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Judgment Days:
On Domestic Violence, Battered Women and Children, and a Liberal Court

by

Anke Therese Schulz

DISSERTATION

Submitted in partial satisfaction of the requirements for the degree of

DOCTOR OF PHILOSOPHY

in

SOCIOLOGY

in the

GRADUATE DIVISION

of the

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Dedication and Acknowledgments

I dedicate this dissertation to Dr. Johannes M.artin Bos, my partner, who has given me so much love and support for the last 16 years.

I also dedicate this dissertation to my father, Dr. Hans-Joachim Karl Schulz, whose physical abuse and emotional tyranny of my mother, my brother and me I will never forget.

Judgment Days:
On Domestic Violence, Battered Women and Children, and a Liberal Court

Anke Therese Schulz

Abstract

This dissertation is a feminist, sociological ethnography of a domestic violence court in San Francisco. In this study, I examine court procedures and discourses (i.e., negotiations, arguments, and judgments) involved in the legal processing of criminal domestic violence committed by male batterers against women and children.

This ethnography is an observational study of a dedicated criminal domestic violence court in San Francisco. Ethnographic methods were used to gather data about the court that are typically unrecorded in court dockets and transcripts. Data were collected to examine five research questions: (1) How does the criminal court process cases of domestic violence against women and children?; (2) How are battered women and children treated by court officials?; (3) How does the court protect victim safety?; (4) How does the court address the needs of children?, and (5) How does the court deal with the issue of family privacy? Fieldwork was conducted for a period of six weeks in January and February, 2004. Data were analyzed using content analytical methods and NUD*IST, an ethnographic software program. Key themes and concepts were identified, coded and analyzed to identify underlying judicial and social processes involved in criminal domestic violence court cases.

Three major themes emerged from this study, namely: *victim safety*, *children in the court*, and *family privacy*. With regard to victim safety, I found that, although the judge routinely issued restraining orders to protect battered women and children, these orders were often lifted or modified shortly after being issued. With regard to children, I found that, with the exception of adding children's names to restraining orders, the court extended few additional protections to children. Lastly, despite efforts by some court officials (prosecutors, victim advocates, and probation officers) to reconceptualize domestic violence as a public issue, I found that the judge's rulings remained anchored in traditional legal principles of family privacy that have historically protected batterers from law enforcement and prosecution.

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PART 1

PROJECT RATIONALE, THE LEGAL CONTEXT, THEORETICAL FRAMEWORKS, AND REVIEW OF EMPIRICAL STUDIES

CHAPTER 1: PROBLEM STATEMENT, BACKGROUND, RESEARCH QUESTIONS AND METHODS

A. Problem statement

1.1 Introduction and statement of purpose

This dissertation is an ethnographic study of a domestic violence court, and how it processes criminal cases of domestic violence against women and children. The methodology of this study is grounded in feminist, sociological perspectives that seek to make visible hidden aspects of women's encounters with social institutions. The purpose of this study is to examine how domestic violence, a prevalent social problem in the U.S. (and worldwide), is transformed by the courts from a social problem into a legal issue, and how this transformation may affect the well-being of battered women and children living in San Francisco.

To examine how domestic violence is transformed from a social into a legal issue, I conducted six weeks of ethnographic fieldwork in a dedicated domestic violence court in San Francisco. During the fieldwork period, I "inhabited" the courthouse, observing court proceedings, and visiting departments relevant for victims. In a journal, I kept detailed field notes about what I observed, felt and encountered, gathering information about the people, the atmosphere, and the geography of the court. As I conducted the fieldwork, I attempted to do so from the victims' perspective.

I have dedicated this dissertation to the subject of domestic violence against women and children because I am interested in the prevention of domestic violence, and social justice for women and children. Although domestic violence is a social problem that is deeply embedded in broad, complex, and conflictual social relations, in this study I have focused on the court system because it is an important arena for public discourse

and negotiation about violence. Courts also may have the potential to effectively intervene in domestic violence, thus contributing to social change.

In this dissertation I examine how the legal system "handles" domestic violence cases as they are transferred, by battered women and prosecutors, from the private sphere of family relations into the public arena of a local court. Historically, U.S. law has treated domestic violence against women and children as a private, family matter. Since the 1990's, however, with the enactment of new legislative measures against domestic violence (e.g., the federal Violence Against Women Acts I and II), courts have been mandated to take on a more interventionist role. In this dissertation, I examine to what extent this mandate is being realized in San Francisco, a politically progressive city, and whether domestic violence is currently being treated by a local domestic violence court as a public, societal issue.

The research conducted for this dissertation is not informed by a single theoretical framework, but rather relies on multiple frameworks that shed light on some aspect of the relationship between the legal system and domestic violence against women and children. In the theory chapter (Chapter 3), I discuss these frameworks in detail, and describe their usefulness for examining the legal processing of domestic violence cases in the courts.

B. Background

1.2 Prevalence of domestic violence against women and children

Domestic violence against women and children is a widespread social problem in the U.S. According to one study, 40 percent of adult American women have suffered from physical abuse by an intimate male partner (Collins et al., 1998). Another study found that domestic violence is the single greatest cause of injury to women, more than

automobile accidents, rapes and muggings combined (Stark and Flitcraft, 1985). In a report published by the U.S. Department of Justice, researchers state that 3 out of 4 women murdered in the U.S. are killed by an intimate male partner, spouse or family member (Rennison, C.M. and S. Welchans, 1998). In this latter study, researchers also found that women with children are at greatest risk of intimate partner homicide: 40 percent of female victims of intimate partner homicide lived in households with children aged under 12 (Rennison, C.M. and S. Welchans, 1998).

Domestic violence is also a serious problem in San Francisco. According to the San Francisco Police Department, it receives between 20 and 25 domestic violence-related calls every day (San Francisco Police Department, 2003). The San Francisco District Attorney's Office also reports that domestic violence is the leading cause of female homicide in San Francisco: among all female homicides committed in San Francisco in 1993, over half (54 percent) involved domestic violence (Schwartz, 1996). The San Francisco district attorney's office also found that, in 1991, over 8,000 residents called domestic violence crisis lines, and that only three domestic violence shelters (with a total of 66 beds) were available to assist victims, and that San Francisco domestic violence shelters routinely turn away over 85 percent of battered women and their children due to lack of available space.

Although women are often considered to be the primary victims of domestic violence, children are victimized by domestic violence as well. Davidson (1994), for example, estimates that between 3.3 million and 10 million children are victimized by domestic violence in the U.S. every year. These children may be directly and indirectly abused by the batterer: that is, batterers may physically and emotionally abuse their

children, or expose them to violence perpetrated against their mother. Direct and indirect exposure to domestic violence is extremely harmful for children: child development studies show that any exposure to domestic violence causes severe emotional trauma (Perry, 1995). Exposure to domestic violence has such severe consequences for children, that some child development experts consider it a form of child abuse (Perry, 1995).

In every case of domestic violence, there is a strong likelihood that children are involved. Statistics show that young women of child-bearing age - women who are most likely to be pregnant or mothers – have the highest rates of domestic violence victimization (Goodwin et al., 2000). Pregnant women are not only more likely to be abused than other women, they are also at greater risk of escalating and severe violence (Goodwin et al., 2000). Because pregnant women suffer disproportionately from domestic violence, they are more likely to experience miscarriages, or give birth to premature or low birth weight infants (Goodwin et al., 2000).

Children witnessing domestic violence, or living in violent homes, are often described as being "exposed" to domestic violence. Bancroft and Silverman (2002) write that children may be exposed to domestic violence in a variety of ways. For example, children may observe their father abusing their mother, or they may hear the abuse from another room in the home. Some batterers purposely inform their children of the abuse in order to scare them into silence or obedience. According to Bancroft and Silverman (2002), children exposed to domestic violence often develop feelings of paralysis, fear and anxiety. These feelings can be overwhelming, interfering with children's daily functioning and personal development. Children, however, rarely report or talk about the

abuse. Children often deny the abuse is taking place for fear of breaking up the family, or triggering another incident of battering (Bancroft and Silverman, 2002).

Children living with domestic violence often try to avoid the batterer and his abuse, but batterers are unlikely to spare their children from assault (Edleson, 1999). Statistics show that batterers who abuse women are highly likely to abuse their children as well: one study estimates that the correlation between domestic violence against women and domestic violence against children may be as high as 80 percent or higher (Edleson,1999). Given this high correlation between domestic violence against women and domestic violence against children, if children are sharing a home with the batterer, it is almost certain they are being victimized along with their mothers. Children's advocates argue that it is important for courts and other public institutions to effectively address children's victimization in cases of domestic violence against women; otherwise, these children may remain trapped in violent households until they reach adulthood (Bancroft and Silverman, 2002).

The risk of domestic violence against children typically reaches its peak during the early post-separation period. Studies show that batterers' violence is most likely to escalate when battered women first leave (or are planning to leave) the relationship (Hassler et al., 2001). In the post-separation period, batterers' violence often increases in frequency and intensity toward both mothers *and* children. Batterers may use children as instruments of retaliation against the mother, or pressure them to remain silent about the abuse (Bancroft and Silverman, 2002). Other batterers may sexually abuse, rape, kidnap, or kill their children, either in retaliation against the mother, or as a demonstration of their control over the family (Bancroft and Silverman, 2002).

Studies show that domestic violence has severe, long-term consequences for both women and children (Tjaden and Thoennes, 2000). Victims frequently suffer from physical and emotional injury, including: broken bones, depression, homelessness, poverty, post-traumatic stress syndrome, and social isolation (Mercy et al., 2003). Severe effects of domestic violence are particularly likely among battered women and children seeking assistance from the courts. Richman (2001), for example, found that women and children applying for a restraining order in Orange County, California, only did so as a last resort, after many years of suffering from emotional and physical injury. Other studies show that, by the time battered women and mothers engage the legal system, the violence has often escalated to life-threatening levels (Gondolf, 2002).

1.3 Domestic violence and the courts

Large numbers of women and children are victimized by domestic violence annually, and in California, many jurisdictions have established special domestic violence courts to process these cases (MacLeod and Weber, 2000). According to the Judicial Council of California, a domestic violence court is one in which a judge (or judicial officer) hears a "special calendar" of domestic violence cases, and is committed to "enhancing victim and child safety and ensuring batterer accountability" (MacLeod and Weber, 2000). The Judicial Council identifies two types of domestic violence courts in California: *dedicated courts,* in which domestic violence cases are heard exclusively, and *non-dedicated courts,* in which domestic violence cases are heard along with other types of cases (MacLeod and Weber, 2000). In San Francisco, and in other large urban areas

with high domestic violence caseloads, dedicated courts have been created to process domestic violence cases exclusively.

1.4 Judges and domestic violence courts

According to the U.S. Attorney General's Task Force on Family Violence, judges are potential "key agents" for the prevention of domestic violence (U.S. Department of Justice, 1984). Levey et al. (2001), however, state that, in order for judges to effectively intervene, they must have a common understanding of the problem of domestic violence, and received specialized training in domestic violence law. In California, domestic violence laws and procedures are detailed in the California Judges' Bench Book on Domestic Violence (Lemon, 1996). The purpose of this bench book is to familiarize judges with the dynamics of domestic violence, and domestic violence law, in order to "improve judicial responses" to domestic violence (Lemon, 1996). In the introduction, the authors state: "Increasingly, the need for all branches of the justice system to handle domestic violence cases in a consistent manner, and from the same base of knowledge, has been recognized" (Lemon, 1996). The authors also state that the bench book is part of a broader effort to develop programs and curricula for the continuing education of criminal court judges who process domestic violence cases.

1.5 Victims and domestic violence courts

While domestic violence caseloads have increased significantly in the last decade, these cases continue to represent only a small fraction of domestic violence that is actually perpetrated by male batterers against women and children (Levey et al., 2001). Part of the gap between prevalence and prosecution rates may be attributable to battered

women's reluctance to report the abuse. Richman (2001), for example, states that most battered women turn to the courts only as a last resort. In her interviews with battered women applying for a restraining order in Orange County, California, Richman (2001) found that, prior to filing for a restraining order, battered women attempted to "manage" the abuser's violence for years, even decades. Battered women in Richman's study reported that they had first sought help from family members, friends, domestic violence hotlines, and counselors, before turning to the courts. The battered women in Orange County also stated that they felt ashamed about the abuse, and that they turned to the legal system for help only when the abuse had become life-threatening and unmanageable.

The gap between domestic violence prevalence and prosecution rates may also be attributed to the legal system (Fernandez, M., Iwamoto, K., and B. Muscat,1997). Historically, the legal system has prosecuted batterers only with the greatest reluctance (Siegel, 1996). Given battered women's hesitation to involve the courts, and many prosecutors' unwillingness to charge batterers, few domestic violence cases continue to be brought before a criminal court judge, despite recent laws granting district attorneys and courts greater authority to intervene in domestic violence. When domestic violence cases are brought before a criminal court judge, these cases are often severe and dangerous. They typically involve major injuries to women and children, and repeated incidents of violence. By the time a domestic violence case reaches a criminal court judge, victims are often in desperate need of help. At this point, most battered women will have exhausted many of their sources of social support, and are therefore highly dependent on the legal system and the courts for assistance and protection.

C. Research questions

In the existing literature on domestic violence and the courts, researchers have identified a number of critical issues related to court intervention in domestic violence. For example, Cretney and Davis (1997) found that, in the court proceedings they observed, prosecutors often trivialized batterers' violence. In another study of domestic violence courts, researchers found that judges openly sympathized with batterers, and humiliated or demeaned battered women (Memoli and Plotino, 1993). In a third study, researchers found that judicial decisions often compromised victim safety, and put children at risk of further violence (Jaffe, Lemon and Poisson, 2003). Collectively, these studies suggest that domestic violence courts may not be providing adequate support and protection for battered women and children.

On the basis of these findings, I have formulated five research questions for this study. The first question is: How does the court process criminal domestic violence cases? This question reflects one goal of this study, namely to document and analyze court procedures for processing domestic violence cases. The purpose of this research is to inform victims and advocates about little-known aspects of how the domestic violence court "works." Richman (2001) reports that, for many battered women, seeking help from a domestic violence court is an overwhelming and frightening experience. It is therefore critical for victims and advocates to understand what to expect. In this dissertation I will provide practical, critical information about the domestic violence court that will help victims and advocates effectively navigate the legal system.

A second research question addressed in this study is: How does the court treat battered women and children? Prior studies have found that some prosecutors and judges trivialize women's experiences, verbally demean them, or even chastise them for coming forward and "wasting" the court's time (Ptacek, 1999; Memoli and Plotino, 1993). In interviews, many battered women have stated that they felt "battered all over again" by the legal system to which they had turned for help (Richman, 2001). Negative treatment by the court deters battered women from reporting domestic violence, and undermines their cooperation with prosecutors (Fernandez, M., Iwamoto, K., and B. Muscat,1997).

A third research question addressed in this study is: How does the court ensure victim safety? For victims, safety is a primary concern: studies show that battered women and children are most vulnerable to escalation in domestic violence when they attempt to leave the abusive relationship, or when they appeal to the courts for help (Jaffe, Lemon and Poisson, 2003). Although California domestic violence court officials are well aware of the extreme danger victims face when they decide to involve the legal system (MacLeod and Weber, 2000), it is not known to what extent judicial decision-making acknowledges this risk. For example, in order to protect victims, judges may issue a restraining order against the batterer (Holt et al., 2002). In this study, I will examine how often judges issue restraining orders, under what conditions these orders are issued, and how long these orders remain in effect. I also examine whether the court implements any other measures designed to protect victim safety.

A fourth research question addressed in this study is: How does the domestic violence court handle the needs of children? Perry (1995) and others have documented the traumatizing effects of domestic violence on children, and that children often suffer

acutely, and silently. Because children are frequently too frightened to report the violence, social and legal institutions tend to ignore their needs (Jaffe, Lemon and Poisson, 2003). As a result, children become the "hidden" victims of domestic violence. In this study, I will examine to what extent the local domestic violence court acknowledges, and addresses, the unspoken needs of children.

A fifth research question defined for this study is: How does the domestic violence court address the issue of family privacy? Legal analyses of domestic violence law have found that family privacy is a primary legal principle embedded in domestic violence law (Siegel, 1996). The legal principle of family privacy has been criticized, however, for contributing to the maintenance and reproduction of patriarchal power within the family (Gordon, 1988). Olsen (1983) has also found that the enduring principle of family privacy undermines the legal system's ability to protect victim safety.

D. Methods

1.6 Definitions and terminology

In this dissertation, I refer to the problem being studied as domestic violence against women and children. Although many terms for domestic violence exist (e.g., family violence and intimate partner violence), few of these terms highlight the gendered character of the problem, and the fact that children suffer equally from domestic violence against women. Contrary to what gender-neutral terms for domestic violence suggest, men and women do not engage in similar rates of domestic violence. In the vast majority of cases, domestic violence is perpetrated by men against women, and most often by men against pregnant women and mothers. For example, in one study conducted by the U.S. Department of Justice, women were at least five times more likely to be victimized by

domestic violence than men (Greenfield et al., 1998). Other studies report even higher discrepancies between male- and female-perpetrated domestic violence (Tjaden and Thoennes, 2000).

Domestic violence is commonly viewed as an individual or interpersonal problem occurring within the context of the family or an intimate relationship. This individualized conception of domestic violence is also reflected in legal definitions of domestic violence. For example, according to the California Penal Code 13700, domestic violence is defined as "abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship" (Lemon, 1996). This definition frames domestic violence both as an interpersonal problem, and as a criminal matter. According to the California Judges' Bench book (Lemon, 1996), domestic violence includes the following penal codes: domestic violence assault (PC 273.5), domestic violence battery (PC 243(e)(1)); intimidating a victim witness (PC 136.2); terrorist threats (PC 422); spousal rape (PC 262); stalking (PC 649.9); and violation of a restraining order (PC 274.6). In the domestic violence court where I conducted fieldwork, I observed cases involving one or more of these charges filed against batterers.

Sociologists and other social scientists have critiqued individual, interpersonal, and legal conceptions of domestic violence for ignoring the important role social institutions play in the production and reproduction of domestic violence against women and children (Gordon, 1986). Gordon (1986), for example, a feminist historian, defines domestic violence as "a product of conflict and negotiation between people troubled by

domestic violence and social control agents attempting to change their supposedly unruly and deviant behavior." In this definition, Gordon identifies social control agents (representing the state) as co-producers of domestic violence against women and children.

Individual, interpersonal, and legal definitions of domestic violence have also been critiqued for being defined in gender-neutral terms. Feminist sociologist Kersti Yllo, for example, argues that, because women are most often victimized by domestic violence, the problem must be viewed through a feminist "lens" (Yllo, 1993). As a feminist sociologist, Yllo argues that studies of domestic violence must focus on gender and power as key elements in domestic violence. She defines domestic violence as a coercive control tactic, perpetrated by men against women for purposes of creating and maintaining male power within the family and society (Yllo, 1993). According this perspective, individual acts of domestic violence against women and children are embedded in larger, social relations that contribute to the maintenance of patriarchy in society.

1.7 Fieldwork, data sources, and data collection

Fieldwork for this project was conducted at a domestic violence court in San Francisco in January and February, 2004. During this period, I visited the court every day, Monday through Friday, for six weeks. Court sessions typically began at 9:00 am, and continued until the early afternoon, usually ending at 1:00 or 2:00 pm. During the fieldwork period, I conducted courtroom observation, observed the domestic violence court, and spent time in other areas of the courthouse frequented by victims, before and after court sessions. While visiting other departments, I observed, and recorded notes

about the courthouse environment that battered women encounter and must negotiate. On occasion, I informally talked with court officials for purposes of gathering contextual information about the courthouse and the domestic violence court. The types of data collected for this study therefore include: observational field notes gathered in the courtroom, notes on informal conversations with court personnel, notes on my own personal experiences (for purposes of making the researcher visible in the field work), and printed information given to battered women at the courthouse. All of these data comprise the dataset I analyzed for this dissertation.

In the process of collecting data, I attempted to view the courthouse environment, and the courtroom, from the victims' perspective. I recorded information about: the courtroom atmosphere; the judge's demeanor; victims' behavior (women and children); defendants' behavior; court officials' actions; and the judge's decisions. In my fieldnotes, I also recorded: how battered women and children are treated in court; whether they came to court alone or with friends and family; whether they were supported by victim advocates; whether they were given an opportunity to address the judge; whether their statements were believed by the judge; whether they were represented by an attorney; and how batterers (and defense attorneys) reacted to victims' presence in the courtroom. Other factors I tried to consistently monitor included: whether the litigants appeared in court on time; whether the litigants observed courtroom rules and etiquette; and whether the court provided translators in cases involving non-native English speakers.

1.8 Sampling

The study sample includes every criminal case of domestic violence committed by male batterers against women and children that was called before the bench during the fieldwork period. During the six-week study period, I observed an average of 70 domestic violence cases per day. In the six weeks I spent at the court, I observed a total of 1,703 misdemeanor and felony criminal domestic violence cases involving women and children victims. In these cases, batterers were charged with a variety of criminal behaviors, including: domestic assault and battery; child endangerment; violation of a restraining order; and probation violation (e.g., failing to participate in a batterer treatment program, or failing to appear in court).

1.9 Analysis

Fieldnotes compiled during the study period were analyzed using the ethnographic software program NUD*IST. The hand-written field notes were first scanned electronically and translated into PDF picture files, then imported into the NUD*IST program for the analysis. Following importation into NUD*IST, I assigned a unique number to each case and indexed the cases according to data source, case type and date. For the analysis, I examined the data for major themes and key concepts, such as family privacy and victim safety. Some of these themes were predefined (as suggested by the existing literature on battered women and the courts), while other themes and concepts emerged from the data. To verify consistency in coding, I conducted the analysis a second time.

