

Effective Interventions in Domestic Violence Cases:

Context Is Everything

In order to ensure that criminal justice system interventions are effective in holding offenders accountable and protecting victims from harm, the context in which each act of domestic violence must be understood.

Introduction

The criminal justice system is, by design and necessity, incident-focused. For example, guilt or innocence is usually determined relative to a single alleged act. However, as in the case of the use of violence to defend oneself, the context in which the violence is used may be quite relevant to the issue of criminal culpability. Furthermore, for purposes of bail or sentencing hearings the legal system must be able to distinguish among defendants in order to tailor its responses to their acts and to ensure that the system's handling of cases is effective. The context in which incidents occur is one of the most significant ways in which acts of domestic violence differ.

In order to intervene effectively in these cases, it is important to understand the complex issues of violence within intimate relationships, including the (1) intent of the offender, (2) the meaning of the act to the victim and (3) the effect of the violence on the victim; the *context* within which any given act of violence occurred. Other relevant factors include the particulars of the incident, and how much violence, coercion, or intimidation accompanied the violent event.

Some perpetrators are highly dangerous to their victims and other persons, while many are not. Some perpetrators are amenable to treatment or educational programs, while attempting to use such approaches with other perpetrators is not only a waste of resources but dangerous to the victim. Some perpetrators act in self-defense or only in response to a pattern of ongoing violence against them, while others are truly predators and terrorists whose violence must be addressed as such. Intervenors must develop and utilize methods of gathering relevant information, including from victims, about these perpetrators, as well as ways to assess the perpetrators' histories and dangerousness. They must handle cases in a manner which maximizes victim safety and offender accountability in each case.

The last two decades of experience with people who use violence in their relationships have demonstrated to both the criminal justice system and people in the battered women's movement that there are several historical contexts in which specific acts of domestic violence occur. They include (1) a history of battering, including intimidation and control tactics, by the actor; (2) the existence of a mental impairment or disability which affects the culpability of the actor; (3) the absence a history of prior acts of violence, including tactics of intimidation and control, against the victim, which situation

could lead a careful intervenor to the conclusion that the act was an isolated and uncharacteristic one; (4) a history of the use of violence by the actor in many situations and to resolve conflicts with many people outside the family, where the use of violence against a partner is only one part of a pattern of general “fighting” violence; and (5) in the context of and responsive to battering, where the person uses violence against a partner to resist or defend against the battering.

Because each of these contexts can call for a different response by intervenors, each one must ensure (1) that the relevant information is obtained on each person who uses violence in his/her relationship, (2) that the information shared with other intervenors who need the information, and (3) that that information is incorporated into decisions about how the case is handled.

1. Pattern of Violence, Intimidation and Control: Battering

In the context of battering, an act of violence against a partner is often only one component of a complex system of controlling, coercive, intimidating, and violent behaviors used by someone, a “batterer” to control the victim. The violence causes – or likely will cause – a significant gap in power and autonomy between the batterer and the victim, and it severely compromises the victim’s autonomy.

“Battering” is a sociological term coined by the grassroots battered women’s movement to describe this pattern of physical abuse, intimidation, coercion, and other forms of abuse committed by a person (the batterer) to establish or maintain control of his or her partner. This pattern is described by the Power and Control Wheel, which was created by women who attended support groups in Duluth, Minnesota, and who were asked to describe behaviors, in addition to violence, that gave their violent partners power over them. Eventually the group started calling these behaviors “tactics.” Other tactics were listed, but almost all women experienced all the tactics described on the wheel. Not all behaviors on the Power and Control Wheel are illegal acts or assaults.

Battering behavior is often denied or minimized by the perpetrator. The victim often has little reason to believe that the violence will be repeated or that it will become more serious over time, contributing to her assessment that ending the relationships would be more risky or problematic than staying in it. When a battered woman does attempt to leave a battering relationship, the violence, intimidation, and coercion often escalate because the separation constitutes a direct threat to the batterer’s control over the victim. Research has not yet shown whether this is also true in cases where men are assaulted by their female partners, although there is evidence that there are few women who manage to control their male partners through violence and intimidation. Criminal justice system interventions that are most effective in battering cases are interventions which take into account the intent, meaning and effect of the violence, as well as its other common characteristics.

