup> Such biases need to be combated through agency oversight and accountability, as well as and regular education and training, for all levels of criminal justice personnel.

Improving criminal justice responses to domestic violence requires considering and balancing all of the different tensions and factors described above. Moreover, improvement starts with recognizing that there is no “one size fits all” solution for how a particular county or agency can best address the needs of the community it serves. Rather, shortcomings and inequities among local criminal justice agencies should be remedied through multi-agency, collaborative strategies that take into account the unique needs of individual communities and community members. Indeed, if the criminal justice system is to live up to its promise of “justice” for victims of domestic violence, the domestic violence community, as a whole, must be committed to regularly informing, evaluating and implementing meaningful criminal justice reforms aimed at preventing domestic violence and domestic violence homicide in our communities.

In this volume of the report, we begin by examining law enforcement and probation department responses to domestic violence. Issues relating to the

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criminal prosecution and punishment of domestic violence will be addressed in future volumes of this report.

## (Footnotes)

1. Sources: Tanya Brannan, *The Murder of Jackie Anderson*, PURPLE BERETS (1999); Tanya Brannan, *Deadly Consequences, Law Enforcement Fails: Another Domestic Violence Homicide Rocks California's North Coast*, PURPLE BERETS (1999); Wang, U., *Ukiah Man Declared Competent Murder Charge in Wife's Death*, THE PRESS DEMOCRAT (September 20, 2000); Wang, U., *Judge Sets Trial for Ukiah Man in Alleged Murder*, THE PRESS DEMOCRAT (January 12, 2002); and Wang, U., *Teen Recounts Screams, Shots in Slaying Case*, THE PRESS DEMOCRAT (March 15, 2002).
2. The Puritans enacted the first laws criminalizing domestic violence in 1641. See Elizabeth Pleck, *Domestic Tyranny* (Oxford University Press: 1987).
3. Elizabeth Peck, *Criminal Approaches to Family Violence, 1640-1980 in Family Violence, Volume II, Crime and Justice: An Annual Review of Research*, edited by Lloyd Ohlin and Michael Tonry (Chicago: UNIVERSITY OF CHICAGO PRESS 1989).
4. Jeffrey Fagan, *The Criminalization of Domestic Violence: Promises and Limits*, NIJ RESEARCH REPORT (January 1996).
5. Buzawa, E. and Buzawa, C., *Domestic Violence: The Criminal Justice Response*, 3<sup>rd</sup> ed. (SAGE PUBLICATIONS: 2003).
6. *Id.* at pp. 109-15.
7. *Id.*
8. *Id.*; *The Nature and Scope of Violence Against Women in San Diego*, SAN DIEGO ASSOCIATION OF GOVERNMENTS (March 2000) pp. 29-30.
9. *Id.*
10. The U.S. Department of Justice defines "community policing" as a "policing philosophy that promotes and supports organizational strategies to address the causes and reduce the fear of crime and social disorder through problem-solving tactics and police-community partnerships," See *What is Community Policing?* U.S. DEPARTMENT OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, available at <http://www.cops.usdoj.gov/default.asp?Item=36> (accessed August 8, 2005).
11. *Safety & Justice for All: Examining the Relationship Between the Women's Anti-Violence Movement and the Criminal Legal System*, Ms. FOUNDATION FOR WOMEN (2003).
12. The number of Caucasian males killed by an intimate partner dropped from 493 in 1976 to 229 in 2000. *Homicide Trends in the U.S.: Intimate Homicide*, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, available at <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm> (accessed August 8, 2005).
13. The number of African-American males killed by an intimate partner dropped from 846 in 1976 to 192 in 2000. *Id.*

14. *Intimate Partner Violence, 1993-2001*, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS (February 2003), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv01.pdf> (accessed August 8, 2005).

15. The percentages of female homicide victims who were killed by an intimate partner from 1995 through 2000 are as follows: 26.3 percent in 1995; 29.6 percent in 1996; 29.5 percent in 1997; 32 percent in 1998; 32.1 percent in 1999; and 33.5 percent in 2000. U.S. DEPARTMENT OF JUSTICE, *supra* note 12.

16. *Id.*

17. *Id.*

18. The number of African-American women killed by an intimate partner dropped from 714 in 1976 to 570 in 1977, remained relatively stable at an average of 525 deaths each year from 1978 through 1992, and gradually decreased from 542 in 1993 to 333 in 2000. *Id.*

19. No uniform national statistics documenting similar trends among other specific racial and/or ethnic groups were gathered during this period.

20. According to California Department of Justice statistics, the numbers of women identified as a race other than Caucasian who were killed by an intimate partner each year from 1998 through 2002 are as follows: 73 in 1998; 78 in 1999; 91 in 2000; 100 in 2001; and 121 in 2002. *Willful Homicide Crimes, 1998-2002, Domestic Violence as the Precipitating Event by Race/Ethnic Group of the Victim*, CALIFORNIA DEPARTMENT OF JUSTICE, CRIMINAL JUSTICE STATISTICS CENTER (on file with author).

21. This statistic is an estimation based on U.S. Census Bureau statistics which indicate that, in 2000, 40.5 percent of California's population identified as a race other than "White" and 50.2 percent of the population was female. *California Quick Facts*, U.S. CENSUS BUREAU, available at <http://quickfacts.census.gov/qfd/states/06000.html> (accessed August 8, 2005).

22. In 2002, a total of 206 people were killed by an intimate partner in California. Of the 181 women murdered by an intimate partner that year, 121 were identified as a race/ethnicity other than Caucasian. See CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 20.

23. See *Third National Conference on African American Women and the Law: Facing Challenges – Forging Change, African American Women's Action Agenda* in *Voices of African American Women in the United States of America: The Unkept Promises of the Platform for Action*, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW (May 2000), p. 37 (One of the action items on the African American Women's Action Agenda from the Third National Conference on African American Women and the Law stated as follows: "Training of law enforcement to address the perception that Black women can 'take' the abuse because they are strong bodied; and to expose the fear that law enforcement officers have of African American women. This

training should decrease the tendency of law enforcement to respond inappropriately [to violence against African American women] as they view sisters as being 'loud,' aggressive and dangerous.").