I used the NUD*IST software program to conduct the analysis in several ways. First, NUD*IST (Non-numerical, Unstructured, Data: Indexing, Searching and

Theorizing) was used to store and manage various types of data (i.e., journal entries, court calendars, and informational pamphlets) in one place electronically. Secondly, once I had imported the documents and assembled them into one project database, NUD*IST was used to search all of these documents simultaneously for words and phrases representing key concepts and themes. Once I had identified and flagged key concepts and themes, I retrieved the documents in which they appeared, and was able to examine the contexts in which they appeared. For example, using the search terms "safety" and "danger," I found that the issue of victim safety came up in certain types of court cases, namely: (a) petitions filed by batterers to lift or modify a restraining order; (b) petitions filed by batterers for child visitation; and (c) petitions filed by batterers to be released from custody on their own recognizance.

The coding strategy was informed by methods described by Richards and Richards (1994), who created the NUD*IST program to help academics and qualitative researchers manage and analyze large amounts, and diverse types, of qualitative data. To code the data, I read each document in my project database several times, and conducted multiple keyword searches to identify conceptual patterns in the data. Once I had identified each concept and marked where it occurred in the database, I analyzed the context in which it occurred to gain an understanding of how it was operationalized within the setting of the court. For example, to analyze how the court treated battered women, I flagged every instance in my data that shed light on this question (for example, when the judge talked to or about battered women, or when attorneys talked about or referred to the victim). I then analyzed all of these instances to determine aspects of how battered women were treated by members of the court.

1.10 Protection of human subjects

Although the domestic violence cases I observed are a matter of public record, I have concealed litigants' identities to protect the victims. I assigned a unique number to each case that is unrelated to a docket number or other court case identifier. In discussing particular cases in this dissertation, I have also refrained from revealing too many details that might identify the case to a third party. To further preserve the anonymity of litigants, and to avoid interfering with the court processes I was observing, I also did not at any time communicate with victims or batterers.

1.11 Limitations

The findings reported in this study reflect one domestic violence court in San Francisco at a particular point in time. Thus, the findings are not generalizable (in the quantitative sense) to any other court. Due to the qualitative nature of this study, findings presented here do not include statistics, or other quantitative data. Because I approached the data-gathering process in an open-ended way, I did not systematically gather quantitative information about the cases, defendants or plaintiffs. I was also not able to collect reliable information on the number of cases by gender, race, ethnicity, and other socio-demographic characteristics from the court.[1]

The findings of this ethnography are reported in terms of major themes and concepts resulting from a content analysis of court observations and other materials

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[1] Demographic data on age, race, ethnicity and other characteristics are often missing from the official court record. In the courtroom I could not ascertain individual characteristics of defendants or victims who were present, because (a) I did not talk to any defendant or victim, and (b) most of these characteristics are not obvious in visual observation.

collected for this project. Details about cases are provided to the extent possible, so long as they do not reveal litigants' identities. The findings reported here are exploratory only, and are intended to provide suggestions for future feminist sociological work in the areas of domestic violence, battered women and children, and the law.

1.12 Who I am, and why that matters

In their efforts to make race, class and ethnicity more visible in their work, feminists have called for greater reflexivity (see, for example, Judith Stacey's *Brave New Families*, 1990). In order to reveal my own social location with respect to race, class, and ethnicity, I can say that I am a white, upper middle class, European immigrant woman, who has survived both child abuse and intimate partner violence. While the survival and recovery process has been difficult and challenging for me, I can say with certainty that I occupy a more socially privileged position than most of the victims and batterers I observed in the domestic violence court. As a researcher, I believe that my personal experiences with domestic violence and social position have simultaneously informed and limited my research. For example, while I believe my own experiences with domestic violence have enabled me to relate to victim safety issues, my social position as a white, European woman has limited my capacity to discern and name racist and classist aspects of domestic violence court proceedings.

Readers of this dissertation should know that I am a political activist involved in numerous causes related to social justice. I believe that, as a feminist, it is important to work for: world peace, gender equity, child welfare, environmental protection, animal rights, and global social justice. Readers should also know that I am a well-educated woman (I hold two master's degrees from East Coast universities), and that I worked as a

women's and children's advocate in a domestic violence shelter for three years prior to conducting the research for this dissertation. I believe that as a feminist sociologist, I have a responsibility to use my personal and professional experiences, as well as my understanding of sociology and feminism, to work for social change and make this world a better place for all its inhabitants.

E. Overview of the chapters

This dissertation is structured in two parts. In Part I, I describe the rationale for the project, the research questions, and the project design (detailed in Chapter 1). In Chapter 2, I provide a brief history of domestic violence law to provide a historical, legal context for the findings. In Chapter 3, I discuss existing social theory and empirical research on the topic of battered women and children and domestic violence courts.

In Part II of this dissertation, I describe the research findings, and discuss their implications for social theory and public policy. The findings are described in three chapters, each corresponding to a dominant theme or issue emerging from the analysis, namely: victim safety, domestic violence and children, and family privacy. In each chapter, I discuss how each theme relates to existing theory and research. In Chapter 7, the final chapter of this dissertation, I describe the theoretical and policy implications of the findings, and suggest possible directions for future research.

CHAPTER 2: THE LEGAL CONTEXT: HISTORY OF U.S. DOMESTIC VIOLENCE LAW

To historically situate the findings presented in this dissertation, in this chapter I provide a brief history of domestic violence law. Domestic violence laws, in their present guise in the U.S. and elsewhere, may be viewed as a product of historical efforts by the state to establish legal boundaries between acceptable and unacceptable behavior within marriage and the family. According to legal scholars who have examined the historical development (or social construction) of domestic violence laws in the U.S. (MacKinnon, 1989; Olsen, 1983), domestic violence laws constitute a critical boundary between the interests of private parties and the state. MacKinnon (1989), for example, views domestic violence laws as expressing the fundamental "non-interest" of the state in family matters. Other legal scholars (mainly feminists) have described the purpose of domestic violence laws as keeping the problem of domestic violence against women and children out of the public sphere, and contained within the family (Siegel, 1996). Although many legal scholars acknowledge that domestic violence laws appear to have changed in favor of victims, they also maintain that these changes may be rhetorical. In other words, these scholars argue that contemporary laws against domestic violence may not represent a "real" shift in the state's orientation toward domestic violence as a private, family matter (Siegel, 1996; Lemon, 2001).

A Early history of domestic violence law

2.1 Roman law

In her study of the history of domestic violence law, Smith (1998) maintains that domestic violence laws in the U.S. are deeply rooted in Roman and English common law.

Smith (1998) found that the Roman laws of chastisement (enacted in 753 B.C.) marked the beginning of court intervention in domestic violence. According to Smith (1998), the laws of chastisement awarded patriarchs absolute control over wives and children, including the right to physically punish and discipline them. The laws of chastisement recognized only husbands as heads of households, and women and children were defined as private property. Smith (1998) writes that a key intent of the laws of chastisement was to keep family matters out of the legal, state and public arena. By assigning family patriarchs responsibility for behavior and discipline of household members, Roman courts avoided dealing with family matters that, in their view, had little to do with matters of state.

Smith (1998) writes that the Roman laws of chastisement are historically significant because they first established the so-called "rule of thumb." The rule of thumb allowed Roman patriarchs the right to physically beat their wives and children with a rod or switch, so long as the circumference of the weapon did not exceed the circumference of the base of the man's right thumb. According to Smith (1998), this limitation in patriarchs' control over their families defined the first boundary between legally acceptable and unacceptable domestic violence. By establishing this boundary, the state also effectively defined domestic violence in "private" and "public" terms.

In another historical study of domestic violence law, Murray (1998) found that Roman laws mirrored, and reinforced, men's social domination over women and children in Roman society. Murray identifies several concepts describing male power within the Roman family. For example, the social power held by men took the form of *patria potestas*, or paternal power, which defined the social and legal status of wives and

mothers as equivalent to that of slaves. Also, the *pater familias* (the oldest male head of Roman families) ruled over all household members, and held *ius vitae necisque*, the power over life and death. The rule of *ius vitae necisque* also gave other male relatives of the paterfamilias the right to discipline wives and children on his behalf.

Murray (1998) writes that Roman domestic violence laws both reflected and reproduced the subordination of women and children in Roman society. As an example of this, she points to Roman rape laws. The word rape is derived from the early Roman law of *raptus*, a form of violent theft applied to property and persons. In cases of forced sex, Roman law stipulated that fathers, husbands and brothers of raped women were entitled to damages to be paid by the offender. Marital and familial rapes were exempted in Roman law, an exception that further defined the distinction between legally acceptable and unacceptable domestic violence.

2.2 English common law

In her comparative study, Smith (1998) found that English domestic violence laws derive directly from Roman domestic violence laws. For example, in 1783, English jurists adopted their own version of the Roman rule of thumb. In the English law, the husband was allowed to beat his wife with "a rod no larger than his thumb." The English rule of thumb was not challenged until the late nineteenth century, when feminists persuaded the English Parliament to declare this law illegal. This was an important victory for women's rights; however, other aspects of English domestic violence law were left intact, such as the marital rape exemption, and the rule of primogeniture limiting women's property rights.

In English common law in the sixth century A.D., marriage was defined as a contract, involving the transfer of a woman's ownership from her father to her husband. This contractual relationship led to the development of two, contradictory roles for male heads of households: as family disciplinarian and protector. This meant that, while husbands retained the right to treat their wives in any way they wished, they were also expected to protect their property from harm outside the family. In this way, early English common law reinforced men's patriarchal control over women, both within the family, and in public society.

Smith (1998) writes that in early English society, when women's suitors wanted to avoid entering a marriage contract with the father, they would engage in "bride capture" or "stealing an heiress." Bride capture involved taking possession of women by raping them, and stealing an heiress involved kidnapping women for purposes of marriage without obtaining consent from the father. According to Smith (1998), English common law defined these practices as criminal behavior, not because they constituted an assault against women, but because they violated fathers' property rights.

In her study of domestic violence law, Murray (1998) discusses the English laws of chastisement, giving men the legal right to discipline their wives and children. In the late eighteenth century, Sir William Blackstone, a prominent legal scholar, described the doctrine of coverture thus: "as he [the husband] is to answer for her misbehavior, the law thought it reasonable to entrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children..." (Blackstone, cited in Murray, 1998). Murray (1998) writes that the English laws of chastisement made use of the feudal doctrine of *coverture*, which prevailed from

the eleventh to the sixteenth centuries. The doctrine of coverture established that husband and wife are one person, and pursuant to it, wives could not own personal property, make a will, or be party to a contract. According to English common law, it was impossible for a man to make a contract with his wife, as this would constitute making a contract with himself. The legal doctrine of coverture, then defined women from the point of view of the state purely in terms of men's property.

2.3 U.S. colonial law

Early American colonial laws against domestic violence were directly imported from English common law, with the exception of the very first settlements, where more stringent laws against domestic violence were enacted to maintain order and stability in the colonies (Murray, 1998). Murray (1998) writes that these were often unenforced, and that domestic assaults were typically excused if the husband could justify his behavior to a colonial court. As the colonies became more permanently established territories, legislators began retroactively to bring colonial law more into line with English common law. Only those early colonial laws remained in effect that did not conflict with existing English law. After the Revolutionary War, English law became even more fully incorporated into U.S. state constitutions.

In the mid-nineteenth century, some states, particularly those in the mid-Atlantic region and the South, began to legally enact the English chastisement doctrine and rule of thumb. According to Murray (1998), these laws reflected the state's intention to retreat from involvement in marital and familial matters. For example, in an 1824 opinion, the Supreme Court of Mississippi wrote that, in exercising his right to chastise his wife, a husband should not be subject to "vexatious prosecutions" by the state. This court wrote

that the state should not be party to exposing the "private conduct" of family conflict to public scrutiny, justifying their opinion thus:

> "Family broils and dissensions cannot be investigated before the tribunals of the country, without casting a shade over the character of those who are unfortunately engaged in the controversy. To screen from public reproach those who may be thus unhappily situated, let the husband be permitted to exercise the right of moderate chastisement, in cases of great emergency, and use salutary restraints in every case of misbehavior, without being subjected to vexatious prosecutions, resulting in the mutual discredit and shame of all parties concerned" (in Murray, 1998).

In the mid-1800's, women began to publicly challenge the laws of chastisement in the U.S. In the Declaration of Sentiments (1848), they denounced the laws of chastisement and the rule of thumb. Through the reform efforts of feminists, state laws of chastisement were eventually modified. However, the social and legal principles of women's inferiority and need for protection continued to drive legal rule-making in cases of domestic violence. In Massachusetts, for example, courts did not recognize domestic violence as legal grounds for divorce. In other states allowing women to sue for divorce on the grounds of domestic violence, husbands successfully challenged these suits by claiming their violent behavior was "provoked" by their wives. When women delayed petitioning the court, husbands were often able to have the suit dismissed. Thus, reforms won by the first American women's movement, though significant, were somewhat limited. It was not until the 1960's and '70's that second-wave feminists would again challenge the inadequacy of legal responses to domestic violence.

B. Contemporary domestic violence law

2.4 U.S. federal law

In the 1990's, violence against women became a major issue on the legislative agendas of state assemblies and the U.S. Congress. In 1994, Congress passed the Violence Against Women Act (VAWA I), which was re-authorized and expanded in the year 2000 (VAWA II). These two federal laws provided the most far-reaching and comprehensive protections for battered women and children in the history of the U.S. Both laws contain provisions for increasing the number and range of protections available to battered women and children, in terms of police, judicial, and social service assistance. For example, VAWA I bolstered prosecution efforts for intimate male partner violence, sexual assault and child abuse, and increased victim services and resources for law enforcement. VAWA I also created the National Domestic Violence Hotline, and provided protections for battered immigrant women and children. VAWA II reauthorized the programs introduced by VAWA I for another five years, and provided funds for training and education of court personnel and prosecutors, as well as technical assistance and technological improvements for courts to facilitate victim assistance and protection. VAWA II also provided special funds to further encourage arrests for domestic violence, and for violation of restraining orders.

2.5 California law

On the state level, California has been on the forefront of domestic violence legislation. Barbara Lee, a California state senator, introduced the Domestic Violence Prevention Act (DVPA), which became law in 1993 (Cook, 2000). The DVPA stipulates that domestic violence victims may petition the court, free of charge, for temporary and

permanent restraining orders. The law also stipulates that victims may request any additional orders from the judge that are important for victim protection, such as: child custody; supervised visitation; child support payments; sole control over joint assets; removal of guns from the household; restitution for lost earnings, medical bills and other damages; mandated counseling for the batterer; and attorney fees and costs. The DVPA further allocates monies from the federal STOP program to California courts, police and judges for training, prosecution, victim services and other programs.

In a brochure produced by the district attorney's office that I obtained from the restraining order clinic at the courthouse, domestic violence is defined as "threatened or actual abuse from someone in your family or in your home or with whom you have a close relationship. This includes a: a spouse or former spouse; person you are dating or used to date (it does not have to be an intimate or sexual relationship); mother or father of your child; person related to you by blood, marriage or adoption (such as mother, father, child, brother, sister, grandparent, or in-law); or person who regularly lives or used to live in your home." In this brochure, the DVPA is described as "designed to protect you or your children under the age of 18 who live with you from actual or threatened violence such as: physical injuries; sexual assault; attacking, striking or battering; molesting; harassing; stalking; harassing or threatening phone calls; destroying personal property; disturbing your peace; and threatening to do any of the above."

2.6 Implications for victims

VAWAs I and II, and the California Domestic Violence Prevention Act, provide for substantial court protections to be extended to battered women and children. The mere passage of this legislation, however, does not guarantee that battered women and

children are actually receiving these protections. For example, Lemon (2001) found that California courts only inconsistently provide assistance and protection to battered women and children. Her study suggests that, despite an apparent sea-change in domestic violence legislation, battered women and children may still be unprotected by the state. In this dissertation, I will examine the extent to which battered women and children in San Francisco are receiving court assistance and protection.

CHAPTER 3: THEORETICAL FRAMEWORKS AND EMPIRICAL STUDIES

In this chapter, I review the existing body of literature on the subject of battered women and the courts, focusing specifically on the themes of victim safety, children, and family privacy. In my analysis of the data collected for this dissertation, I found these issues to be the most prominent in the court discourse, proceedings, and rulings. To properly contextualize my findings, in this chapter I discuss theoretical frameworks and empirical studies focusing on domestic violence law, victim safety, children, and family privacy.

In the process of identifying literature for this review, I found that most studies on the subjects of domestic violence, victim safety, children, and family privacy were conducted in fields other than sociology. Specifically, the majority of these studies were conducted from within the fields of law, criminal justice, and psychology. In general, I found that this body of work did not examine social or sociological aspects of domestic violence law and its effects on battered women and children. For this reason, most of this literature is not reviewed here. Rather, in this review, I discuss only those studies explicitly examining social, or sociological aspects of domestic violence law, the courts, battered women and children, victim safety and family privacy.

In Section A, I discuss the literature on domestic violence courts and victim safety, with a focus on feminist, sociological perspectives examining how the legal system reproduces women's social vulnerability to domestic violence. In Section B, I discuss batterer parenting styles, and how the courts typically respond to battering fathers. In Section C, I review the literature on how domestic violence law maintains the public/private split between families and the state.

A. Victim safety

According to the Judicial Council of California (2000), domestic violence courts in California share a commitment to batterer accountability and victim safety. Empirical studies indicate, however, that domestic violence and family courts may not be providing adequate levels of victim protection (Lemon, 2001). In the following section, I review three problematic issues related to victim safety: restraining orders, social disorder, and social entrapment.

3.1 Restraining orders

One of the most effective ways judges can enhance victim safety is to issue a restraining order. Restraining orders mandate that batterers maintain a certain distance - to be determined by the judge, usually 100 or 150 yards - from victims. Restraining orders also prohibit batterers from contacting the victim directly, allowing them to communicate with victims only through an attorney. There are two types of restraining orders: short-term, emergency protective orders (EPOs), which are valid up to three days, and permanent restraining orders (PROs), which are valid up to three years. Both types of orders must be issued by a judge, and they can be issued without the victim's consent. Restraining orders are not automatically issued in cases of domestic violence: judges must first make a determination that an incident of domestic violence has occurred, and that a victim is in "imminent danger" of further violence.

Studies show that restraining orders can significantly reduce the likelihood of continued domestic violence (Fineman and Mykitiuk, 1994; Holt et al., 2002). Holt et al. (2002) found that restraining orders are effective in breaking the cycle of violence

because they prohibit direct contact between the batterer and the victim, thus greatly reducing batterers' opportunity to further abuse the victim. Despite restraining orders' effectiveness, however, they are not routinely issued by judges. For example, Memoli and Plotino (1993) found that, in Bergen County, New Jersey, restraining orders were issued in only 45 percent of domestic violence cases coming before the judge. In this study, Memoli and Plotino (1993) found that failure by the judge to issue a restraining order can lead to tragedy: the authors describe a case in which the batterer was allowed to return home, whereupon he murdered is wife in the presence of his young son. Because batterers often know how to be charming and contrite, and following a violent episode, victims and judges often forgive batterers, and give him another chance, despite overwhelming empirical evidence that the violence is highly likely to continue, and to become more severe.

In addition to protecting victims from further battery, restraining orders provide other significant benefits to battered women and children (Levey et al., 2001). For example, restraining orders may be used to remove the batterer from the home. This provision in the restraining order is important for battered women and children because it not only puts physical distance between the batterer and the victims, but it also alleviates some of the pressure on battered women and children to go underground, flee to a shelter, or become homeless. Restraining orders can also award temporary custody of the children to battered women. In conjunction, judges may also mandate that the batterer provide financial child support while the case is being litigated. All of these provisions in restraining orders help battered women because they minimize disruption, or, in Ptacek's words, the disorder caused by domestic violence in the lives of battered women and

children. In recognition of this fact, the California Domestic Violence Prevention Act mandates that these supports and legal protections be provided to battered women and children.

Despite their potential for protecting victims, and the empirical evidence of their effectiveness, Ptacek (1999) found that restraining orders were viewed by many judges, abused women, and batterers as "just a piece of paper." Ptacek writes that, in the course of his research, he encountered no single phrase more repeatedly in reference to restraining orders. Ptacek writes that for batterers and abused women, this phrase means that batterers are able to ignore (with impunity) legal attempts to prevent further abuse. For judges, the phrase reflects their belief that, even when restraining orders are issued, lack of enforcement by police and other judges undermines their effectiveness. For victims, Ptacek writes that the phrase "just a piece of paper" indicates that existing laws against domestic violence constitute an "empty promise" for abused women, who run great risks in seeking protective orders, and ultimately gain little protection from them. Thus, restraining orders may not provide adequate protection for battered women and children, either because they are not consistently issued, or because they are not being enforced.

In some cases, judges may lift restraining orders, even permanent restraining orders, which are meant to protect victims for a period of up to three years. It is important to understand that when judges lift restraining orders, they effectively put victims' lives at risk. In San Francisco, battered women have died shortly after the court lifted or modified their batterer's restraining order. For example, four years ago in San Francisco, a Filipina named Claire Tempongko was killed by her batterer, who had been

put on probation and ordered to participate in a batterer treatment program (Vanderbeken, 2004). Claire's batterer had actively participated in his treatment program, and had received favorable progress reports from his counselors. The court was convinced that this batterer would reform, and that he was no longer a danger to Claire, or to the community. Soon after his restraining order was lifted, this man murdered Claire, despite her frequent calls to the police and criminal justice system for help. Battered women's advocates were outraged, and demanded better protection from the legal system. The case made headlines in San Francisco, and raised public awareness about victim safety.

Nonetheless, battered women continue to die at the hands of their batterers in San Francisco. Four years following Claire Tempongko's death, another victim of domestic violence, Marisa Corpuz, was killed by her batterer. On September 12, 2003, following an argument in which Marisa had told her husband she was leaving him, William Corpuz choked his wife and shoved her head into a headboard (Vanderbeken, 2004). Corpuz was arrested on felony charges, but because the injuries to his wife Marisa were deemed "minor," the charges were lowered to a misdemeanor. Corpuz expressed remorse for his behavior, pleaded guilty, was placed on three-year probation, and was ordered to complete a 52-week batterer treatment program. Corpuz fully complied with court orders, and his counselors reported that he was on time for sessions, paid his fees, communicated in class, and even bought books on domestic violence. He had successfully completed 39 weekly sessions of batterer counseling when he killed Marisa.