2. Absence of violence, intimidation and control: Isolated Act

A person may use violence only once in a relationship; the act is highly uncharacteristic. Such an act of violence often occurs in the context of unusual, highly stressful circumstances which leads the actor to say and do things he or she has never done or said. In this context, the incident is *not* part of a larger pattern of coercion, intimidation, and/or violence, and neither party in the relationship uses violence to control the other. The person who uses violence in this context normally freely admits their behavior. Such an act may be an illegal domestic assault, but the perpetrator does not generally benefit from a batterers' rehabilitation group.

Many men who are actually batterers will, upon being publicly accused of an assault for the first time, will assert that the assault is an isolated event. And many of these men's partners, who are actually battered women, will make statements agreeing with the assertion that the assault was a one-time event.

Intervenorers who are comfortable with the conclusion that a given incident constituted an isolated act should look for other signs that the person using violence is beginning, or is already entrenched in, a pattern of controlling behaviors which could easily lead to battering.

3. History of General Violence: A "Fighter"

Some people are generally violent people (which we refer to herein as "fighters") who use violence to resolve many kinds of conflicts, no matter the context in which the conflicts occur. These people may have poor communication skills and know little of non-violent means for resolving conflict. They may be chemically dependent. Note that a person can be a generally violent "fighter" and also be a batterer, so intervenorers need to screen such cases for evidence of tactics of intimidation, power and control which would indicate that the "fighter" is actually acting as a batterer in the use of violence in his or her relationship.

4. History of Mental Impairment or Incapacity

A person may use violence as a result of an impairment caused by mental illness, alcohol/drug dependency, medication, or other factors. Such a person's use of violence in a relationship may well be illegal unless the person lacks criminal intent or is otherwise not considered culpable under the law. Research shows that a very small percentage of domestic abuse is due to mental impairment, although batterers have been known to assert that they should not be held accountable for their violent acts because they suffer from some kind of impairment. In addition, some mental health care providers, misunderstanding domestic violence, may misdiagnose a batterer as impaired when he is, in truth, using violence simply because he believes that he has the right to control his partner through various means which include violence. Finally, note that batterers are

no more likely than are the general population to suffer from mental illness and that people with mental illness are no more likely to batter their partners than people without mental illness.

5. Self Defensive or Responsive to Battering

A person's use of violence against a partner may occur only and always in response to violence or a threat of violence by the partner. Legally justifiable acts in this category include acts that are classically self-defensive; that is, they are taken to prevent the actor from suffering imminent serious harm. Acts that are responsive to violence can also be illegal. For example, a person can use violence against his or her batterer in order to punish the batterer, to "stand up to" the batterer, or to dissuade the batterer from further use of violence.

In all of these cases, the person using the violence is trying to control a situation rather than to establish overall control over the other person. Some women who have been battered in previous relationships may use violence to try to establish that they will not tolerate controlling behaviors or violence by their current partner. The key factor is that there is no attempt by the person using the violence to also use coercion or intimidation to keep the victim of their responsive violence in a state of fear (behaviors which constitute battering). The violence used in response to battering or in self defense is usually less severe than the battering violence (except in some cases involving the use of weapons) and the users of this type of violence usually stop their violence when the relationship ends.

Interventions with such persons must recognize the intent and effect of the violence, as well as the central role violence against the perpetrator plays in the decision to use violence. Sentencing and other remedies used with these perpetrators should reflect the fact that traditional batterer's intervention programs may be a waste of time and resources. In addition, they should address the reality that the victim of this type of violence will likely continue to intimidate and control, if not assault, his/her partner in the absence of intervention.

May, 2001

Effective Interventions in Domestic Violence Cases: Context is Everything

By Loretta Frederick, Legal Counsel, Battered Women's Justice Project, Minneapolis, Minnesota, a program of Minnesota Program Development, Inc., Duluth, Minnesota, (800) 903 0111 x 1, and Julie Tilley, Praxis, Duluth, Minnesota, (218) 277 7281