The Corpuz case is a disturbing one because, to outside observers, Corpuz appeared to have completely reformed. His counselor, a 20-year veteran clinician, described Corpuz as "somewhere between respected and admired for the work he was

doing" in the batterer treatment program (Vanderbeken, 2004). Corpuz had also successfully convinced his wife, who, only two months after the restraining order had been issued against her husband, sought to have it lifted by the judge who presided over the domestic violence court at that time. This judge asked Marisa if she understood the implications of her request, and she said yes, but she wanted to give the relationship another try. Over prosecutors' objections, the judge lifted the order, and Marisa was subsequently murdered.

In the Corpuz case, the legal system was drawn into, and participated in the batterers' cycle of violence, not recognizing that the batterer was occupying the third phase of the cycle, the "honeymoon" period. Although the court should have considered Corpuz' behavior in the same terms as a violent crime against a stranger, the judge did not. The judge chose to believe the batterer, even though batterers rarely change their violent behavior. Both the Tempongko and the Corpuz case illustrate the deadly risks involved when restraining orders are lifted.

3.2 Social disorder

On the basis of his ethnographic research, Ptacek (1999) found that domestic violence courts are highly "disordered," both in terms of how court cases are processed, and in terms of judicial decision-making. Ptacek describes disorder in the domestic violence courts as having several aspects. First, he describes the disorder created in battered women's lives by domestic violence itself, in which the court is legislatively mandated to intervene. Secondly, he refers to the disorder domestic violence creates in the judicial system when it is forced to intervene in the private affairs of the family. Lastly, Ptacek describes the *social* disorder the judicial system creates in the lives of

battered women and children when it fails to effectively intervene in cases of domestic violence.

3.3 Social entrapment

In his study, Ptacek (1999) found that domestic violence constitutes a form of "social entrapment" for battered women. He defines social entrapment as: "a social process enacted by men against women, in which the judicial system is deeply implicated." Ptacek writes that the judicial system reproduces the social disempowerment of battered women by failing to protect them from abuse. Social entrapment occurs when courts act, or fail to act, in ways that further isolate and marginalize battered women. Ptacek found that the courts he examined socially entrapped women through: inconsistent rulings, complex filing procedures, and multiple, lengthy hearings. Ptacek writes that, as the judicial system imposes huge prosecutorial burdens on battered women, victims become disillusioned, and drop out of the prosecution process (see also Fernandez et al., 1997). Victims' unwillingness, fear, or inability to comply with prosecutorial demands often leads to prosecutors dropping domestic violence charges against the batterer.

The term "social entrapment," as defined by Ptacek (1999), refers to the multiple ways in which society traps battered women in violent relationships. The term social entrapment refers to social processes and institutions that actively position women to become, and permanently remain, victims of violence and oppression. Ptacek describes social entrapment as comprising three elements: "(a) a focus on the social isolation, fear, and coercion that men's violence creates in women's lives; (b) attention to the indifference of powerful institutions to women's suffering; and (c) identification of the

ways that men's coercive control can be aggravated by structural inequalities of gender, class, and racism" (Ptacek, 1999). Ptacek's description of social entrapment is significant because it highlights the social character of violence against women, its structural dimensions, and the powerful role social institutions play as co-producers of women's and children's disenfranchisement.

Ptacek argues that "seeing battering as social entrapment helps to reveal both the possibilities and pitfalls of criminal justice interventions." He states that the courts represent "just one of many institutions involved in. ...the system of male power that is the basis of battering." While courts are deeply implicated in the social entrapment of battered women and children, Ptacek also views courts as a potential site for social justice. He argues that no other institution in our society has greater authority to address violence against women.

Ptacek maintains that viewing battering through the conceptual lens of social entrapment gives "heightened significance" to judicial responses. He states that it is important to examine how judicial decision-making affects battered women's ability to resist or escape violence. In his view, what judges do with their authority can attenuate or aggravate women's social entrapment. He argues that courts can lessen the social entrapment of battered women by: recognizing and addressing women's fears; ensuring battered women's safety in the courtroom; displaying a positive, supportive and respectful judicial demeanor; not trivializing, denying, or blaming the victim for the violence; not colluding with the batterer; recognizing economic/financial aspects of battering; and recognizing the needs of children.

B. Children

In the following section, I review the literature on domestic violence courts and children. This literature is extremely limited, perhaps because, according to California law, domestic violence is an adult crime. Jaffe et al. (2003) found that domestic violence courts tend to ignore the needs of children. In the following pages, I discuss existing theories and empirical studies examining the effects of domestic violence on children, and how these needs are addressed or unaddressed by the courts.

3.4 The batterer as parent

In the *Batterer as Parent*, Bancroft and Silverman (2002) discuss the relationships among domestic violence, parenting and the courts. In particular, they discuss the ways in which courts and judges reinforce batterers' parenting behaviors. For example, Bancroft and Silverman write that battering fathers often exhibit certain parenting "styles" toward their children. They state that, in addition to inflicting physical and emotional abuse on their children, batterers' parenting styles are characterized by: "authoritarianism, noninvolvement, neglect, irresponsibility, self-centeredness, and manipulativeness." Furthermore, Bancroft and Silverman write that batterers tend to see their intimate partners and children as personal possessions – an attitude that is often reinforced by the legal system.

3.5 Power parenting

Bancroft and Silverman (2002) describe batterers' parenting style as "power parenting." They define power parenting as "a coercive, authoritarian style of parenting that severely weakens the family unit." They also state that power parenting undermines

trust, communications, and relationships among family members, and shapes the belief systems children develop about themselves, the home, intimate relationships, and gender roles. Children exposed to power parenting and domestic violence often grow up believing violence is a normal and appropriate part of intimate and family relations. Children adopt this worldview from batterers' power parenting style, which in turn predisposes children to perpetrate domestic violence themselves, or become victimized by it as adults.

In their research, Bancroft and Silverman (2002) found that power parenting has gendered consequences for children. They state that boys tend to identify with their batterer-fathers, while girls tend to identify with their victimized mothers. Children's gendered identification with their parents is the pathway through which domestic violence is repeated intergenerationally. Bancroft and Silverman write that children exposed to domestic violence may show signs of battering and victimization at an early age, in their peer and dating relationships.

3.6 Battering and child sexual abuse

In their discussion of the effects of domestic violence on children, Bancroft and Silverman (2002) review a number of studies reporting a strong correlation between domestic violence and child sexual abuse. Based on their review, Bancroft and Silverman state that men who batter women are at least four times more likely than nonbatterers to perpetrate incest, "with some studies finding a risk increased by nine times or more." Bancroft and Silverman maintain that batterers' tendency to perpetrate child sexual abuse is linked to batterers' egocentric beliefs and attitudes about their partners and children. They argue that batterers' extraordinary sense of entitlement and

possessiveness toward their partners and children plays a major role in their perpetration of violence against women and sexual abuse of children.

3.7 Battering and child trauma

Many clinicians and child psychologists view children exposed to domestic violence as victims of trauma. Perry (1995), for example, has found that children exposed to domestic violence suffer from a wide range of trauma-related symptoms , such as anxiety, fear, and excessive shyness. Perry and others have found that domestic violence-related trauma symptoms are visible at every stage of children's development. For example, newborns and infants exposed to domestic violence typically suffer from sleep disorders, sustained crying spells, and strong, adverse reactions to separation from their mother. In preschool-age children, the symptoms can be seen in aggressive behavior, destruction of playthings, tantrums, speech delays, and other learning disabilities, such as attention-deficit disorder.

In contrast to boys, girls exposed to domestic violence tend to exhibit other types of trauma-related symptoms. Specifically, girls are more likely to internalize their fears and, instead of acting out aggressively, may become excessively withdrawn and isolated. Girls exposed to domestic violence in their homes often suffer from major losses in self-esteem, and are likely to develop eating disorders, or engage in self-mutilation. Girls exposed to domestic violence also have an elevated risk of attempting suicide, and becoming victims of bullying and dating violence at an early age.

One important aspect of children's exposure to domestic violence is that many children living in violent homes are also physically injured by the batterer. Although the batterer may not be consciously targeting the children when he abuses the mother,

children can be (and are often are) physically injured while he is abusing the mother. Children may also be injured when they intervene in parental conflict, which they often attempt to do, even when they are very young. Sometimes, batterers directly target their children once they have finished abusing the mother. Because many batterers abuse women in the presence of their children, there is a very strong likelihood that children will also be physically injured.

In their discussion of the traumatic effects of domestic violence on children, Jaffe et al. (2003) describe children exposed to domestic violence as "war torn." Like victims of war, battered women and children fear for their lives and are often forced to flee their homes for safety reasons. Battered women and children must often move from location to location in order to put a safe distance between themselves and the batterer. Because batterers typically stalk their victims for years after their victims have left, battered women and children are forced to change residences frequently. This causes enormous instability and chaos in women's and children's lives, compelling them to feel perpetually unsafe and at-risk. The long-term chaos caused by battering greatly undermines women's and children's ability to recover from the trauma of domestic violence.

3.8 Children and the post-separation period

The post-separation period is an especially dangerous time for children living through domestic violence (Fleury et al., 2000). Studies show that, in the post-separation period, batterers frequently intensify their attempts to maintain power and control over their families. These attempts usually take the form of more persistent and dangerous violence, including: stalking, death threats, kidnapping, attempted murder, and homicide

(Liss and Stahly, 1993). Batterers who have reached this stage in the cycle of violence pose a serious threat to their families and society, and frequently target the children more intensively than at any other time in the relationship.

The early post-separation period is also the time when battered women are most likely to turn to the police and the courts for help. Some studies show that battered women are especially likely to terminate the relationship and turn to the legal system for help when the batterer has hurt their children (Richman, 2001). At the point when battered women seek help from the legal system, they are often in fear for their lives. By seeking a restraining order, filing a police report, or pressing charges through the district attorney's office, battered women send a clear signal to the criminal justice system that the batterer has committed serious harm, and that they believe he will seriously hurt them and their children.

3.9 Court responses to domestic violence and children

Despite the dangers battered women and children face in the post-separation period, courts and judges rarely acknowledge these dangers, or modify the way they process domestic violence cases to enhance victim safety (Ptacek, 1999). Jaffe et al. (2003), for example, found that many legal professionals and court officials hold the erroneous belief that battered women and children are safe once they have left the abuser. Jaffe et al. (2003) write that this belief is reflected in judges' unwillingness to grant restraining orders, and in judges' reluctance to issue prison sentences for domestic violence. Given courts' reluctance and/or resistance to seriously addressing domestic violence, many battered women have found that they and their children become even

more exposed to domestic violence *after* they have involved the legal system (Merry, 1995).

The risks to children involved in domestic violence cases are particularly severe when courts ignore safety concerns in custody and visitation orders. Jaffe et al. (2003), for example, found that batterers, who displayed little interest in their children prior to separation from the family, frequently begin to aggressively petition the court for custody and child visitation privileges once the mother has involved the legal system. When courts grant these petitions for custody and visitation, batterers often use these privileges as an opportunity to inflict further abuse and violence. Batterers are twice as likely as nonbatterers to petition a court for custody and visitation rights, and are *equally likely* to gain these rights (Bowermaster and Johnson, 1998). This inequity in the court system allows batterers to use the legal system itself as an instrument of further control and domination over women and children (Ptacek, 1999).

A study conducted by the Judicial Council of California (2000) indicates that domestic violence court officials are highly aware of battered women's and children's vulnerability. In their survey of domestic violence court officials throughout California, respondents acknowledged that an important goal for domestic violence courts is the protection of children. When asked how to best to provide this protection, respondents stated that domestic violence courts can protect children by: listing their names on restraining orders issued to the mother; denying sole or joint custody to the batterer; and to limit, or disallow visitation with the batterer. Based on these responses, it is clear that domestic violence court officials in California have a high level of awareness about the

effects of domestic violence on children, and of the power, authority, and opportunity the judicial system has to protect children.

3.10 Restraining orders and children

Restraining orders are not only an important judicial tool for the protection of battered women, but they are equally important for children. Studies indicate that restraining orders significantly reduce the likelihood of further domestic violence (Holt et al., 2002). Other studies show that, besides protection, restraining orders also provide other important benefits for children, such as child support payments from the batterer (Levey, 2001). Judges, however, do not issue restraining orders (or other orders associated with them) consistently, even in severe cases of domestic violence (Ptacek, 1999). Moreover, some studies have found that judges *resist* the mandates of domestic violence law (Lemon, 2001). In her survey of domestic violence courts in California, Lemon found that some judges actively discouraged battered women from filing restraining order petitions, which effectively denies court protections to children as well.

In cases of domestic violence involving children, judges may add children's names to restraining orders issued to the mother. Restraining orders stipulate that batterers maintain a specific physical distance from the victims named in the order, and they forbid any direct contact between the batterer and the victims, except through an attorney. However, restraining orders may also contain allowances for joint custody and visitation, which the judge may approve. In these situations, the enforcement of restraining orders becomes difficult because they allow for some direct contact between batterers and victims.

Given the inconsistency with which restraining orders are issued to battered women and children, it is clear that battered children do not receive adequate protection from the judicial system. Lemon (2001) found that judges use different criteria for adding children's names to restraining orders. For example, Lemon found that some judges added the child's name only if the batterer directly harmed the child (i.e., committed physical child abuse). This judicial policy ignores the emotional harm and trauma inflicted on children witnessing domestic violence.

3.11 Presumptive custody orders

A second judicial tool for protecting battered women and children is the "presumptive custody" order. This order, when issued by a judge, temporarily denies batterers custody of their children in cases of domestic violence. Presumptive custody orders may deny batterers sole, joint, legal and/or physical custody of children. The duration of the presumptive custody order is usually tied to the duration of the restraining order. Both may be in effect for up to three years, at which point they may be renewed at the discretion of the court.

California's presumptive custody statute has been in effect since January, 2000. This legislation, A.B. 840, was carried by Sheila Kuehl, a long-time advocate for victims of domestic violence. It was based on a model code developed by a national task force on child custody and domestic violence, of which Kuehl had been a member. Although the legislation was passed by the California legislature, Lemon (2001) notes that it was opposed by a number of special interest groups, including the California Judges Association.

Lemon (2001) writes that presumptive custody statutes have been passed in more than twenty states. In California, the enactment of the presumptive custody statute (Cal Fam Code 3044) was problematic. According to Lemon (2001), in the 1980s battered women's advocates began to demand more stringent domestic violence legislation, while at the same time, fathers' rights groups began to demand increased child custody and visitation. These two advocacy groups exerted conflicting pressures on legislators, whose responses worked at cross-purposes. The presumptive custody statute reflects these conflicting responses because, even though it extends some protections to children, it also contains loopholes and vague language allowing for wide variation in judicial interpretation.

In her comparative analysis of presumptive custody statutes in the U.S., Lemon (2001) found that these statutes vary along three dimensions: (a) type of custody petition (sole, joint, physical and/or legal); (b) legal and judicial definitions of domestic violence; and (c) evidentiary standards used to trigger, or rebut the presumption against custody. In Texas, for example, Lemon found that the presumptive custody statute applies to joint and sole custody, *and* to unsupervised visitation. In California, on the other hand, although the statute applies to all types of custody, it *does not* extend to visitation.

Lemon (2001) writes that there are other limitations in California Family Code 3044. First, in order to trigger the presumption, the incident of domestic violence must have occurred within the last five years. Second, the presumption is triggered only by incidents in which the victim was the other person seeking custody of the children. Third, the court must make a finding that domestic violence occurred. All of these restrictions in Family Code 3044 show that presumptive custody is not automatically

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triggered in cases of domestic violence in California, and that victims (or district attorneys) must actively petition the court in order to keep children away from the batterer. Some judges may even require victims to personally testify in court, a requirement that further exposes victims to batterers, and undermines battered women's and children's ability to stay safe.

From the victim's perspective, one highly problematic aspect of the presumptive custody statute is that batterers may challenge, or rebut these orders. According to the California statute, the presumption may be rebutted on the basis of "a preponderance of evidence." In her analysis of the statute, Lemon writes that: a) the court must consider whether the perpetrator has shown that it is in the best interest of the child to be in his custody; b) the batterer must have successfully completed a batterer's counseling program; c) the batterer must have successfully completed a drug or alcohol counseling program, when appropriate; d) the batterer must have complied with previous court orders, probation and parole conditions; and/or 5) the batterer must not have engaged in any further acts of domestic violence. While the statute clearly specifies what the batterer must do in order to have his rebuttal considered by the court, it is not clear from the statute whether batterers must satisfy one, some, or all of these conditions. This leaves open the possibility that batterers may minimally satisfy only one condition, and then successfully petition the court to regain custody of the children.

Lemon et al. (2001) conducted a telephone survey of California state domestic violence courts to determine how well the presumptive custody statute was being implemented. In this survey, the authors found that the presumptive custody statute was being implemented unevenly; i.e. with a high degree of "inconsistency and distortion."

Based on their analysis, the authors identified four problems. First, respondents indicated that many judges hold polarized views with regard to the extent to which past domestic violence should be considered in custody decisions. The authors conclude that these polarized views lead to inconsistent and highly variable judicial decision-making, which greatly undermines the ability of the law to protect children.

A second problem identified in the survey is that the language of the statute is ambiguous. Lemon et al. (2001) write that, even though the California statute is much more specific than presumption statutes in other states, it is still not clear enough what kind of finding is necessary to trigger the custody presumption. Specifically, although the statute contains a list of factors which the court must consider in determining whether the presumption may be rebutted, in Lemon's survey (2001) respondents felt this section of the statute was still too vague, and should provide more specific direction to the court.

A third problem identified by the survey is substantial resistance on the part of individual judges. According to respondents, judges who resist the statute believe that granting shared child custody to both parents is almost always appropriate, even in domestic violence cases. The respondents also stated that many judges resent statutorily imposed restrictions on their decision-making power, and that this resentment is reflected in their judgments. One example of judicial resistance to the presumptive custody statute was judges' tendency to repeatedly order batterers and victims to mediation, in order to force them to "iron out their differences." Respondents stated that judges would order mediation, and award joint custody, even in cases involving multiple incidents of domestic violence, and prior convictions for domestic violence.

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A final problem uncovered by the survey is that, in some California counties, the passage of the presumptive custody legislation seems to have had a negative impact on the issuance of restraining orders. Some survey respondents reported that it has become increasingly difficult for battered women to obtain restraining orders from judges. Respondents stated that judges opposed to the presumptive custody legislation attempt to avoid triggering the presumption by refusing to issue a restraining order in the first place. In addition, some judges encourage or require the involved parties to "stipulate" the order, thus avoiding a court finding of abuse. Other judges may issue a restraining order, but state on the record that they are making no finding of domestic violence. Finally, some judges continue temporary orders several times, rather than issue a long-term order, in hopes of avoiding a triggering of the presumption.

Although the language of California statutes pertaining to child custody in cases of domestic violence is clearer than in other states, judges retain the ultimate authority to interpret the law. While the purpose of this judicial authority is to serve as a "check" on the legislative branches of government (and to allow judges the freedom to review each case individually), the wide latitude allowed in their decision-making has a negative impact on the degree of *consistency* in custody and visitation rulings. Judicial inconsistency seriously undermines the effectiveness of any law, because it sends "mixed messages" to perpetrators about what is considered legally (and socially) allowable behavior within the family. Inconsistency in court rulings also has the effect of sending mixed signals to victims, who learn that they cannot depend on courts for protection.

Lemon et al. (2001) document judicial opposition and resistance to the presumptive custody statute in California. Jaffe et al. (2003) note that judges sometimes

award joint custody and visitation rights to batterers simply because they fear being viewed as biased or impartial, or "taking sides" with battered women and children. Jaffe et al. (2003) write that judges' fears about being viewed as impartial have caused many courts to become "immobilized" in custody and visitation hearings. This situation compromises judges' ability to effectively intervene in cases of domestic violence.

3.12 Visitation

A third tool courts can use to protect children from further exposure to domestic violence is to restrict or deny batterers' rights to child visitation. Previous research indicates that batterers frequently use child visitation as an opportunity to inflict further abuse on their families. Leighton (1989), for example, found that twenty-five percent of battered women's lives were threatened during child visitation.

Bancroft and Silverman (2002) write that, when domestic violence cases involving children first enter the court system, a number of questions must be addressed, including: where the children will live, how much time they will be spending with their father, and whether visitation will be supervised. They argue that unsupervised contact with batterers greatly undermines the safety of battered mothers and children. In *The Batterer as Parent* (2002), Bancroft and Silverman describe a number of risks to which children are exposed when courts allow unsupervised visitation with the batterer. One of these is the risk that the batterer will engage in *continued or intensified undermining of the mother's authority and mother-child relationships*. Bancroft and Silverman (2002) write that this directly interferes with children's ability to recover from domestic violence.

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Unsupervised visitation exposes children to a number of other risks, including the risk of *continued exposure to rigid, authoritarian parenting*, or power parenting. Bancroft and Silverman (2002) state that the recovery of traumatized children is best facilitated by a "nurturing, loving environment" that also includes appropriate structure, limits and predictability. In order to recover from domestic violence, children must, above all, feel safe. Courts can help provide a nurturing environment for children by restricting batterers' visitation privileges.

Bancroft and Silverman (2002) identify a third risk that unsupervised visitation poses to children, namely the risk of *neglectful or irresponsible parenting*. The authors cite numerous studies showing that batterers – particularly in the post-separation period tend to be preoccupied with grievances against their former partners and retaliation. As a result, batterers fail to focus on their children's needs (Johnson and Campbell, 1993). This problem can become severe when children spend long periods of time with the batterer, who may be unaccustomed to caring for children. An even more ominous possibility is that batterers will deliberately neglect their children. This can include: leaving them alone for long periods of time, failing to provide proper food or clothing, or allowing children inappropriate freedoms (such as staying up very late, or watching R-rated films). Empirical studies show that batterers frequently give their children inappropriate freedoms so as to manipulate them into thinking they are the "nicer" parent. Bancroft and Silverman (2002) write that this manipulative behavior confuses children, and further undermines the mother-child relationship.

A fourth risk unsupervised visitation poses to children is the risk of exposure to *new threats or acts of violence toward the mother*. Bancroft and Silverman (2002) state

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that many domestic violence assaults occur after separation, and that children witness a high proportion of these assaults. Battered mothers are at very high risk of re-assault: they are four times more likely to be re-assaulted than childless victims of domestic violence (Bancroft and Silverman, 2002). Bancroft and Silverman (2002) maintain that unsupervised visitation exposes battered mothers to high rates of repeated violence: through visitation, batterers can question the children about the mother's whereabouts, movements and activities, which greatly increases their ability to re-assault the mother.

Unsupervised visitation exposes children to a fifth risk, namely the risk of *substantial psychological abuse*. One type of psychological abuse that Bancroft and Silverman describe is "parentification." Parentification is the attempt by adults to make their children "parent" them (it is a type of parent-child role reversal). When parents parentify their children, they force their children to prematurely assume adult responsibilities. For example, a parentifying batterer may ask an 8-year old child to care for a younger sibling alone, for long periods of time. Bancroft and Silverman (2002) state that batterers often inappropriately share adult concerns and worries with their children, even when their children are very young, and unable to understand, or relate to the adult world of the batterer. Parentification puts children under enormous stress – it is therefore seen as a form of psychological abuse. Parentification also further undermines children's ability to recover from domestic violence.

According to Bancroft and Silverman (2002), a sixth risk to which children are exposed during unsupervised visitation is the risk of *physical and sexual abuse*. In the post-separation period, the risk of physical and sexual abuse rises dramatically. Bancroft and Silverman (2002) state that batterers' likelihood of sexually assaulting their children

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increases after separation because they have an even greater opportunity to do so, because the mother is no longer present to provide supervision. They also write that children who are beginning to successfully recover from domestic violence may grow more defiant toward the batterer, and challenge him about his violent actions. Children "talking back" often angers the batterer, who may respond with physical and/or sexual assault.

A seventh risk associated with unsupervised visitation is the risk of *inconsistency*. In their clinical practice with batterers and domestic violence victims, Bancroft and Silverman (2002) found that many batterers drop in and out of their children's lives. They describe this dropping in and out behavior as a "recurring phenomenon," in which batterers fail to visit their children for months, then appear in court to request visitation on holidays, birthdays, and long weekends. Bancroft and Silverman (2002) write that, in their experience, courts often grant these requests, and that this has adverse consequences for children. They argue that, by routinely granting these requests, courts: (a) allow batterers to continue patterns of emotional injury to children; (b) reinforce a batterer's notion "that his status and privilege as a father need not be tied to the sacrifices or consistency demanded of other parents;" and (c) reinforce children's belief that batterers may retain all of their rights and privileges within the family, even when they have committed severe acts of domestic violence.

Children forced into unsupervised visitation with the batterer are also exposed to the risk of *learning attitudes that predispose them to perpetration or victimization of domestic violence*. The existing research on domestic violence and children shows that batterers' sons have highly elevated rates of domestic violence perpetration when they reach adulthood (Silverman and Williamson, 1997). Batterers' daughters are at increased

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risk of domestic violence victimization (Hotaling and Sugarman, 1986). Given the strong link between domestic violence against women and the likelihood that children exposed to domestic violence will become perpetrators or victims as adults, Bancroft and Silverman (2002) conclude that batterers provide violent role models for children. When courts award custody or visitation rights to batterers, children may interpret this judicial action as an endorsement of their father's behavior.

Another risk unsupervised visitation poses to children is *exposure to violent behavior in the batterer's new relationships*. Because violence against women is a serial behavior, batterers are likely to continue their abuse with new intimate partners, and children are highly likely to witness abusive behavior toward this new partner. Bancroft and Silverman (2002) write that, because new partners are unlikely to acknowledge abuse in the beginning stages of an intimate relationship, the abuse may remain unreported for a long period of time, during which children are continuously exposed to abuse.

A final risk Bancroft and Silverman (2002) identify as associated with visitation is the risk of *abduction*. Bancroft and Silverman (2002) write that most child abductions take place within a context of domestic violence, with ninety percent of these abductions being carried out by the batterer. Often, there are warning signs that an abduction will take place: Bancroft and Silverman (2002) write that, in half the abduction cases, the batterer made a verbal threat that he would kidnap the children. Abductions also take place following a court-mandated visit, when the batterer fails to return the children to the mother.

B. Family privacy

In the literature on family privacy, feminists and other scholars have identified the legal principle of family privacy as a central problematic in domestic violence law. Family privacy is a problematic issue because, in order to allow for intervention, legal and social boundaries must be crossed, and the public sphere must "intrude" into the private sphere of the family. For court intervention to take place, the family unit itself must be redefined as a public entity. Previously in this dissertation, I have argued that domestic violence law, from Roman until modern times, has continuously reproduced the right to privacy in the family, a right that has extended legal protections to violent husbands and fathers.

With the passage of the Violence Against Women Acts I and II in the 1990s, it appeared that domestic violence laws were focusing more on victims' needs. Feminists hailed the passage of VAWAs I and II because these laws provided for extensive legal action in cases of domestic violence. To feminists, VAWAs I and II seemed to signal a fundamental reshaping of legal boundaries between the family and the state. However, although the passage of VAWAs I and II may have signaled a move away from traditional legal principles of family privacy, it is not yet clear how well the legislation is being implemented in the courts, and the extent to which judicial decision-making reflects new understandings of the family as a public entity in cases of domestic violence.

3.13 Classical sociological theories

Contrary to the body of literature on victim safety and children, more sociological work exists on the subject of domestic violence and family privacy. Many sociological theories of domestic violence are grounded in conflict perspectives that view "family

violence" as an instance of broader social conflict. Marx (1844), for example, theorizes that oppression and violence within the family is an expression of broader social conflict, related to forces of industrialization and modernization. In his *Economic and Philosophic Manuscripts* (1927), Marx writes that male violence against women and children in the family is an expression of bourgeois/proletarian class struggle. He describes the family as a microcosm of society, within which men's abuse of women and children mirrors bourgeois class oppression of the proletariat.

Unlike Marx, who only briefly discussed violence in the family, Engels devoted a book to the subject of family relations, class, and the state. In *The Origin of the Family, Private Property and the State* (1884), Engels further develops Marx's theories of the family and class relations, describing them in terms of public and private spheres of society. He writes that the historical evolution of the family both parallels, and coincides, with the historical evolution of larger society. Drawing on the work of anthropologist Lewis Morgan, Engels describes the first, prehistorical family as a public, communal institution, characterized by "group marriage," and comprising multiple generations and branches. For Engels, prehistorical families exhibited a public character because they were formally integrated into larger communal and governmental structures.

Along with Marx, Engels (1884) argues that the family is produced by conflictual class relations. Engels writes that class struggle has fundamentally transformed the prehistorical family from a communal, public entity into a socially and politically separate, private social unit. For example, he describes how the patriarchal family first rose to prominence in ancient Greece, when the Athenian state first assigned male heads of households ownership over their wives and children, legally defining them as private

property. Engels (1884) writes that Athenian heads of households were responsible for disciplining women and children, and that the Athenians were the first society to legally relegate women, children and all family matters to the private sphere. Thus, women and children were formally excluded from the public arena of the state.

Engels describes the modern, capitalist family as retaining much of its Athenian, patriarchal character, while also reflecting bourgeois/proletarian class relations. According to Engels, the modern, capitalist family has a unique feature, namely *monogamy*. Engels describes monogamy as having a unidirectional, gendered character; that is, only wives are expected to practice sexual fidelity. Under capitalism, Engels writes that women and children continue to be treated like property, and that they continue to occupy the private sphere of the familial household, outside the domains of law and social justice. As private property, Engels writes that women and children possess no rights at all, either within or outside of the family. He writes:

> "In the old communistic household, which embraced numerous couples and their children, the administration of the household, entrusted to the women, was just as much a public, a socially necessary industry as the providing of food by the men. The situation changed with the patriarchal family, and even more with the monogamian individual family. The administration of the family lost its public character. It was no longer the concern of society. It became a private service."... "The modern individual family is based on the open or disguised domestic enslavement of the woman; and modern society is a mass composed solely of individual families as its molecules. Today, in the great majority of cases the man has to be the earner, the breadwinner of the family, at least among the propertied classes, and this gives him a dominating position that requires no special legal privileges. In the family, he is the bourgeois; the wife represents the proletariat" (Engels in Tucker, 1884/1978).

In *The Origin of the Family, Private Property and the State* (1884), Engels describes the modern, industrial family as a private institution characterized by patriarchy and monogamy. In contrast to the prehistorical family, the modern, capitalist family

occupies a private space, outside public and community life. Engels argues that the modern, capitalist family is actively produced, and reproduced, by the bourgeoisie, who, as owners of private property and controllers of state apparatuses, are in a position to define family structure for their own purposes, and in their own interests. Through economic, legal, ideological, and other mechanisms, Engel writes that the bourgeoisie actively structure the family to facilitate accumulation of capital on a grand scale.

Engels maintains that women and children remain largely unaware of how crucial their subjugation is to the maintenance of bourgeois power in society. The state, through its participation in the legal relegation of the family to the private sphere, continually reproduces this class inequality, and in so doing, purposely obfuscates the relationship between bourgeois class interests and the oppression of women and children. By defining the family as a private entity, the state isolates families from the rest of society, treating them as individual, unrelated units. Thus, the state undermines women's and children's ability to realize how they are being exploited to further bourgeois class interests. Engels maintains that the continued reproduction of the private family sphere is a crucial bourgeois strategy for control and domination over the proletariat, which includes women and children.

One important aspect of Engels' theory is that the state plays a secondary role in the maintenance of bourgeois/proletarian class relations. Engels views the state and the law as epiphenomenal instruments of the bourgeoisie, because they reproduce *preexisting* class relations. Because Engels views domestic violence as an outcome of bourgeois/proletarian class conflict, he argues that oppression within the family will not disappear unless class divisions are eliminated first, through revolution. He argues that

domestic violence will continue to exist despite legal interventions seemingly intended to redress power imbalances within the family.

For Engels, the purpose of the state and its legal system is to maintain existing class relations, especially when the proletariat challenges them. Engels argues that legal challenges to class oppression are useless because the oppression exists *prior to law*. Because the family occupies the private sphere, the state will not become involved in family matters, *unless* it is for purposes of reinforcing state and bourgeois control over the family. Engels argues that, the enactment of juridical equality for women and children (i.e. equality before the law) would not change existing social relations between men and women within the family. On the contrary, he argues, the enactment of juridical equality would give even greater visibility to the oppressive class character of familial relations. He writes:

> "And similarly, the peculiar character of man's domination over woman in the modern family, and the necessity, as well as the manner, of establishing real social equality between the two, will be brought out into full relief only when both are completely equal before the law. It will then become evident that the first premise of the emancipation of women is the reintroduction of the entire female sex into public industry; and that this again demands that the quality possessed by the individual family of being the economic unit of society be abolished (Engels in Tucker, 1884/1978)."

3.14 Contemporary sociological theories

Contemporary family sociologists Gelles and Straus began to conduct empirical research extensively on the subject of family violence in the 1970s. Gelles and Straus conducted two national surveys on violence within the family. These surveys measured high prevalence rates of family violence, which led Gelles and Straus to the conclusion that, "with the exception only of the police and the military in times of war, the family is the most violent institution in American society" (Gelles and Straus, 1979). With this

statement, Gelles and Straus further challenged the view that the family is a stable, nurturing social unit.

Based on their empirical research, Gelles and Straus concluded that family violence is an everyday, normal behavior in the family. Gelles and Straus attribute the normality of violence in the family to unique structural characteristics families possess, which predispose them to violence, namely: (a) the large amount of time family members spend with one another; (b) the wide range of activities family members pursue together; (c) the intensity of emotional involvement among family members; (d) the likelihood that there will be "winners" and "losers" in family decisions; (e) a feeling that family members have the right to influence other family members' decisions; (f) conflicts arising from age and sex differences within the family unit; (g) the expectation that family members' behavior will conform to ascribed roles related to age and sex (i.e., that of "father," "mother," "daughter," and "son"); (h) knowledge of strengths and vulnerabilities among family members; (i) stress due to changes in the family (e.g., a birth) or an external source (unemployment); (j) involuntary family membership that, in the case of children, cannot be legally terminated; and (k) the high degree of *privacy* in the family (Gelles and Straus, 1979, emphasis added).

Gelles and Straus also view the family as a social entity that occupies the private sphere of social relations. They describe the family as a modern, private institution that is "insulated from the eyes, ears, and often the rules of wider society" (Gelles and Straus, 1979). They theorize that, where privacy is high, the degree of social control is low. For Gelles and Straus, the relationship between privacy in the family and violence is not a direct one, but one that is mediated by the presence of social control. For this reason,

their theory of the relationship between family violence and privacy is often described as a social control theory. Whereas for Engels, violence within the family is an aspect of class oppression, Gelles and Straus suggest that the absence of social controls (including legal prohibitions) contribute to high prevalence rates of family violence in American society.

Gelles and Straus conceptualize what they call "family violence" as a *conflict tactic*. According to this theory, violence is a strategy employed by family members for purposes of managing or "resolving" conflict. The conceptualization of family violence as a conflict tactic is the theoretical basis for Gelles and Straus' Conflict Tactics Scales (CTS), a measurement instrument they developed to measure the prevalence of family violence. Among the possible conflict tactics measured by the CTS are: discussing an issue calmly, shouting, storming out, crying, hitting, slapping, and punching.

In his later work, Straus (1990) states that families are made up of individuals "seeking to live out their lives in accordance with personal agendas that inevitably differ." Thus, he describes family violence as an outcome of *conflicts of interest* among family members. Given that family members have many competing interests, Straus theorizes that violence is a likely result, i.e. family members will often rely on violence to manage or "settle" family conflicts. Straus (1990) defines conflict tactics as "overt actions used by persons in response to a conflict of interests."

While the CTS have been widely used by social scientists to quantitatively measure family violence, the scales have also been widely criticized. One major critique is that the CTS fail to distinguish between "first strike" violence and self-defense. Numerous studies have shown that, when women resort to violence, they most often do

so in self-defense, and in response to long-term battering from an abusive male partner (Walker, L.E., 1992). The scales' failure to distinguish between "first strike" battery and self-defense produces prevalence statistics that erase gendered aspects of domestic violence. The CTS have also been criticized for failing to measure many kinds of violent behaviors that batterers typically perpetrate, for example: economic deprivation, harassment, stalking, and intimidation (Dobash and Dobash, 1992). Failure to measure these behaviors leads to low estimates of the prevalence of domestic violence perpetrated by men, and perpetuates the erroneous view that men and women are equally likely to engage in domestic violence.

3.15 Feminist theories

In contrast to Gelles and Straus, feminists maintain that domestic violence is a highly gendered social behavior. Feminist sociologist Kersti Yllo, for example, argues that domestic violence must be viewed through a feminist "lens" that focuses on power and gender in the family and society (Yllo, 1993). Furthermore, Yllo argues that "domestic violence against women" is a more appropriate term than "family violence," because men are much more likely to perpetrate domestic violence than women. She also challenges Gelles and Straus' conception of violence as conflict tactic, arguing instead that domestic violence should be viewed as a *control tactic*. Yllo describes control tactics as violent behaviors that have a social and patriarchal intent, namely to "create and maintain male power within the family and society" (Yllo, 1993).

Yllo argues that a feminist perspective is critical for gaining a true understanding of domestic violence against women. She describes feminist theory as a "wide-angle lens" capable of "broad analysis of gender and power in society that has been fruitfully

applied to domestic violence" (Yllo, 1993). In her discussion of feminists' traditional focus on patriarchy, which she defines as "the system of male power in society," she contends that patriarchy has been falsely described as "a discrete, measurable variable" like age, sex, and socioeconomic status. She argues that only feminist perspectives recognize that patriarchy is a complex and multidimensional phenomenon, and that by focusing on patriarchy, "feminism is no more a single variable explanation than sociology, with its focus on social structure."

In her discussion of domestic violence as a control tactic, Yllo does not discuss domestic violence against women in terms of its public or private aspects at great length. However, she does acknowledge that such a separation exists. For example, she writes that, "Domestic violence is not just an individual problem, but a social and political one." In addition, she argues that, while domestic violence appears to occur only on the individual or relationship level, it must simultaneously be viewed as a social phenomenon and public issue as well.

Contemporary sociological theory on domestic violence has been strongly influenced by feminist theories outside the discipline of sociology as well. Walker, for example, a psychologist by training, developed the theory of the cycle of violence (Walker, 1979; Walker; 1984). According to this theory, domestic violence occurs in three escalating stages: the tension-building phase, the acute battering incident, and the "honeymoon" phase. In the tension-building phase, batterers begin to display controlling and abusive behaviors, that continue to intensify until an acute battering incident occurs (the second phase). The third phase, or so-called "honeymoon" period, is a time of relative calm when the batterer does not engage in abusive behavior, and may even

apologize for the violence. This third phase is a very significant one in the cycle of violence, because it is at this time that battered women and children are often lured back into a relationship with the abuser. Walker argues, however, that when abusers are forgiven, the violence soon recurs, with each cycle of violence escalating in frequency and severity.

From her research with battered women, Walker developed a clinical concept known as battered woman's syndrome (BWS) (Walker, L.E., 1984). This concept is important for understanding the reluctance of many battered women to leave abusive relationships, and their hesitation to involve the courts. Walker describes BWS as a psychological consequence of battering on women suffering from prolonged abuse. Its symptoms closely resemble those of post-traumatic stress disorder (PTSD); however, BWS is specifically caused by battering. Walker states that battered women frequently exhibit a number of psychological after-effects of battering, including: depression, anxiety, cognitive and memory changes, avoidance behaviors, and arousal symptoms associated with flight or flight trauma. Consistent with feminist theory, Walker states these behaviors are a direct result of women's prolonged exposure to abusive behaviors perpetrated by intimate male partners, who, through violence, attempt to exert power and control over women's lives.

Because BWS-related symptoms closely resemble those of post-traumatic stress disorder (PTSD), BWS is often considered a subcategory of PTSD, even though it is not listed as such in the *Diagnostic and Statistical Manual of Mental Disorders*. BWS, however, does appear as a separate condition in the World Health Organization's *International Classification of Diseases*. Research studies have found similarities in the

symptomologies of other subcategories of PTSD, namely: rape trauma syndrome, combat veteran's syndrome, child sexual abuse accommodation syndrome, battered child syndrome, and in cases of other traumatic incidents, such as earthquakes, fires, and airplane crashes (Walker, 1992). BWS differs from PTSD in that it describes a set of psychological behaviors and symptoms caused by prolonged domestic violence. The advantage of the term BWS, from a feminist point of view, is that it directly names the source of trauma inflicted on women.

Gordon (1986; 1988), a feminist historian, has also examined child abuse and domestic violence against women. Gordon analyzed child abuse records in 19th century Boston, and found that many battered women overcame their sense of disempowerment, and engaged the authorities for help. Because these women actively engaged social control agencies for help, Gordon concludes that existing social control theories of domestic violence do not adequately reflect women's attempts to shape and control their lives. Gordon identifies four problems in social control theories of domestic violence, namely: (1) the assumption that a "natural" or "autonomous" family exists; (2) the assumption that social control is unidirectional; (3) a lack of acknowledgment that women and children often attempt to shape their own social control; and (4) a tendency to view family violence solely as an outcome of social control agents' cultural biases and imagination. With these critiques, Gordon challenges theories of domestic violence that do not acknowledge women's resistance to abuse.

Gordon (1986; 1988) argues that feminist theories of domestic violence must closely re-examine the role of social control. Gordon uses the term family violence and defines it as: "a product of conflict and negotiation between people troubled by domestic

violence and social control agents attempting to change their supposedly unruly and deviant behavior" (Gordon, 1988). She uses the term family violence to account for all forms of violence within the family, including child abuse. She defines the problem in a way that incorporates social control agents into the definition, referring specifically to the state and its institutions.

Gordon critiques notions of the natural family for upholding liberal ideologies promoting the family as a private social entity. She writes that the liberal relegation of the family to the private sphere reproduces a public/private dichotomy of victim versus oppressor that fails to account for women's and children's efforts to engage social control agents to act on their behalf. Gordon bases this assertion on the finding that some battered women in 19th century Boston engaged the police, child welfare, and family welfare agencies to intervene in violent family situations. She writes that this finding indicates that women and children can and do use social control agencies for their own purposes, and consequently, social control should be viewed as a potentially bidirectional phenomenon.

Another aspect of liberal ideology that Gordon challenges is the unproblematic conceptualization of family privacy. In the following passage, Gordon makes clear that legal notions of privacy and liberty are viewed as ungendered, and as a result, they offer little legal protection to battered women and children:

> "For example, the critique of social control, both left and right, frequently points to the violation of civil liberties as evidence of the dangers of intervention into family privacy. We have seen many instances of such violations in this book, but before condemning the very enterprise of intervening into the family, one must ask: Whose privacy? Whose liberties? The conception of liberties dominant in the 19th century was one of individual rights against the state, which was in fact an attribution to heads of households. These rights functioned to

> enshrine the home as private and inviolable, and the champions of these rights were naturally adult men, particularly those with the wealth and privilege and wealth to maintain independent households... Such rights did not protect subordinate members of families against intrafamily oppression or violence. On the contrary, privacy rights have been invoked to remove some individuals from public guarantees of these liberties. Until recently it was customary for law enforcement officials to decline to guarantee such liberties to battered women, for example. Children did not usually even get as far as telling their story to law officers, so removed were they from access to their 'rights.' Thus one man's loss in privacy was often another's (frequently a woman's) gain in rights" (Gordon, 1988).

In her most recent work on domestic violence, Yllo (2005) argues that one of the most pressing needs for feminist work on domestic violence is the need to more fundamentally incorporate issues of race, class and ethnicity into feminist theory and analysis. Yllo (2005) writes that, along with gender, issues of race, class and ethnicity permeate all aspects of family life and its social context, and that, while many commonalities among battered women's experiences exist across racial, ethnic, and class lines, women's experiences with domestic violence also differ significantly by the social positions they inhabit. For example, white, middle-class women may be more likely to trust, and seek assistance from, government and law enforcement than immigrants or women of color.

3.16 Legal theories

Feminist legal scholars have also contributed much to our understanding of domestic violence against women and children. Many of these scholars recognize that domestic violence is a social problem that may not be eradicable through legal intervention alone. For example, Olsen (1983) argues that, so long as the legal system treats the family as a naturally-occurring social unit with certain inherent structural characteristics, legal reforms designed to improve the status of women and reduce the

incidence of domestic violence that do not address this issue, will be largely ineffective. She argues that legal definitions of the family must be changed to reflect the fact that families are not natural, but *socially constructed* units potentially amenable to change.

Olsen (1983) argues that the family is a socially constructed unit produced specifically to meet the purposes of powerful stakeholders in society. Two such stakeholders are the state and the economic marketplace, which Olsen describes as occupying public spheres of activity that are ideologically cast in opposition to the private, family sphere of activity. According to Olsen, the family, the state and the economic marketplace have traditionally been viewed (both legally and politically) in simplified public/private terms. She writes that, to understand the true relations among these, false dichotomies surrounding definitions of the family must be better understood and transcended.

Olsen theorizes that three distinct, but "crucially related" dichotomies are used to ideologically structure relations among the family, the state and the economic marketplace. These are: the market/family dichotomy; the state/civil society dichotomy; and the dichotomy between male and female. Though theoretically separate, Olsen writes that each of these dichotomies strongly parallels the other, and that they are cast, for ideological purposes, in public versus private terms. For example, the market/family dichotomy portrays the family as a safe haven from the vicissitudes of the economic marketplace. Similarly, the state/civil society dichotomy portrays the state as a public entity separate from private, civil matters of the family. Finally, the male/female dichotomy portrays men as exclusively associated with the public activities of the marketplace and the state, while women (and children) are associated with the private

spheres of the family and civil society. Olsen theorizes that the oppositional casting of the family, market, state, civil society, male and female, are false and ideological. They do not serve the interests of women and children because their purpose is exclude them from government, the law, and other spheres of public activity. All of these dichotomies are instruments used to perpetuate inequality among men, women and children.

One effect of the above, Olsen argues, is that courts contribute to the problem of domestic violence by assuming a stance of "neutrality" and "noninterference" in the private affairs of the family. As an example, Olsen describes laws limiting teens' access to contraception that have been upheld in many states based on the legal principle of non-interference in the family. She argues that noninterference is not simply a description of state action or inaction, but rather a way of condemning particular state policies, particularly those aimed at changing the status quo. The status quo – including inequality and domination within the family - is treated by the state as naturally occurring, *not* as a social reality the legal system has an obligation to change.

Catherine MacKinnon, a well-known feminist legal scholar who has theorized extensively about the relations between gender and the state, writes that, while feminism has developed theories of gender and power, it has yet to develop a theory of the state (MacKinnon, 1989). She writes that feminism must develop a theory of the state because it has "not confronted, on its own terms, the relation between the state and society." She writes that feminism lacks a "theory of jurisprudence," which she defines as a theory of "the substance of law, its relation to society, and the relationship between the two. " For her, a feminist theory of the state would "comprehend how law works as a form of state power in a social context in which power is gendered" (MacKinnon, 1989).

In her discussion of which questions a feminist theory of the state might seek to answer, she writes that one of these might be the question of how women encounter the state. MacKinnon argues that women are likely to encounter a masculine state, that is, a state expressed in law that "sees and treats women the way men see and treat women." She writes that the so-called liberal state "coercively and authoritatively constitutes the social order in the interest of men as a gender – through its legitimating norms, forms, relation to society, and substantive policies." She concludes that "the state is male jurisprudentially," meaning that it adopts the perspective of male power on the relation between law and society. For MacKinnon, the law reflects the gender system in legal form, reflecting society back to itself. Its very purpose is to reinforce and reproduce gender (and other) inequalities existing in society, *not* to correct them.

MacKinnon describes the state as a "negative state" (MacKinnon, 1989). This is "the view that government best promotes freedom when it stays out of existing social arrangements." She writes that the negative state "reverberates throughout constitutional law," and that it is doctrinally embodied in rubrics like 'state action', equal protection law, freedom of speech law, and in the law of privacy." With regard to the law of privacy, MacKinnon finds that "governmental intervention itself is unconstitutional." Echoing Engels, MacKinnon states that "civil society, the domain in which women are distinctively subordinated and deprived of power, has been placed beyond the reach of legal guarantees. Women are oppressed socially, prior to law, without express state acts, often in intimate contexts. The negative state cannot address their situation in any but an equal society – the one in which it is needed least." Given an equal society, MacKinnon writes that an alternative "positive state" is an interventionist one that promotes "positive

freedom" and "positive liberty," or the freedom or right "to do, rather than to keep from being done to." She defines positive freedom as "the right to do or be what one is able to do or be, without interference from other persons."

In a historical analysis of the origins of domestic violence law in the U.S., feminist legal scholar Siegel (1996) found that, despite changes in rhetoric, domestic violence laws have barely changed in substance. Siegel describes this process as the "preservation through transformation" of domestic violence law; i.e. the preservation of traditional domestic violence law *through* its rhetorical transformation. In her analysis, she found that, although states began to set greater legal limits on domestic abuse since the 1800's, she argues that women today have yet to achieve equality with their partners. Siegel defines equality in social and material terms, namely as "the dignitary and material 'goods' associated with the wealth wives control, or the kinds of work they perform, or the degree of physical security they enjoy."

Siegel (1996) argues that the U.S. legal system plays an important role in perpetuating existing sex-, class-, and race-based differences in society. She theorizes that, similar to civil rights laws, domestic violence laws have undergone simultaneous preservation through rhetorical transformation. She describes the preservation through transformation process as becoming increasingly less visible over time, as, in domestic violence law, the legal discourse and rhetoric changes from a rhetoric of *marital prerogative* to a rhetoric of *marital privacy*.

According to Siegel, the process of preservation through transformation begins when advocates attempt to reform a "status regime," i.e. challenge existing laws. These challenges often appear to be successful. However, once they have become law, Siegel

argues that lawmakers both cede and defend status privileges by "gradually relinquishing the original rules and justificatory rhetoric of the contested regime and finding new rules and reasons to protect such status privileges as they choose to defend." In this way, they "breathe new life into a body of status law by pressuring legal elites to translate it into a more contemporary, and less controversial, social idiom." It is this process of change and reification in "the rules and rhetoric of a status regime" that Siegel names "preservation through transformation." She maintains that the preservation and transformation of domestic violence law is a modernization dynamic visible in the rhetorical recasting of domestic violence laws from the language of marital prerogative to a language of marital privacy.

Siegel describes how the language of contemporary domestic violence law no longer refers to patriarchal rights, but rather to privacy rights. She states that, instead of reasoning about marriage in older, hierarchy-based norms of English common law, modern jurists use the language of privacy associated with companionate marriage in the industrial era. Siegel writes that jurists reasoning within this discourse of "affective privacy" progressively abandon tropes of hierarchy and employ tropes of interiority to describe the marriage relationship. She argues that translating the justification for state regulation from an antiquated to a more contemporary gender idiom is necessary to both justify and prevent the state from intervening in domestic violence against women and children.

3.17 Summary

In this chapter, I have reviewed theories and empirical studies examining social (or sociological) aspects of domestic violence law, the courts, battered women and

children, victim safety and family privacy. Collectively, these theories and studies suggest that courts may not be protecting battered women's safety adequately, or effectively responding to children's needs for safety, stability , and a stress-free home environment. Legal theories of domestic violence also suggest that the historical principle of family privacy continues to dominate domestic violence law, and function as the primary mechanism through which the state is able to maintain a position of non-interference with matters of the family.

In the findings section of this dissertation (Chapters 4-6), I discuss how these issues were handled by the San Francisco domestic violence court. In particular, I discuss how the court's actions and rulings contributed to the social entrapment (Ptacek, 1999) of battered women and children. Drawing on Walker's cycle of violence theory (1979), I also discuss how the court was drawn into the cycle of violence, and became an active co-participant in the social oppression of women and children.

PART II

FINDINGS

CHAPTER 4: VICTIM SAFETY

In Part II of this dissertation, I describe my findings with regard to three key issues: victim safety, children, and family privacy. After describing physical aspects of the courtroom, courthouse, and the neighborhood, I discuss how the domestic violence court, in its procedures and discourse, addressed the issue of victim safety. I found that the primary judicial response to victim safety needs was the restraining order. In this chapter, I discuss how the court handles restraining order petitions, including: petitions for new orders, petitions to lift existing orders, and petitions to modify existing orders. Subsequently, I revisit Ptacek's concept of social entrapment, and discuss how the San Francisco domestic violence court may contribute to the social reproduction of women's vulnerability to domestic violence.

A. Setting the stage: The domestic violence court, the courthouse, the neighborhood, the victims, the defendants, and the judge

The domestic violence court

The domestic violence court for the City and County of San Francisco I observed is located in the San Francisco Hall of Justice at 850 Bryant Street. The courtroom was relatively large (approximately 1,500 square feet), and it was clean and well maintained. The interior of the courtroom was arranged in a standard way: the judge's bench was located in the center, rear of the room; the court recorder, district attorneys, victim advocates, and probation officers occupied the left-hand side of the room; and public defenders, private defense attorneys, and bailiffs occupied the right-hand side of the room. Defendants in custody occupied a separate room adjacent to the courtroom on the right. A railing running from the left wall to the right wall separated spectators from

official members of the court. Batterers and victims occupied the spectator area in the front part of the courtroom. There was no special waiting area for victims.

Seating was available for approximately 75 spectators in the courtroom. Often, the courtroom would be crowded with defendants, victims, and children. The seats in the courtroom were quite uncomfortable. Courtroom rules were posted on the wall in several places in the spectator area. The rules were: "No eating; no drinking; no chewing gum; no talking; no reading; no sleeping; no hats; no cell phones; no pagers." One sign stated that, "Anyone caught violating these rules will be removed from the courtroom."

Bailiffs were charged with enforcing the rules in court; however, I found that they did so inconsistently. The court would often become very noisy, and the judge herself frequently asked for order. On one occasion, a bailiff approached me to warn that reading was not allowed in the courtroom. When I responded that I was taking notes, he nodded "OK," and went back to his station. I found that, when batterers broke the rules, they usually talked, slept, or wore a hat. Although bailiffs and probation officers often warned batterers when they broke the rules, batterers were never removed from the courtroom, with the exception of one batterer, who arrived at the courtroom drunk.

In the course of my fieldwork, I noticed that probation officers were often more adamant about enforcing courtroom etiquette. On several occasions, I witnessed a probation officer asking defendants to quiet down because "the judge wants you to pay attention to what's happening up there." This statement shows that the court wanted spectators, especially batterers, to learn from the court proceedings.

Court sessions were held Monday through Friday, beginning at 8 or 9am until 1 or 2 pm, after the entire court calendar had been heard. On days when caseloads were

unusually high or a number of complicated cases had been calendared, court sessions lasted until the late afternoon. Although most of the cases I observed were processed quickly (within 5 minutes), some hearings lasted as long as 45 minutes.

The courthouse

The San Francisco Hall of Justice is a grey and imposing stone building, with a wide row of concrete steps leading up to the entrance doors. The Hall of Justice houses the Superior Court and its departments, the district attorney's office, police headquarters, the probation department and the county jail. On the ground floor, there were several coffee and concession stands, a shoeshine service, the children's waiting room, and the main administrative offices of the court. Individual departments and courts are located on the first through fourth floors.

Every morning, I waited in a long line to enter the courthouse. I found that, in the wake of the September 11 terrorist attacks, the city of San Francisco greatly increased security in its public buildings. To enter the courthouse, all visitors were required to walk through a metal detector, and to open their bags for inspection by a police officer. Security was friendly and efficient, and I usually did not have to wait more than 15 minutes to enter the building.

Before and after court sessions, I spent time in the courthouse to gain a sense of its atmosphere, and its physical structure. I found that the courthouse was a confusing and labyrinthine place, in which it was difficult to locate a particular department. Although a courthouse directory was posted on the ground floor, some of the information listed on it was not up-to-date. On the first morning of fieldwork, I consulted the directory for the location of the domestic violence court, only to discover that the information was

incorrect. To find out where the domestic violence court was located, I had to ask for information in the court records office.

The children's waiting room was located on the ground floor, next to the main administrative offices of the court. The children's waiting room was not listed on the courthouse directory at the time, and I only discovered it by accident one day while visiting the main administrative offices. At that time, I noticed that, although some children were playing in the waiting room (which looked like a small, children's day care center), many more children were milling about in the halls outside. Some of these children accompanied a parent or guardian, while others sat alone on a bench. I observed that older children were left in charge of watching younger children while their parent or guardian was taking care of court business.

The neighborhood

The San Francisco domestic violence court is located in a busy, gentrifying neighborhood in downtown San Francisco. The neighborhood, called "SoMa" (in reference to its location in the area south of Market Street), is a sunny, mixed residential and commercial neighborhood. The neighborhood surrounding the Hall of Justice is eclectic, in terms of its architecture, businesses, and people. SoMa is San Francisco's equivalent to New York's "SoHo," with its many warehouses and live-work lofts. Despite the new loft buildings, however, the neighborhood has retained much of its gritty, downtown character. Because SoMa is a place where people live and work, there is much activity, and the streets can be noisy and dirty.

On my daily walks to the courthouse, I found that SoMa's commercial activity was in full swing early in the morning. SoMa is a sunny neighborhood with a mix of

high and low income residents, trendy boutiques and restaurants, and biker bars. It is located adjacent to the Mission, where many of the city's Latino people live, and the Tenderloin, where many very low income and homeless people reside. SoMa is also within walking distance of the city's financial district. Because SoMa's streets are relatively flat, many people walk or bike to work: I found that the streets and sidewalks were crowded with pedestrians and cyclists. The streets were also filled with cars entering and exiting the ramp to Interstate 80 and Highway 101.

Commuting from my own neighborhood, Noe Valley, I would take the J Church Street streetcar line to Market Street, and exit at Powell and Market, where tourists lined up early for a trip on the cable cars. I would then head south to 6th Street and Bryant, where the Hall of Justice is located. On my walks to and from the courthouse along this route, I passed by pawnshops, soup kitchens, and single room occupancy hotels. I also passed by many homeless people, who lived in the alleyways among the jewel-like office buildings of San Francisco's downtown.

In the afternoons, I would often eat lunch on the grassy area just outside the courthouse to observe the passersby and the visitors to the courthouse. I saw families, police officers, courthouse staff, and attorneys enter and exit the courthouse here. I did not observe any judges using this entrance.

Victims and Defendants

I observed an average of 70 hearings per day during the fieldwork period. In total, I observed 1703 hearings. With few exceptions, all of these hearings involved male defendants. Almost all of the hearings I observed concerned heterosexual relationships. In the courtroom, I noticed that people of color were greatly overrepresented among both

victims and defendants, compared to San Francisco's population as a whole. Most defendants and victims appeared to be in their twenties, thirties, or forties. Some of the defendants returned several times during my observation period for different hearings concerning their cases.

Based on my observations, it appeared that very few batterers or battered women were able to afford a private attorney. Many batterers appeared to be gainfully employed, and they seemed to receive preferential treatment by the court. For example, I observed that employed batterers received exemptions from appearing in court. These batterers were also able to delegate most of the details of their cases to their attorneys

The judge

In the San Francisco Superior Court, one judge hears all domestic violence cases. The judge I observed for my research is a middle-aged, Caucasian woman. This judge was new to the domestic violence court: on the day I began my fieldwork, I learned that it was the first day of her appointment to the court.

The judge I observed presided over the domestic violence court every day during the fieldwork period, with the exception of one day. On that day, a retired, male, Caucasian judge substituted for her. After my dissertation defense, I learned that the female judge, after serving on the domestic violence court for approximately one year, was reassigned to the felony trials court. This court is located next door to the domestic violence court in the San Francisco Hall of Justice.

At the suggestion of a dissertation committee member, I conducted a brief interview with the judge after my dissertation defense. During this interview, I asked the judge for her perspective on my study findings. I also asked her to comment on the

nature of her rulings, and the constraints under which she performed her judicial duties in the domestic violence court. Because this interview took place over one and a half years after the fieldwork period ended, I present the results of this interview in the Afterword to this dissertation (Chapter 8).

B. Restraining orders

4.1 Court procedures

When battered women go through the process of petitioning a judge for a restraining order in San Francisco, they are referred to victim advocates from the district attorney's office, who help them complete the application forms. Victim advocates are very helpful for battered women because they help them negotiate the often bewildering court processes and procedures. Victim advocates also help battered women in non-legal ways. For example, when petitioning the court for a restraining order, victims also received referrals to shelters, counselors, and medical care. In the San Francisco court I observed, victim advocates were always present in the courtroom to assist victims. Every day, they canvassed the audience several times to check if there were any victims present who needed assistance.

Based on my observations of the San Francisco domestic violence court, I found that the court is highly aware of the dangers facing battered women. In virtually every case that came before the judge, a restraining order was issued to protect both the mother and the children (the children were automatically added to the restraining order when it was issued). I also observed that, when victims came to court, advocates would immediately check in with them to see if they needed help. The judge would also occasionally check in with prosecutors and advocates to see if there were any issues with

regard to the battered woman's situation that the court should be aware of. Prosecutors actively worked with advocates and victims to make sure victims were safe, and living in a relatively stable and safe situation.

In my fieldwork, I found that the court made it a high priority to welcome and assist victims. Virtually all of the officials of the court, from bailiff to judge, displayed sincere concern for victims' well-being and safety. During the daily proceedings I observed, victims were treated with courtesy and respect. They were listened to, and their views and complaints were taken seriously by everyone in the court. Victims were always referred to in a respectful way, whether or not they were present in the courtroom. This finding stands in marked contrast to findings from other studies of domestic violence courts (Memoli and Plotino, 1993), reporting a variety of trivializing, demeaning, patronizing, even hostile behavior toward victims (Cretney and Davis, 1997, Mileski, 1973; Ptacek, 1999). Unlike the courts observed in this literature, the San Francisco court treated victims in a friendly and supportive manner.

In addition to treating victims with respect and helping them access services, the San Francisco court showed its concern for victim safety by granting restraining orders in every criminal case that came before the bench. Through the Domestic Violence Unit at the District Attorney's office, victims received help filing petitions for restraining orders. With this assistance, victims were able to receive a restraining order relatively easily, judging by the ease with which they were processed in court. During the time I conducted my fieldwork at the court, ***not one*** restraining order petition was denied by the judge. Unlike many other domestic violence courts – both in California and elsewhere - this court routinely issued protective orders for victims. The length of these orders, which

can be as long as three years, depended on the severity of the case, the nature of the request by the victim, and the recommendation of the District Attorney's office. The length of the order, however, was never read aloud by the judge, so I was not able to determine how long each restraining order issued by the domestic violence court was valid.

Another positive finding of this study is that, in this court, victims were *not* required to testify before the judge in order to obtain a restraining order. Testifying in court is a great burden to victims, who fear having further contact with their batterer, even in the relatively controlled setting of a courtroom (Richman, 2001; Cretney and Davis, 1997). For this reason, it is important for the court to do anything it can to protect victim safety. One way to accomplish this is to allow victims to petition the court (via sworn statements or depositions) without having to make a court appearance. Private attorneys and victim advocates should also be able to represent the victim in court.

During the fieldwork period, I observed that the judge did not spend a great deal of time on petitions for new restraining orders. The judge, however, spent much more time processing other restraining order-related matters. I observed that four types of restraining order hearings were held by the judge, namely: (1) petitions for new restraining orders; (2) petitions to "lift" restraining orders; (3) petitions to modify restraining orders, and (4) restraining order violations. The court processed each of these types of petitions in markedly different ways. Most of the petitions in the second and third categories were filed by batterers attempting to resume contact with their victims.

4.2 Petitions for a new restraining order

In San Francisco, the district attorney's Domestic Violence Unit has greatly streamlined the process of obtaining restraining orders for victims. I found that the judge did not spend much time reviewing new restraining order applications, or engaging in fact-finding about the case in order to determine whether or not to issue a restraining order. Instead, the judge devoted time to reading aloud the specifications of the order to the batterer, and periodically checking in with him to make sure he understood the terms. If the victim was present in court, the judge would also, on occasion, speak to the victim to make sure she understood the order as well. As mandated by law, in cases involving non-English speakers, a court translator would translate the contents of the order, and the judge's comments to the batterer and the victim. A copy of the restraining order would then be served to the defendant (in the appropriate language), and the judge would ask the prosecutors to provide the victim with a copy of the order, if she was not present in court at that time. Restraining orders were issued to batterers regardless of disposition (a guilty or not guilty plea).

In hearings involving petitions for new restraining orders, the judge would emphasize to the defendant (and to the victim, if she was present) the need for both parties to abide by its terms. It was stressed, primarily to the defendant, that even if the victim attempted to contact the defendant, he should not respond to it. The judge would tell victims that, if the defendant attempted to contact them, they should immediately contact the police, or the district attorney's office. Defendants and victims were reminded that the restraining order is *court-mandated*, and that a restraining order can only be lifted or modified through another petition to the court.

In hearings for new restraining orders, I observed that batterers rarely contested them. However, batterers would sometimes show resistance in the form of questions the batterer would direct to the judge about the order. These questions were usually posed in sarcastic or defiant tones, and were often framed in a way that would redirect the judge's attention from the batterer back to the victim. For example, one batterer asked: "And what do I do if she contacts me? She's doing that all the time?!" To questions like these, which were usually posed in a disrespectful manner, the judge would respond that the batterer should ignore it. The judge would respond to batterers' questions calmly, but would also indicate that the defendant should direct further questions to his attorney.

In some cases, when a new restraining order was being issued, batterers would cast their resistance in more practical terms, asking questions about the order designed to show, in some way, that the order was unworkable. For example, one batterer asked: "How am I supposed to get my things out of my apartment? It's my apartment!" To this objection, the judge told the defendant he could retrieve his belongings with police accompaniment, and that the judge would issue a "civil stand by" order so he could do so. Other batterers gave the judge scenarios, asking her what they should do if they happened to "accidentally" run into the victim (in the supermarket, on the street, etc.). The judge would advise the batterer to leave the place immediately. When reading the terms of the new restraining order to the batterer, however, the judge would only allow a limited number of questions. If defendants asked more than one question, the judge would usually turn to the defense attorney, and ask the attorney to "go over" the terms of the restraining order with the defendant.

The above examples show that batterers' attempts to resist restraining orders when they were first being issued were largely unsuccessful. The judge did not reconsider issuing the order, or changing its contents at that time. The judge also did not give batterers much opportunity to question or resist the order while it was being issued. By the time the order was drawn up and sent to the bench, the judge had already reviewed it in chambers. In the courtroom, the judge merely signed the order and reviewed the terms with batterers and victims.

4.3 Petitions to lift a restraining order

While hearings for a new restraining order were relatively straightforward and did not take more than 5 or 10 minutes of the court's time per petition, I found the reverse to be true for the other three types of restraining order hearings. While batterers did not show much resistance to restraining orders at the time they were first issued, I found that batterers would delay their resistance and employ other tactics to defy the order at a later date. In my fieldwork, I found that batterers strenuously resisted restraining orders by continuously contesting them after they had been issued. Usually, batterers would first attempt to have the order lifted entirely. If this strategy failed, they would petition the court to modify the order. Many batterers simply ignored or violated the order altogether, and if they were caught, they faced new charges and penalties for violating it.

Batterers who were issued a restraining order by the San Francisco domestic violence court were required to attend 52 weeks in a batterer treatment program, regardless of whether they plead guilty or not guilty to the charge. These programs are approved and monitored by the probation department. When batterers requested to attend

a new batterer counseling program, or a program unknown to the probation department, the judge required a counselor from the program to come to court and make a formal presentation about their program. The judge would then decide whether to approve the program for the batterer's participation.

Batterer counseling programs in San Francisco are usually operated by nonprofit organizations or churches. Batterers are allowed to attend an approved program near where they live, even if they reside outside of San Francisco. (However, batterers continued to be tried in San Francisco if their crime had been committed in San Francisco County.) The court mandated batterer treatment when the judge had made a finding of domestic violence. Batterers were required to attend a batterer counseling program, both as a condition of restraining orders that were issued (when the case was still pending), and as a condition of probation (when the batterer had pleaded guilty to the charge).

Once ordered into treatment, batterers were required to report their attendance in batterer counseling programs to their probation officers using signed forms from the counseling programs. If they failed to do so, this constituted a probation violation or restraining order violation, which would trigger a bench warrant. The court was kept apprised of batterers' progress through periodic hearings, which were scheduled weekly, bi-weekly, or monthly, depending on the batterer's prior cooperation. Batterers were required to submit a copy of the progress report to their probation officer (in person or via fax) in advance of one of these hearings. I observed that many batterers failed to submit their progress reports in advance, and therefore had to personally appear in court on their progress report date (regardless of whether they lived in San Francisco or elsewhere). On some occasions, batterers came to court with a copy of their report, but more often, they

appeared without one. In the latter situation, batterers would attempt to explain why they did not have a progress report to submit at that time.

I observed that batterers frequently also came to the court, even when they were not required to do so. I found that batterers often came to court, not only to take care of a progress report matter, *but also* to file petitions to have restraining orders lifted. I observed that it was easy for batterers to file petitions to have a restraining order lifted. In most cases, it involved the batterer asking their defense attorney to make the request, whereupon the attorney filed a motion to have the order lifted. I found that defense attorneys (both public defenders and private attorneys) actively helped their clients petition the judge to lift restraining orders, regardless of whether this had dangerous implications for the victim or her children. Because it was so easy for batterers to petition the court to lift a restraining order, they did so frequently (until they succeeded), with the strong support of public defenders and privately retained defense attorneys. I observed that the judge was inundated with requests to lift or modify restraining orders.

In these hearings, I observed that batterers frequently asked the judge to lift the restraining order following the submission of a favorable progress report from the batterer treatment counseling program. The judge would review their progress report, then praise them for their "excellent work," whereupon the defense attorney would say, "Your honor, at this time we would like to ask that the restraining order be lifted. My client has shown good faith and compliance with the court's orders." In response to these petitions, the judge would briefly review the case, the prosecutors would usually object, and the judge would usually deny the request. In denying the request, the judge would, for the record, mention an aspect of the case that would make it "unadvisable to lift the

order at this time." When denying these petitions, the judge would justify it by citing: the severity of the violence, the number of prior violent episodes committed by the batterer, a desire to protect the victim's safety, the victim's wishes that the order remain in place, and/or unsatisfactory progress reports submitted on prior occasions by the defendant.

Defense attorneys, I found, appeared generally unconcerned with victim safety. I observed that they appeared to file motions to have a restraining order lifted whenever the defendant asked for it. They would do so even if it was obvious that such a request was inappropriate (for example, in cases with an established pattern of severe and repeated domestic violence, that would severely compromise victim safety). Some petitions were so flagrantly inappropriate that the judge reprimanded the defense attorney for making the request. This did not deter defense attorneys, however, and the judge's attempts to stem the continuous flow of requests to lift restraining orders were largely ineffective.

This situation was exacerbated by the judge's lack of consistency in her rulings. I found that, although she *usually* denied petitions to lift restraining orders made at the batterer's request, she did not always do so. When she granted petitions to lift a restraining order, it was unclear why the judge had been lenient. Even when there was evidence of violations of the restraining orders and failure to participate in counseling, the judge often lifted restraining others. These decisions seemed arbitrary and inconsistent. Defense attorneys and batterers were encouraged by these inconsistent rulings, and attempted to take advantage of them by continually making requests to lift restraining orders.

4.4 Petitions to modify a restraining order

Restraining orders represent a significant obstacle to batterers, who become restricted in their ability to maintain power and control over victims. Without having direct access to victims, batterers lose their ability to terrorize and influence battered women and children. For batterers, it becomes critical to maintain access to their victims. I observed that, when their attempts to have restraining orders lifted were unsuccessful, batterers would persistently petition the court to *modify* the order. Although modified orders did not allow batterers unrestricted access to their victims, they did allow batterers some direct contact.

In hearings for petitions to lift a restraining order, I found that these petitions strongly paralleled the dynamics of the cycle of violence, first described by Walker (1979). Specifically, I found that batterers' strategy of submitting a favorable progress report, then asking to have the order modified, strongly resembles "the honeymoon phase" of a violent relationship. In the cycle of violence, following an abusive incident, batterers will often express remorse and make amends for their behavior. They also typically promise never to abuse the victim again. Convinced by batterers' apparent sincerity, victims frequently forgive the batterer, only to be abused again more severely. I found that, when batterers submitted favorable progress reports, the judge was inclined to forgive them, and modify the order. If the judge had previously denied the batterer's petition to lift the order entirely, she was even more inclined to modify the order.

One extremely effective argument batterers used to justify their petitions for a modified restraining order was their desire to "see the children." In my fieldwork, I observed that, although the judge would rarely lift a restraining order entirely, she was

much more likely to modify an existing order, especially when the batterer asked to see his children. If the batterer asked for contact with his children, the judge would consider the petition, even though there is no judicial requirement for her to do so. I observed that the judge processed many restraining order violation hearings involving batterers who had misused contact with their children to further abuse the victim. In one case, for example, a convicted batterer and his victim arranged for the batterer to pick up the children for visitation with him at a local Boys and Girls Club. As the mother was dropping the children off at the Boys and Girls Club, the batterer abused the mother at that location. These types of incidents, however, did not seem to diminish the judge's likelihood of modifying the restraining order in favor of the batterer. "Using the children" was therefore an extremely effective strategy batterers used to regain contact and control over battered women and children, even while the existing restraining order remained in place.

During the fieldwork period, I found that the judge was also inclined to modify restraining orders allowing batterers to pursue child visitation and custody in family court. The judge would refer the case to family court, even when prosecutors objected on the grounds of public safety and child endangerment. When the judge made these rulings, I observed that prosecutors were often baffled. In one case involving a baby who had been assaulted by her father while she lay in her mother's arms, the prosecutor, the victim advocate, and the probation officer all urged the judge to deny the petition. The judge modified the restraining order anyway, and referred it to family court, at which point the child no longer received protection from the criminal court.

I observed that batterers employed another highly successful strategy to have a restraining order modified, namely to convince the victim herself to file the petition. I observed victims telling the judge they were convinced the batterer would change, and they wanted to give him another chance. Victims also told the judge that they were dependent on the batterer, and needed his help, for example, with child care. Even though the judge was aware of the dependency issues, she would usually grant the petition if the victim had filed it, or supported it. The judge granted these petitions, even when doing so was not in the best interests of the mother, the child, or the public. When victims filed the petition, the judge did require them to appear in court. The judge stated, "I want to hear and see the victim."

I observed that the judge attempted to set some limitations on petitions for modified restraining orders. One of the judge's "ground rules" was to require batterers to have successfully completed at least four batterer counseling sessions in advance. The judge frequently informed attorneys, batterers, and victims of this ground rule, but defense attorneys often ignored it, and continued to file their petitions, even when the condition had not been met. I observed that the judge seemed to arrive at the number four arbitrarily: she did not explain why four counseling sessions were enough to lift or modifying a restraining order. Given that few batterers ever stop their abuse, even when they have successfully completed year-long batterer counseling programs, the four session requirement seemed inadequate.

On several occasions, I observed that the judge violated her own ground rule. Although the judge spoke of the need to strike a balance between the victim's wishes and her safety, she modified the order even when batterers had not *registered* for a batterer

counseling program. This inconsistency in the judge' rulings sent a frightening message, namely that "permanent" restraining orders, which are intended to protect victims for up to three years, may be successfully lifted or "watered down" within months or weeks of being issued.

Studies show that when the courts allow batterers to have *any* direct contact with victims, batterers often take advantage of this contact to inflict further abuse (Lemon, 2001). In my fieldwork, I found that many batterers whose restraining orders had been modified subsequently reappeared in court for violating a modified restraining order. In one case, a batterer who had been granted telephone contact with his children used this privilege to further harass and threaten the mother, using the children to convey threatening messages to her. According to prosecutors, the batterer told his children to tell their mother he would kill her if she started seeing another man. In another case, the batterer used the telephone contact privilege to threaten the mother directly. She stated that he would call her ostensibly to talk about setting up a visitation appointment, and then use this occasion to threaten her. Both of these examples show that restraining orders modified to allow *any* type of direct communication between batterers and victims are a threat to victim safety.

4.5 Restraining order violations

In my fieldwork, I observed that many restraining order hearings concerned restraining order violations. Many batterers express their resistance to restraining orders by flagrantly violating them. According to Keilitz et al. (1997), thirty-five percent of women obtaining a restraining order experienced a violation of that order *within six months* after it was issued (Keilitz, et. al., 1997). This study also found that 60 percent of

women obtaining a restraining order experienced a violation of that order *within one year* of its being issued. Given these high violation rates, it is unsurprising that the San Francisco judge spent a considerable amount of time conducting hearings for restraining order violations.

Levey et al. (2001) state that, once the legal system becomes involved in promoting victim safety and batterer accountability, the integrity of that system becomes "a focal point of interest." They argue that, when a court issues a restraining order, it must take care to enforce it, or else it will be rendered meaningless to batterers and victims. Levey et al. (2001) report that many domestic violence courts do not respond to restraining order violations at all, or courts' responses to them are inadequate. In the San Francisco court, I observed that restraining orders violations were taken seriously and routinely prosecuted. The typical sentence included (depending on the severity of the violation): additional classes in a batterer treatment program, additional days of community service work, additional days in custody, or longer probation periods. The most common punishment I observed was an additional three months probation.

When batterers violated a restraining order, victims called the police and filed an incident report. Prosecutors would then file new criminal charges, a motion to revoke probation (an MTR), or a motion to modify probation. If the violation caused serious harm or injury, prosecutors would ask the judge to revoke probation and remand the defendant into custody. When prosecutors asked for a remand, they usually did so on the grounds of public safety. Remand requests were filed on a regular basis; nonetheless, the judge often denied them, and merely extended the probation period. Because so few requests for remands were granted, the issue of bail and how high to set it, did not appear

to be a major factor in the court's decision making. In felony cases where batterers were incarcerated while awaiting trial, bail was set at a minimum of $50,000. In misdemeanor cases, bail was set as low as $5,000. It is unclear whether bail was a deterrent to those batterers who did not commit violations that would have led to bench warrants, but given the low likelihood of arrest it is unlikely that it was a major deterrent.

Most petitions to lift or modify a restraining order were filed at batterers' request. On occasion, defense attorneys would file the petition because *they* disagreed with some aspect of it, or felt it was inappropriate or unnecessary for their client. For example, one defense attorney argued that, because his client had not caused any physical injuries to the victim, the restraining order should be lifted. (Incidentally, this was not accurate: the judge read aloud from the complaint that the victim had scratches and bruises on her body, which were observed and recorded by a police officer.) Another attorney, a female public defender, informed the judge that she had "a problem with geographic restraining orders" because her clients had to constantly make sure they were at least "a football field and a half" away from the victim. From this attorney's perspective, staying away from the victim imposed too much of a burden on her client.

Public defenders and private defense attorneys continually appealed to the judge to lift or modify restraining orders. Among the cases I observed, an *average* of 10 petitions to have a restraining order lifted or modified occurred every day, which would require between 1 and 2 hours of the court's time. These requests would be filed even in extreme cases of domestic violence, and when batterers had not even enrolled in the counseling program.

B. Social entrapment

By consistently challenging restraining orders, batterers frequently succeeded in having three-year restraining orders modified, or entirely lifted within a few months or weeks after they had been issued. I observed that district attorneys would object to these petitions on the grounds of public safety, citing numerous prior incidents (or convictions) of domestic violence. Although it was clear that these batterers were dangerous, the judge gave them the benefit of the doubt. Batterers were allowed continued contact with victims, and they were rarely incarcerated for more than a couple of days.

Ptacek (1999) has argued that viewing battering through the conceptual lens of social entrapment is useful for examining judicial responses to domestic violence against women and children. He states that it is important to examine how judicial decision-making affects battered women's ability to resist or escape violence. In his view, what judges do with their authority can attenuate or aggravate women's social entrapment, namely by: recognizing and addressing women's fears; ensuring battered women's safety in the courtroom; displaying a positive, supportive and respectful judicial demeanor; not trivializing, denying, or blaming the victim for the violence; not colluding with the batterer; recognizing economic/financial aspects of battering; and recognizing the needs of children.

In my fieldwork, I found that the court in some ways helped lessen women's social entrapment. For example, the court helped battered women feel safe by providing victim advocacy services, and by not requiring victims to make a personal appearance in court (unless they wanted a restraining order lifted or modified) . The judge, along with most other members of the court, also displayed a supportive and respectful demeanor

toward victims. With the exception of defense attorneys, the court did not trivialize or deny the violence battered women had experienced, not did they blame the victim for the violence. The court I observed also consistently issued restraining orders, and temporary child custody to battered women.

On the other hand, I also observed a number of judicial responses that contributed to the social entrapment of battered women in San Francisco. These responses included: putting batterers in probation (rather than incarcerating them); allowing batterers virtually unrestricted contact with their children; providing only the mildest punishments for restraining order violations; failing to punish other violations of court orders; and granting petitions to lift or modify a restraining order. I observed that this court also contributed to the social entrapment of children by failing to take into account their needs for safety and consistency. Judicial responses to children's needs will be discussed in the next chapter.

CHAPTER 5: CHILDREN AND THE DOMESTIC VIOLENCE COURT

In this chapter I discuss how the San Francisco domestic violence court addressed the needs of children. Jaffe et al. (2003) have previously found that, although domestic violence courts today are more likely to respond to the needs of battered women, they continue to be less likely to respond to the needs of children. In my analysis of the domestic violence court data, I found three major findings with regard to children. First, I found that children were frequently present in the courtroom, and witnessed the court proceedings for hours at a time. Secondly, I found that, when children were involved, this *increased* the likelihood that the judge would lift or modify a restraining order. Lastly, I found that the judge frequently granted batterers' requests for visitation privileges, regardless of the circumstances or severity of the case.

5.1 Children in the courtroom

During the fieldwork period, I observed that children frequently accompanied one of their parents to court. Specifically, on half the days I conducted fieldwork, I observed at least one child accompanying their parent (usually the mother) to court. When children arrived in the courtroom, I observed that they would wait for several hours until their parents' case was called. Although defendants and victims were allowed to leave the courtroom during the proceedings, many did not do so for fear of being absent when their case was called. When batterers were not present in the courtroom, they risked having a bench warrant issued for their arrest.

Many defendants and victims were compelled to sit in the courtroom all day, between four and six hours. Although the court would sometimes adjourn for lunch, if the court's calendar was full, the judge would often work through lunch. I observed that

the waiting was very stressful for children. Especially younger children had a difficult time waiting in the court for such long periods of time. Although children were allowed to be in the courtroom, they were not allowed to talk, move around freely, or play. Adults in the courtroom were also not allowed to read or otherwise occupy themselves in the courtroom, so as to fully direct their attention to the judge and the proceedings.

5.1.a Young children (0-5)

I observed that the atmosphere in the court was particularly stressful for young children, who would often cry or fidget audibly in their seats. To minimize this stress, I observed that court officials (bailiffs, district attorneys and public defenders) were kind, tolerant, and friendly to children. They also conducted the court proceedings in as calm and professional manner as possible, so as not to scare children unnecessarily. However, inevitably, I observed that court proceedings would become loud and contentious, as defendants and attorneys argued their cases. Given the high stakes involved in domestic violence cases, high levels of stress are to be expected. Stress, however, is harmful for young children, who do not understand what is happening, and need to feel safe in order to recover from the trauma they have already experienced.

Most of the children I observed in court were very young children, from newborns to five year olds. While observing these children, I noticed that they would sit quietly at first (or sleep), but after a while they would become uncomfortable and begin to squirm in their strollers or seats. Many children would begin to complain to their mother, or cry. Some would demand to go outside, or attempt to walk around in the courtroom. Although this behavior is normal and appropriate for young children, it had the effect of disrupting court proceedings. When the noise became too much, the bailiffs would

kindly ask the parent to take the child to the children's waiting room, located on the ground floor of the courthouse.

While conducting fieldwork at the courthouse, I visited the children's waiting room on several occasions to see whether it was an inviting and safe place. I found that it was a bright, well-equipped facility with ample recreational materials and toys for children. The waiting room was protected by thick glass walls, doors and windows. Several staff people played with the children and kept them occupied. The children there seemed to be entertained, safe, and well taken care of.

Although the children's waiting room was a friendly and safe place, the play area was limited to one medium-sized room. This small space could only accommodate a few children at one time: a sign posted on the entrance door informed parents that a maximum of 7 children could be admitted to the waiting room. Every time I visited the children's waiting room, I usually saw several children playing there, but it was never filled to capacity. This suggested to me that most parents did not know about the facility. During court observation, the parents confirmed this: when the bailiff or prosecutors informed parents about the children's waiting room, the father or mother would respond they did not know about it.

The domestic violence court I observed allowed children in the courtroom, even though the courtroom is clearly not an appropriate place for children. It appeared that it may be difficult or impossible for defendants or victims to arrange, or pay for child care. Court officials made an effort to treat children as kindly as possible. Nonetheless, I found the court to be a highly stressful place, prone to high levels of conflict and violence. I observed that children were exposed to a lot of testimony about domestic

violence, and they had continued exposure to the batterer. Although batterers were not allowed to talk to their children in the court, the children could still see him, batterers sometimes communicated with them nonverbally (using gestures). When in front of the judge, batterers behaved as if they loved their children, and were good parents. In this way, I observed that batterers made use of their children's presence in court to portray themselves as loving and caring fathers.

During the fieldwork period, I observed that batterers used their child's presence as a pretext to make a variety of requests from the judge. In one case, a batterer pointed to his child while asking the judge to lift a restraining order. Another batterer brought his children to court in order to show the judge how necessary it was for him to receive probation, so that he could continue to support his children. When the court granted these requests, children learned that the court did not consider domestic violence a sufficient reason to curtail batterers' parental rights.

Children accompanying their parents to domestic violence court were subject to high degrees of stress, were exposed to verbal testimonies of violence, and were at risk of physical violence. In one case called before the court, family members waiting outside engaged in a scuffle, involving shouting, threats, and physical shoving. Although bailiffs quickly put a stop to the violence, and no one was hurt, the children involved were exposed to this violence, and could have been physically injured as well. When children are subjected to violence at court, this further undermines their ability to recover from the violence they experienced from the batterer. Young children, especially, cannot understand or make sense of this violence; they also possess the least capacity to defend themselves or resist it.

5.1.b Older children (6-12)

Although most of the children I observed in the court were very young, some were of school-age (6-12). Observing these children in court was distressing because they were not attending school. Children exposed to domestic violence have high truancy and school drop out rates, and accompanying their parents to court exacerbates this problem. During the fieldwork period, not one court official remarked upon these children's presence in the court.

In general, the school-aged children I observed showed less dissatisfaction with being in the courtroom than their younger counterparts. I observed that they would sit relatively quietly, and sometimes whisper to their parent or sibling. Although it was unclear how these children felt about accompanying their parents to court, it was clear that the older children were being exposed to the same levels of stress, conflict, and violence in the courtroom as the younger children.

5.2 Children accompanying mothers

I observed that children accompanying a parent to court most often accompanied the mother. During the fieldwork period, I found that mothers were most likely to bring their children to court when they had petitioned the judge to lift or modify a restraining order. When victims filed a petition to modify a restraining order, the judge would usually grant this request, although sometimes the judge would deny it of the batterer had not yet successfully completed at least three or four batterer counseling sessions. The judge also usually asked the mother to meet with a victim advocate first, who would try to explain the risks associated with lifting a restraining order to the mother.

When victims petitioned the court to lift or modify a restraining order, they would often bring their children to the bench so the judge could see them. Victims would frequently incorporate the children into their request. For example, they would say, "I want the father to see his children," or "I need the father to help me out with child care." In most cases, the judge would try to grant these requests, even though doing so meant that the children would have continued exposure to the batterer, and his violence. Perhaps most significantly, the judge did not ask the children directly how they felt about these requests, despite having a golden opportunity to do so. The judge also did not ask mothers whether they had consulted with their children about the prospect of further contact with the batterer. Finally, the judge never asked mothers whether they had considered what consequences further contact with the batterer might have for her children.

One case in particular illustrates the above situation. A young, Caucasian mother appeared in court to have her infant daughter's name removed from the existing restraining order. The victim explained that she was working part-time, enrolled in school, and did not have the financial resources to pay for child care. She took partial blame for the violence, and told the judge she did not feel her partner was a threat to her child. When the judge reminded her that her partner had thrown a mug at her child in their living room, the victim insisted that she wanted the father to have contact with the child anyway. Both the prosecutor and the victim advocate, on the record, strongly objected to the mother's request. Ironically, just as the mother was making her case to the judge, the little girl began to cry, and the prosecutor pointed to the child, and said, "Maybe we should let the child speak." The judge ignored these objections and granted

the mother's request anyway, referring the mother and the batterer to family court to work out plans for visitation and custody. The judge granted the mother's request even though the batterer had not completed a single one of his required 52 batterer counseling sessions. The batterer also did not apologize, nor indicate that he would be nonviolent in the future.

5.3 Children accompanying batterers

In a few cases, children accompanied the batterer to court. On one occasion, I witnessed a young father entering the courtroom with his young son, who appeared to be between five and six years old. Father and son sat in the back of the courtroom and waited. When the father was called to the bench, the probation officer stated that the defendant had three outstanding bench warrants for failure to appear in court. The probation officer asked for ten days of community service as a penalty, but the judge did not penalize the defendant at all. During the proceedings, I observed the young son anxiously witnessing the proceedings. The judge told the defendant that it was a good thing that he had shown up that day, and that "today is your lucky day." The judge let the defendant go, after admonishing him to attend the batterer counseling program, and to submit progress reports to the court in a timely manner.

On a second occasion, I observed a batterer who came to court with his four -year old son. In this case, the batterer was facing a remand into custody for failing to comply with court orders. When the batterer was called to the bench, his young son slid off his chair and began to follow his father, who was walking toward the judge. Realizing this, the batterer turned around and told his son to go back. The little boy did so, crying quietly. No other adult had accompanied this child and his father. The prosecutor looked

worried, and she asked the judge to put the matter over until another day. When this request was granted by the judge, the prosecutor approached the father, and told him about the children's waiting room, adding "it's free." The batterer replied that he had not known about it.

In both of the cases described above, batterers received favorable rulings when they brought their children to court. Batterers benefited regardless of who brought the children with them to court. I found that for victims and batterers, bringing the children to court was an effective strategy for lifting or modifying restraining orders, and for receiving more lenient sentences. In particular, batterers were able to avoid being taken into custody.

5.4 Children and restraining orders

In the San Francisco domestic violence court, I found that children were routinely added to restraining orders when they were issued to the mother. I observed that the court issued a restraining order in every domestic violence case that came before the bench. If children were involved, they were automatically listed on the order as a "protected person." In restraining order hearings, the deliberations were not generally whether to issue the order, but whether to lift or modify the order. I found that battered women and children could easily obtain a restraining order, but that this order could be just as easily lifted or modified.

In my fieldwork, I observed that children would most often be present in court when their mother had petitioned the judge to lift or modify a restraining order. When mothers did so, they would often give practical reasons for their request, such as needing help with child care, or needing financial support from the batterer. Some mothers asked

the court to help them make a good father out of the batterer. They stated that they wanted their children to have contact with the father, but that the court should help ensure that this contact was nonviolent.

I observed that batterers frequently used the fact that they had children as a way to convince the judge to lift or modify a restraining order. Batterers would claim they wanted to see their children, and I observed that their requests were met with great sympathy by the judge. When these cases came up, the judge would not necessarily lift the order entirely, but she would modify it so that the batterer could petition the family court for visitation, or grant the batterer *supervised* visitation. When the judge did this, she was very friendly to the batterer: Frequently, she would say, "Good luck to you, sir." The judge did not ask batterers about their past violence, or how they would ensure their children would not be exposed to more violence in the future.

When batterers petitioned for a modified restraining order, these requests were often granted outright by the judge. In these cases, almost no discussion took place, although the judge did review the docket to ascertain whether the batterer had a history of compliance with court orders. In cases involving repeated violence toward partners and children, batterers were able to successfully have a restraining order modified., and to pursue their claim in family court.

By referring batterers and mothers to family court, the judge effectively redefined domestic violence against women and children as a civil, private, family matter. I found that the judge would refer even severe cases of domestic violence to the family court. The judge's ruling implied that domestic violence is not a serious enough crime to limit paternal rights. In one case involving a restraining order that was issued specifically

because the batterer had used visitation to further harass and threaten the family, the judge referred the batterer to family court anyway. In this case, the victim was not present in court, nor did anyone advocate on her behalf.

5.4 Children and custody

During the fieldwork period, I found that the San Francisco domestic violence court awarded presumptive custody to battered mothers. I did not observe one case in which the batterer had been awarded joint or sole custody of the children. However, the criminal court did allow batterers to pursue visitation and custody in family court, thereby treating the case as if it were a high-conflict divorce (as Jaffe et al. (2003) have previously observed). The judge had the authority to deny or limit batterers' visitation privileges, but she rarely used it in a way that would adequately protect children.

5.5 Children and visitation

In the San Francisco domestic violence court, batterers were usually granted some form of contact with their children. If batterers were not awarded visitation privileges, the judge would grant them telephone or letter-writing privileges, and refer the batterer to family court. When the judge granted visitation privileges, these were usually limited to supervised visitation. However, in quite a few cases, the judge allowed unsupervised visitation.

I observed that batterers actively and persistently pursued visitation in the criminal court. Batterers accomplished their objective by continually petitioning the court to lift or modify a restraining order. Much of the criminal court's daily activity was dedicated to processing requests for modified restraining orders and visitation. The court

CHAPTER 6: DOMESTIC VIOLENCE AND FAMILY PRIVACY

In my fieldwork, I found that the judge, and defense attorneys, consistently treated domestic violence as a private, family matter. Although battered women were victims of crime, and had publicly appealed to the court, I observed that the judge effectively sent domestic violence "matters" back into the private domain of the family. I observed that the judge, in various ways, recast domestic violence as a private, family matter by: lifting and modifying restraining orders; referring visitation and custody matters to family court; and disregarding issues of victim/public safety. Through these practices and rulings, the judge effectively repackaged domestic violence as a private matter, thereby minimizing the court's involvement in criminal cases of domestic violence.

A. Restraining orders and family privacy

I found that one way the judge redefined domestic violence as a private, family matter was by lifting or modifying, restraining orders. Although the judge issued restraining orders in virtually every criminal case, I observed that many of these restraining orders were subsequently retracted or changed, often within weeks of their issue date. By lifting or modifying restraining orders, the judge allowed batterers to have direct contact with victims, thereby effectively minimizing the role of the public sphere in cases of domestic violence.

In court, I observed that the great majority of petitions to lift or modify restraining orders were filed by batterers. Previously in this dissertation, I have documented how batterers inundated the judge with requests to modify or lift restraining orders. I observed that batterers would repeatedly file these petitions, even when they had been

previously denied, and even when they had committed severe acts of domestic violence. When batterers asked for visitation privileges, the judge would express sympathy, as if it were perfectly understandable that batterers would want to see their children, and as if they had no ulterior motives. The judge made a concerted effort to grant these petitions, regardless of circumstances. It seemed as though the judge believed batterers have a right to contact with their children, even when they have abused them, and that the abuse is ultimately a family matter.

On a number of occasions, I observed that victims petitioned the court to lift or modify a restraining order. In these cases, victims justified their petition on the grounds that they needed financial or child care assistance from the batterer. When these petitions were filed by victims, the judge would usually grant them. Although the judge sometimes warned victims that the batterer might abuse them again, the judge did not say that these women's lives might be in danger. I did not observe that the judge, as an alternative, mandated child support without granting batterers visitation privileges - a judicial response that would have protected victims' safety. Instead, the judge allowed the batterer himself to provide child care.

Many batterers came to court because they had violated a modified restraining order. When this occurred, prosecutors would petition the court to issue a new, stricter restraining order. I observed that the judge would usually grant prosecutors' requests in these cases, and issue a new restraining order. However, this dynamic of issuing and re-issuing restraining orders mirrored the cycle of domestic violence itself. That is, I observed a pattern of batterers committing new acts of violence, expressing remorse to the judge (and accepting a mild form punishment), and shortly thereafter, committing a

new act of domestic violence. Thus, domestic violence cases cycled in and out of the public domain of the criminal court.

During the fieldwork period, I observed that an average of one third of the court's time was spent conducting hearings related to restraining orders. Many of these cases involved batterers who were, according to prosecutors, in "flagrant non-compliance with court orders," and who had perpetrated multiple acts of continued violence. The judge usually responded to violations like these by extending the probation period by a few months. In some cases, the judge merely admonished the batterer. The judge did *not* remand violators into custody, but released them on their own recognizance, and allowed them to resume some contact with their families.

B. Referrals to family court

Another way the judge redefined domestic violence as a private, family matter was by referring domestic violence cases involving children to the family court. During the fieldwork period, I observed that, whenever visitation or custody issues arose, the judge almost automatically referred these cases to the family court. The judge frequently justified her referrals to the family court by stating that this court was "better equipped with family services to deal with custody and visitation matters." The judge stated this point of view on numerous occasions, and no one contested it. The judge's point of view seemed to be taken for granted by all of the judicial officers in the court. Batterers, also, did not challenge these referrals; I observed that they were visibly happy with these decisions, because they were allowed to petition the family court without interference from prosecutors.

The judge's practice of referring criminal domestic violence cases involving children to the civil, family court has several negative implications for victims. First, battered women and children are forced to have continued contact with batterers in the family court. Secondly, because prosecutors are not involved in civil cases, victims no longer receive criminal court protection (police are more likely to take criminal restraining orders seriously). Lastly, because the judge often made these referrals at the request of batterers in the absence of the victim, victims could not contest the decision, nor were they informed of it.

C. Public safety

The judge redefined domestic violence as a private, family matter in a third way, namely by ignoring or dismissing public safety concerns. Throughout the fieldwork period, I observed that prosecutors raised the issue of public safety when batterers posed an extreme risk to their families, and to the public. They specifically used this argument when: batterers had threatened to kill their partners or children, expressed an intention to kidnap their children, or when batterers had long histories (or multiple convictions) of domestic violence. Prosecutors used the public safety argument to protect women and children, to contest lifting or modifying restraining orders, and to contest the legal principle of family privacy. However, even though prosecutors reserved their use of public safety arguments for extreme, very high-risk cases, the judge frequently dismissed the argument, thereby further minimizing the court's responsibility for these cases.

In one case, the prosecutor raised the issue of public safety because the batterer had beaten the victim "at least 17 times." In this case, the prosecutor stated that the violence had been severe, and that the couple's two-year old daughter had been present in

the room when the violence occurred. The prosecutor told the judge that the little girl had tried to intervene in the violence, and, although she was not injured, she could easily have been hurt. Because of this, prosecutors charged the batterer with child endangerment in addition to domestic violence. The prosecutor asked the judge to deny the batterer's petition for release from custody on his own recognizance (an "OR" petition), because he posed a serious threat to the victim's and public safety. The defense attorney objected, arguing that a restraining order would suffice to protect public safety. The judge agreed with the defense, allowing the defendant to be released pending $30,000 bail. Although the judge also issued a restraining order, she specifically "directed" the batterer to petition the family court to "work out an arrangement for visitation."

In another case involving the public safety argument, the defendant petitioned the court for release from custody. This case involved a man who had repeatedly committed domestic violence in the past few years, and had held a gun to his victim's head. He had also verbally threatened to kill his former partner on several occasions. The prosecutor quoted the batterer as saying, "If I have to kill you to keep my baby, I will," and, on another occasion, "I'm going to take you out of the picture." In addition to this, the batterer had threatened to kidnap his child, telling the mother that, "You will never see your child again." The prosecutor told the judge that the victim feared for her safety and for that of her family. The defense attorney argued that release from custody was appropriate as long as a restraining order was in place. Again, the defense argued that the restraining order would be "enough to ensure public safety." The judge again agreed

with the defense, set bail at $10,000, and allowed the defendant to petition the family court for visitation privileges.

D. Preservation through transformation

In this chapter, I have documented several ways in which the judge redefined domestic violence as a private, civil matter. By lifting and modifying restraining orders, referring criminal domestic violence cases to family court, and ignoring public safety concerns, the judge removed many of the court protections that had initially been extended to victims. With these decisions, the judge minimized the criminal court's involvement in cases of domestic violence, and reconfigured domestic violence as a private, familial matter.

Each of the judicial decisions discussed above contributed to the reconfiguration of domestic violence as a private matter in different ways. For example, the judge's practice of lifting restraining orders pushed domestic violence back into the private sphere because court protection from the batterer had been removed. When the judge referred cases involving children to the family court, she also redefined domestic violence as a private, family matter because she reclassified these cases as civil matters. Lastly, by ignoring public safety concerns, the judge redefined domestic violence as a private matter though her failure to equate victim safety with public safety.

All of the judicial decisions described above "fit" Siegel's preservation through transformation theory. Although the judge did not employ an overt rhetoric of marital privacy, her decisions revealed that this was the ideological basis of her rulemaking. Siegel's argument that the preservation through transformation process is not obviously visible, but rather detectable only through close observation and analysis, is also borne

out by this study. Because the judge did not explicitly refer to principles of family privacy, it was necessary to analyze her decisions in order to reveal the legal principle underlying them.

Although families I observed had lengthy, intensive engagement with the court, their relations with one another did not appear substantially altered by court involvement. Even when batterers were convicted of misdemeanor or felony domestic violence, and attended many months of batterer counseling sessions, I observed that batterers ultimately retained most of the familial and paternal privileges they had possessed prior to prosecution. Furthermore, I observed that, because most batterers managed to avoid prison sentences, successfully avoided complying with probation orders, and continued to enjoy virtually unrestricted contact with their families, batterers remained virtually unpunished for committing multiple, serious, life-threatening acts of domestic violence.

E. The family, the market, and the state

Consistent with Olsen's theory, families were treated as naturally-occurring social groups, in which domestic violence itself was treated as a naturally-occurring phenomenon. The latter was evident in the "taken-for-grantedness" of the judge's behavior toward batterers, as if their behavior were "normal" and universal, and therefore understandable and excusable. Almost without exception, despite overwhelming evidence of multiple incidents of battery and assault, batterers were treated with empathy and understanding by the judge, as if they had committed this crime because they had merely momentarily lost their temper. The judge also seemed to take for granted, or considered it "natural," that batterers wanted to see their children. In this way, the judge perpetuated false dichotomies separating the family from the state.

Olsen (1983) writes that, in domestic violence court cases, three crucially-related ideological dichotomies drive judicial decision-making, namely: the market/family dichotomy, the state/civil society dichotomy, and the male/female dichotomy. Olsen argues that the purpose of these intertwined ideologies, embedded in law, is to allow the state to maintain a position of non-interference in family matters, so as not to disrupt the social status quo. I found that, through her rulings, the judge continually redefined domestic violence as a private matter. I also observed that the judge's decision-making seemed to reflect the political and bureaucratic interests of the state, which, according to theory, are grounded in the desire to avoid public involvement in family matters. In my data, the latter was most evident when the judge repeatedly asked prosecutors and defense attorneys to "settle" cases as quickly as possible, so that they would not go to trial.

F. The negative state

MacKinnon (1989) describes the state as a "negative" state in which government best promotes freedom by staying out of existing social arrangements. MacKinnon writes that the negative state "reverberates throughout constitutional law," and that it is doctrinally embodied in laws of equal protection, freedom of speech, violence against women, and privacy. In *Toward a Feminist Theory of the State* (1989), MacKinnon questions the power of law to transform existing social relations. Many feminist legal scholars share her view, but also maintain that one must advocate for legal change in order to force the legal system to respond to the needs of the people, and to realize the dream of a truly democratic society. In the domestic violence court I observed, I saw that even good laws, like the California Domestic Violence Prevention Act, can be severely

undermined by judges who fail to carry out the spirit of the legislation. Because the judge's decisions were inconsistent and arbitrary, I found it impossible to determine what potential the DVPA, VAWA I, and VAWA II have for eliminating domestic violence against women and children.

CHAPTER 7: SUMMARY, POLICY RECOMMENDATIONS, AND FUTURE RESEARCH DIRECTIONS

At the outset of this dissertation, I defined five research questions that, based upon my review of the literature on battered women, children and the courts, suggested five areas that could benefit from sociological inquiry. These five questions were: (1) How does the domestic violence court process domestic violence cases?; (2) How does the court treat battered women and children?; (3) How does the court ensure victim safety?; (4) How does the court address children's needs?; and (5) How does the court deal with the issue of family privacy in its proceedings and rulings? I found that, although the court treated battered women and children with respect and courtesy, and although the court had instituted certain policies to make victims' involvement with it less burdensome, the court did not adequately address victim safety or children's needs. Despite efforts by prosecutors and victim advocates to help redefine domestic violence in terms of a public issue, the judge's rulings remained anchored in traditional legal principles of family privacy that have historically protected the rights and privileges of domestically violent men.

A. Summary of findings and policy recommendations

7.1 Victim safety

In this study, I found that, while the domestic violence court treated battered women with courtesy and respect, and victims' safety needs were initially acknowledged by a judge who consistently issued protection orders, the court did not maintain this level of concern for battered women's safety over time. In case after case, I found that the judge lifted or modified restraining orders, sometimes within weeks of their issue date. I

also found that the judge's rulings were often inconsistent and arbitrary. Existing restraining orders were either lifted entirely, or modified to the point where they extended few protections to victims. Perhaps most disturbing, I observed that restraining orders were often lifted, or modified, without victims' knowledge and consent.

These findings have several policy implications. First, because it is so easy for batterers to petition the court to lift or modify a restraining order, a policy should be instituted to allow the batterers to petition the court only after they have met certain requirements. These should include all of the following: successful completion of one year in a batterer intervention program (with evidence of very good participation and progress); no further incidents of violence or other criminal activity; prompt payment of child and family support for the duration of the restraining order, and no contact with victims or children for at least one year. If batterers cannot or will not meet these conditions, they should be remanded into custody, as stipulated by law. Disallowing direct contact between victims and batterers for a sufficient length of time is essential for battered women's and children's recovery. It is a precondition for battered women and children to be able to successfully escape the cycle of domestic violence, and long term, if not permanent, social entrapment.

Secondly, it is critical that victims are consulted before a decision to lift or modify a restraining order is made and that victims are fully notified when this is done. No petition to change an order should be granted unless the victim has had the opportunity to consider it, respond to it in writing, and discuss it with the District Attorney's office or her own legal counsel. In a large share of the cases I witnessed, restraining orders were

lifted or modified in the absence of the victim, in which case she is left unprotected without her knowledge or consent.

Thirdly, when victims consent to an order being lifted or modified, and such a decision is made by the court, the court should reach out to the victims with training and information on how to recognize future incidents of domestic violence, what to do when those occur, and how to keep themselves and their children safe. Such information is already provided by the victim advocates of the District Attorney's Office, but only when victims are present in court.

Fourth, many victims of domestic violence become socially entrapped because they need financial or in-kind support from the batterer to raise the couple's children. This is a choice that no victim of domestic violence should have to make. Government supports should be designed and implemented to ensure that no victim of domestic violence is forced to reestablish contact with her batterer, or into agreeing to the lift or modify a restraining order, simply to be able to take care of her children.

7.2 Children

In Chapter 5, I described how the San Francisco domestic violence court responds to the needs of children. Although children are usually listed as protected persons on restraining orders, and mothers are awarded presumptive custody of children, I found that the court undertakes little else to protect children from further abuse. First, the court itself is an unsafe place for children. I found that children were often present in the courtroom, where they were further exposed to violent language, behavior, and stress. Secondly, I found that the court frequently lifted and modified restraining orders to allow child visitation with batterers, thus potentially exposing children to further acts of abuse,

including sexual abuse, abduction, and homicide. Lastly, I found that children were generally seen, but not heard by the court. With the exception of caring prosecutors and victim advocates, no other member of the court ever directly spoke to a child. Children's needs were also not ascertained or documented on a regular basis by any member of the court.

Based on these findings, and empirical studies documenting the traumatic effects of domestic violence on children, the court should consider disallowing children in the courtroom. The judge, whom I recently interviewed (see the Afterword to this dissertation), confirmed that family court does not allow children in the courtroom for these reasons. This rule should be extended to the criminal domestic violence court. In the absence of such rules, parents should be better informed about the children's room that is already available to them, and where they can leave their children to be safe, supervised place at no charge. Parents should also be warned about the potential negative impact witnessing the court proceedings can have on their children's emotional well-being.

Secondly, visitation with batterers should not be allowed for at least one year, and only if they have met the requirements specified in Section 7.1 of this chapter. Thirdly, in addition to these requirements, the court should mandate that batterers complete a parenting program, to make them understand how their violence damages children. Fourthly, although the current mandate of the court is to process adult cases of domestic violence exclusively, the County of San Francisco should seriously consider expanding the court's authority to process cases of domestic violence against children as well.

Lastly, the court should make greater efforts to incorporate children's experiences and wishes in the judicial decision making process. This should be done through depositions and pre-trial interviews by social workers with the children, rather than through in-court hearings.

Regardless of the treatment of children in the courtroom and considerations of their wellbeing in judicial decision-making, it is important that children are included in treatment programs for victims of domestic violence. Whether or not they are abused themselves or directly witness the violence, children suffer when there is domestic violence in their household. If left untreated, the trauma caused by this suffering is likely to harm the children for life and perpetuate the cycle of violence into the next generation.

7.3 Family privacy

In Chapter 6, I examined the issue of family privacy, and how this legal principle has historically hindered progressive change in domestic violence law. In my research, I found that some members of the court were aware of this problematic, and addressed it by arguing that victim safety is equivalent to public safety. I found that prosecutors, victim advocates, and probation officers seriously endeavored to protect victims, and hold batterers accountable for domestic violence. These members of the court displayed a high degree of knowledge and awareness about the dynamics of domestic violence, expressed real concern for victims, and structured their legal arguments accordingly. These members of the court clearly viewed domestic violence as a public issue deserving of strong, effective, and meaningful court intervention. The judge, however, as reflected in her rulings, did not share this perspective, and as a result, victims ultimately received little support and protection from the court.

These findings suggest that more legal change is necessary to undo the lingering power of family privacy ideology in domestic violence law. This may be accomplished in several ways. First, continuing education for judges should be further expanded to directly address this issue. Such education should not be limited to the legal aspects of domestic violence cases but should include presentations on the empirical patterns of domestic violence, the high likelihood of recidivism by batterers, the problem of social entrapment of victims, the impacts of domestic violence on children, and the importance of setting and reinforcing clear and consistent rules and boundaries. The training should be provided by established scholars who have expertise in the social, psychological, and public health consequences of domestic violence, not just in the legal and law enforcement aspects of the problem. Secondly, additional legislation may be needed, both on the federal and state levels, to more precisely and unambiguously define domestic violence as a criminal act, and provide better judicial guidelines for processing domestic violence cases. Lastly, new court procedures should be implemented to keep judges focused on battered women's and children's needs.

B. Conclusions

In conclusion, my research confirms several existing theories about domestic violence. For example, the findings by MacKinnon (1989) about the limitations of state intervention in the private family sphere are confirmed by the court's repeated decisions to reconnect families by lifting or modifying restraining orders, even when this re-exposed victims to violent batterers who were noncompliant with court orders.

My research also confirms the theory of the cycle of violence developed by Walker (1979, 1984), and also shows how the cycle manifests itself within the

institutional context of a courtroom (a phenomenon also described by Ptacek, 1999). Walker describes how batterers engage in escalating episodes of violent behavior that are interspersed with periods of reconciliation and apparent reform. I observed that, when batterers appeared before the domestic violence court judge, this usually followed an incident of severe violence, when the batterers were in the "honeymoon" period. Batterers' apparent penitence allowed the judge to issue lenient and permissive rulings (e.g., lifted or modified restraining orders) and sentences (e.g., probation with child visitation privileges). It appeared that the judge issued these rulings because she thought they were appropriate, and because these rulings were consistent with historical precedents of judicial leniency toward batterers.

Witnessing the cycle of violence being played out in the courtroom caused me great distress as a battered women's advocate. Having worked at a local domestic violence shelter for three years, I knew what a devastating impact these rulings would have on battered women and children, and how these rulings would undermine victims' ability to break free from their batterers.

B. **Future research directions**

The findings presented in this dissertation suggest several possible directions for future research. First, future qualitative and quantitative studies should examine how battered women and children are treated in domestic violence courts in different national and global contexts. These studies might specifically examine whether restraining orders are lifted (or modified) soon after being issued, and whether traditional paternal rights and privileges continue to be protected by the court. Future studies might also examine how domestic violence laws, and the courts, may be changed to enhance protection for

battered women and children, and how international collaborations among feminists may contribute to this end. Finally, future studies should also re-examine the relationship between the state and society, violence against women and children, and global patriarchy.

One direction future feminist work on domestic violence must also focus on is the question of how race, class and ethnicity intersect with domestic violence against women and children. Along with Yllo (2005), I argue that one of the most pressing needs for feminist work on domestic violence is the need to more fundamentally incorporate issues of race, class and ethnicity into feminist theory and analysis. Issues of race, class and ethnicity interact with all aspects of family life and its social and institutional context, and women's experiences with domestic violence vary significantly across race and class lines.

D. Advocacy for system change

Future work for feminists should also include advocacy for system change. The late Susan Schechter, for example, founded the model AWAKE program (Advocacy for Women and Kids in Emergencies) at Children's Hospital Boston. This program established a link among health care service providers, legal assistance, and other community resources for battered women and children. The AWAKE program now has two locations at Children's Hospital Boston, one of which operates out of the Martha Eliot Health Center, a full-service medical facility providing pediatric health care, mental health services, and an extensive OB/GYN program with a home-visiting component. According to the Technical Assistance Resource Center at the Annie E. Casey Foundation's Community Change Initiative, all staff at the Martha Eliot Health Center

routinely screen for domestic violence and ensure time alone with each patient at each visit. Services also include American Sign Language interpretation and weekly support groups for Latina victims of domestic violence; currently or formerly battered women in substance abuse treatment; a time-limited group for adolescent females; and a 12-week prenatal group. For feminists, one task might be to replicate the AWAKE program model at health care facilities nationwide. Intakes and screening at these programs might also be designed to collect information from victims that may be used in restraining order filings, and reports to child protection and welfare agencies.

Chapter 8: Afterword

In this chapter, written after my defense, I present evidence from a very recent San Francisco homicide case that directly bears on the findings presented in this dissertation. I also present a write-up of a brief interview I conducted with the domestic violence court judge, whose judicial processing of domestic violence cases I observed for this project. Both of these items are presented in the Afterword because I did not collect them during the official study period for this project. Their collection was also not part of the original research design for this project.

A. Another preventable homicide

On October 15, 2005, an event occurred that confirmed my worst fears about the judicial processing of domestic violence cases in San Francisco. On the front page of the *San Francisco Chronicle,* an article appeared about a man who had been convicted of eight felony counts of domestic violence, but had never been sentenced to prison, and who ultimately murdered his former dating partner, a young, immigrant woman from Eastern Europe (Vanderbeken, 2005). According to the *Chronicle*, the victim had met the batterer online, briefly dated him, and was then harassed and stalked by him for a period of three years. According to police reports, the batterer, a Caucasian, 24-year old man, threatened to kill the victim, had broken in to her home, and attempted to kidnap her. Despite this, the San Francisco criminal domestic violence court repeatedly granted this batterer probation, and released him from custody.

Having learned about the homicide, I consulted my field notes to determine if I had observed this man in the domestic violence court. From the court calendars I had collected for my research (on which defendants' names are listed), I discovered that this

batterer was scheduled to appear in court on four separate occasions during the study period. On his first court date, the batterer was scheduled to provide a progress report. In my notes, I had recorded that he failed to appear, whereupon the judge issued a bench warrant for his arrest. Five days later, the batterer came to court to surrender to the bench warrant, and to be taken into custody for his probation violation. On this occasion, I noted in my journal that that the batterer was nicely dressed (in a jacket, with a white shirt and khaki pants), and that his blonde hair was cut in a military, crew cut style. I also noted that the batterer was a heavyset man, and looked "beefy" – he looked very physically strong. When the batterer's case was called, the judge mildly told the batterer that he had missed several court dates, and asked him whether he needed a "re-referral" to a drug program. The batterer was then taken out of the courtroom by a bailiff, and his defense attorney (a public defender) remarked, "Looks like he's being taken into custody."

Two weeks after being taken into custody, the batterer was scheduled to appear in court for a third time. On this occasion, the batterer filed a petition to be released from custody on his own recognizance. When his case was called to the bench, the probation officer asked the judge to temporarily delay the hearing, which was granted. The case was not called again until four days later, when the batterer's petition to be released from custody was granted by the judge. In all four of his court appearances, I noted that there was little or no court discussion about the batterer's case, and that on each occasion, the judge merely issued her ruling. Comparing the history of this case, as described by the newspaper article, to my own notes, I discovered that the court had been aware of the batterer's continued violence and noncompliance for two years.

The homicide described above occurred one week before my dissertation defense, almost one-and-a-half years after I observed these events. While preparing my slides, I wondered how to include information about this murder without sensationalizing the issue of domestic violence, or exploiting the victim's death. While thinking about this dilemma, I recalled Judith Stacey's assertion that exploitation, even in feminist work, is, to some extent, unavoidable, but that steps can be taken to minimize it (Stacey, 1988). Ultimately, I decided that, in order to show how deadly the consequences for battered women can be when the judicial system fails them, I had include information about this case in my dissertation. I have included a copy of the *Chronicle* report in an appendix to this dissertation (Exhibit A), but I have masked the identities of both the victim and the batterer to protect family members and friends of the victim.

C. **A conversation with the domestic violence court judge**

At the request of a dissertation committee member, I conducted a brief interview with the domestic violence court judge in order to ask for her perspective on the domestic court proceedings. In the process of locating a contact address for the judge (who presided over the domestic violence court for approximately one year), I found that she now presides over felony trials in San Francisco Superior Court. When I first contacted the judge (by letter and by phone), and described the nature of my study, she expressed doubt about her ability to be of help. Nevertheless, she agreed to be interviewed when I offered to send her a copy of my questions in advance.

I conducted the interview with the judge on November 8, 2005 in her chambers, an office located directly behind the felony trials court. (The felony trials court is located next-door to the domestic violence court in the San Francisco Hall of Justice.) Although

I had prepared an interview protocol with a list of questions, I did not conduct the interview in a formal way. Instead, I started the conversation by first describing my project, my background, and my study objectives. I then began posing the interview questions, but allowed the judge to address the questions in the order she preferred.

I wanted to encourage openness in the conversation; therefore, I did not tape-record the interview. Instead, I took careful notes during the conversation, and a few hours later, prepared a question-by-question summary of the responses. This summary is provided below.

1) *How did you become a domestic violence court judge?*

   "I was assigned to the court by Judge X. I have prior experience in the family court, and I also had some felony experience, so I was assigned to criminal domestic violence court. I was also a prosecutor in the 1980's. At that time, there were virtually no domestic violence cases. Now, I hear felony trials, some of which involve domestic violence. These felony cases usually involve major injuries, and in some cases, homicide. Because there is more evidence of assault, it is easier to respond to them judicially. Misdemeanor cases are more difficult, and more complex in terms of what the victim wants and what is in the best interest of families. Misdemeanors often lead to acquittals, and this can have an adverse effect on defendants, who then feel their behavior was justified and acceptable."

2) *Did you receive special domestic violence training?*

   "Yes. I believe that anyone who works with domestic violence cases must have training in order to understand the dynamics of a battering relationship. In my experience, prosecutors are the best trained, while public defenders are the least well trained. The latter often make decisions that are not in the victim's best interest or that of the family."

3) *What were some of the most difficult challenges you faced in your role as a domestic violence court judge?*

   "The most difficult challenge I faced was dealing with prosecutors and public defenders who view domestic violence cases primarily in terms of obtaining a conviction, or "getting the defendant off" [an acquittal]. These attorneys view the proceedings in adversarial, win/lose terms, and often do not consider what is in

the best interest of victims or children. This makes it difficult for a judge to try to find a solution. There isn't much of a gray area in this [criminal] court. That's why I often try to encourage battered women to pursue the matter in civil court. It is also difficult being a domestic violence court judge because every case is significant. We can just hope that the system is working, the counseling is effective, and that everybody can stay safe."

4) *In your role as a domestic violence court judge, did you receive support from other city and county agencies involved in the prevention of domestic violence? What kinds of support were available to you?*

"I received a lot of support from victim assistance (in the D.A.'s office), and from the probation department. One probation officer, the one that was in court every day, was invaluable. When this probation officer was not in court, I always noticed it and missed her presence. Victim assistants [advocates] and prosecutors kept me informed about the victim, and probation officers monitored the defendants. That's how I could keep abreast of what was happening with both parties. It got difficult at times, however, because relationships would form among members of the court and the families, and those dynamics would become part of the court proceedings. As a judge, it was difficult to manage that."

5) *As a domestic violence court judge, what means for protecting battered women's safety were available to you? Were there any constraints?*

"In virtually every domestic violence case, the court issued an emergency protective order, or a permanent restraining order. I did not prepare the orders, I usually just signed what prosecutors gave me. Sometimes prosecutors added children to the orders, but they did not always do so. Usually, they would add children when there was evidence the child had witnessed the violence."

6) *As a domestic violence court judge, what means for protecting children involved in domestic violence cases were available to you? Were there any constraints?*

"Children's names were added to restraining orders, but I also sent cases involving children to family court because I believed this was in their best interest. In civil court, evidentiary standards are lower. This makes it easier for battered women to obtain a lasting restraining order, and other services for themselves and their children. I also added dependency, probate and delinquency to the domestic violence protocol (Rule 19, The Recorder, 415.749.5400). This helps me (and family court judges) decide which case goes where, and who has authority over what. Before, Judge X [a former domestic violence court judge] and I would email each other to make sure we weren't issuing conflicting orders. Our records are not computerized, so it is difficult to keep track of cases. We don't have a computer system where we can monitor everything in one central place, and many departments do not talk to each other at all."

6b) *Did you notice that children often accompanied their parents to domestic violence court?*

"Yes, and I agree that that is probably not good for children. Over in family court, we did not allow children in the courtroom. But the criminal court is in a different building."

7) *As a domestic violence court judge, what were your experiences with batterer recidivism and noncompliance? How did you address this issue in court? Were there any constraints?*

"I relied a lot on the probation department to monitor defendants and make sure they were going to counseling. This was their job. I realize there was a lot of noncompliance, but it is probation's job to make sure defendants do what they are supposed to do. In extreme cases, defendants end up in custody, and then we make sure they attend the RSVP batterer counseling program in jail. Many defendants have a hard time keeping schedules, being on time somewhere, and opening up to others in a group. Sometimes there are financial issues, because the programs can be expensive. Also, batterers have to go every week for a year."

8) *As a judge, how did you determine who was a reformed batterer?*

"Probably the only way to make that determination is to look at defendants who have completed a full year of counseling. In court, I would see one or two of these cases a day. But usually, I would only get to see those defendants in court who were having trouble. That's how they would end up in my courtroom. If I didn't hear anything from them, and they kept going to counseling and submitting their reports, and victims didn't file additional complaints, I assumed the defendant was doing fine."

9) *From your point of view, what is the ideal working relationship between the criminal domestic violence court and family court? How should they work together to address domestic violence?*

"Well, down in Santa Cruz, they have a fully integrated system, where one judge hears both criminal and civil domestic violence cases. But even there, many systemic issues had to be overcome, because prosecutors were used to doing things a certain way, public defenders were used to their ways of doing things, and changing all of that was a real challenge."

10) *In your view, what kind of a problem is domestic violence? Do you see it as an individual or personal problem, affecting only a few families, or do you believe it is a larger problem affecting all of society?*

"I know from my experience that the number of cases has dramatically increased in San Francisco since the 1980's. At least all of these cases are now coming to

> the attention of the system, and most people (including juries) have some kind of opinion about domestic violence. The number of felonies has greatly increased. Misdemeanor cases have also increased, and family court now dedicates two courts to hearing domestic violence cases one day a week."

Summary and conclusion

My conversation with the judge was open and friendly, and I believe that she is truly concerned about the safety and welfare of battered women and children in San Francisco, and it trying to do her best as a criminal court judge. However, I found that in our conversation, the judge often talked about family court (unprompted), and how much help it could provide in cases of domestic violence. At one point the judge specified that civil court was an appropriate place for referring misdemeanor criminal cases only; however, at other times, she did not make this distinction. During the interview, I had the sense that the judge felt that family court was a more appropriate site for judicial involvement with domestic violence cases *in general*, and that only the most extreme, clear-cut cases involving physical injuries truly belonged in a criminal court.

Although my conversation with the judge provided me with some insight into how she made decisions in the domestic violence court, I remained unsatisfied with her level of awareness about victim and child safety, and her therapeutic orientation toward batterers and domestic violence. Although I gave the judge a number of opportunities to talk about structural constraints that may have prevented her from issuing different rulings, she named very few of these, and those she did name were, in my view, not impossible to overcome (e.g., public defenders' resistance to change).

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Appendix

Exhibit A

"Slaying suspect's violent past - 8 felony convictions, but he'd never been sentenced to prison " - Jaxon Van Derbeken, Henry K. Lee, Chronicle Staff Writers
The San Francisco Chronicle, reproduction of the original article appearing online at sfgate.com, Tuesday, October 25, 2005

X harassed and threatened his former girlfriend for three years, once even carrying her down the street in an attempted kidnapping until someone maced him, authorities say. On Monday, the 24-year-old El Sobrante man was accused of murdering his ex-girlfriend, Y, 21, of San Francisco, and stuffing her body in the trunk of his Honda Civic. U.S. Park Police found him beside the car at the Marin Headlands on Sunday, retching from what he told officers was a night of vodka drinking.

At the time of his arrest, X had eight prior felony convictions, all for domestic violence, and had been in and out of jail -- as recently as last week -- yet had never been sentenced to state prison. "Y said she always believed X would kill her," said San Francisco prosecutor Leslie Cogan. X was on probation stemming from his multiple acts of domestic violence against Y. In addition, he was under a court order to attend a yearlong domestic violence program as well as monthly court evaluations before a judge -- and he had missed the past two meetings, which resulted in his arrest last week.

Jailed, X appeared before Judge K on Wednesday with his mother. "He claimed his grandmother was seriously ill," Cogan said. "He had a positive earlier report, so the judge let him out. We wanted him to remain for further evaluation." Critics point to the death of Y as symptomatic of larger problems that plague the system aimed at stopping domestic violence in San Francisco, saying that X should have been in state prison, not free. Beverly Upton, head of the San Francisco Domestic Violence Consortium, called the treatment of X over the years lenient and said it shows that courts can be as vulnerable as victims." Judges need to know that the same charm that worked on the victim can work on them," she said.

X, clad in a light blue jail shirt with his hands handcuffed behind him, appeared briefly in U.S. District Court in San Francisco on Monday. Both his wrists were bandaged. Assistant Federal Public Defender Barry Portman sought unsuccessfully to have the complaint dismissed on jurisdictional grounds. A detention hearing was set for Oct. 31. X declined to comment as he was led away after the hearing. His family also declined to comment.

Authorities cite the following history of violence between X and Y.
-- On Dec. 23, 2001, X went to Y's place of work in San Francisco, forced his way in and threw Y against a wine crate, prosecutors say. Charges were filed, but X went free pending the outcome of the case.
-- In March 2002, X went to Y's home in San Francisco, put his hand over her mouth,

pinched her nose and held her so hard that her mouth bled, according to prosecutors. He held her hostage for two hours, at one point ripping the phone out of her hand, prosecutors say. He was arrested and jailed briefly.
-- In July 2002, X, who was free again despite the two pending cases, allegedly broke in to Y's home. "He said, 'If you don't come back to me within a week, I'm going to kill you, bitch,' " Cogan said. He fled when San Francisco police arrived, leading officers on a pursuit to the East Bay, prosecutors say. He later turned himself in.
-- On Oct. 31, 2003, X admitted to stalking, assaulting and threatening Y in charges stemming from the three cases.
-- In December 2003, Cogan sought a six-year prison term, but X was allowed to plead guilty, over prosecutors' objections, to retired Judge D, who sentenced him to time served and probation. "We felt his acts were so significant to warrant state prison, even without a prior criminal history. I brought in Y, her mom and sister to testify," Cogan said. The judge, she said, granted probation "over our strong objection." Judge D also ordered X to undergo counseling and spend 52 weeks in a domestic violence program.
-- On Aug. 1, 2004, X allegedly tried to kidnap Y as a co-worker escorted her to her car after work. X allegedly slapped her and carried her down the street, saying: "You're dead, bitch!" Y escaped when a passer-by sprayed X with Mace. Y suffered scratches to her face, prosecutors said.
-- In October 2004, Y failed to show up at the preliminary hearing in the case and could not be reached, despite what prosecutors described as "numerous attempts." Upton said Y was doubtless scared of her attacker and justifiably afraid of testifying. "If the system had sent a message it could protect her, she would have moved forward."
-- On Dec. 1, 2004, the case was resolved with a guilty plea and a sentence of one year in jail.
-- In the spring of 2005, X was freed under a judge's order that he attend domestic violence classes and come to court each month. He had progress reports in April, May, June and August, but failed to show twice, including this month. A judge issued a bench warrant for him on Oct. 13.

Federal documents released Monday provided more details of how the slaying discovered on Sunday came to light. National Park Service Ranger Matthew Harrison was on routine patrol at about 11:45 a.m. Sunday when he saw X vomiting next to the side of a white Honda Civic, authorities said. When Harrison asked him what the matter was, X said he had been up all night drinking vodka, U.S. Park Police Detective Lawrence Morales wrote in an affidavit. Harrison conducted a field sobriety test and concluded that X would be arrested for driving under the influence, the affidavit said. A computer check revealed that X could be searched, Morales wrote. Another ranger arrived on scene, opened the trunk and said, "There's a person in here," Morales wrote.

At that point, X, who had been sitting on a guardrail, fled and ran down the hill but was arrested, the affidavit said. Paramedics confirmed that Y was dead at the scene. X had been the subject of a "be on the lookout" bulletin issued by Foster City police at 11:23 a.m. Sunday, the affidavit said. "The bulletin states that X is a possible homicide suspect and had made suicide threats," the affidavit said. The bulletin also said X telephoned a friend in Foster City at about 9:30 a.m. and told him that he "had killed his

girlfriend and that she was in the trunk of the vehicle," according to the affidavit and Foster City police.

This isn't the first time questions have been raised about the effectiveness of San Francisco's system for controlling perpetrators of domestic violence. On Oct. 22, 2000, a 28-year-old single mother, Claire Tempongko, was stabbed to death in her Richmond District apartment in front of her two children. She had lodged two police reports against the eventual suspect, her ex-boyfriend Tari Ramirez, once after he allegedly choked her and the other time after he phoned her and threatened to harm her. In the first case, police never tracked Ramirez to serve him with an order barring him from contacting Tempongko. The second incident was never classified as a domestic violence case and charges against him were dismissed. Ramirez has never been found. Last year, the city settled a lawsuit filed by Tempongko's family for $500,000.

Last year, 32-year-old Marisa Corpuz died after her throat was slashed in her Portola district home. Her ex-husband, William Corpuz, was charged with her murder. He had been a model participant in a court-ordered counseling program for domestic violence offenders. Authorities and domestic violence experts said after the killing that the city needed to re-examine its reliance on counseling for domestic violence offenders.

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