

Fatality Review Bulletin

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Confidentiality and Fatality Review

This article was written by Robin H. Thompson, Esq.. Thompson works to improve national, state and local responses to violence against women. Several of her projects, under the direction of the Pennsylvania Coalition Against Domestic Violence, include providing technical assistance to states and communities on Violence Against Women Act funding and programs.

Ralph Bonifay fatally shot his wife Miranda Bonifay, and then immediately turned the gun on himself. The crimes occurred as she was leaving work for the day. Their 8-year-old daughter, Lila, awaited her mother at school. Miranda worked for the State, and Ralph was in the military. Four months prior to the murder-suicide, Miranda had moved out and was living with friends. Miranda had recently placed Lila in a private school, directions to which were found in Ralph's pocket when police searched his body. Ralph had been arrested off the base for domestic violence seven months before he killed Miranda. He pled to supervised probation and was ordered to attend both a batterers intervention program (BIP) and substance abuse treatment, as well as to submit to random drug and alcohol tests. The local newspaper reported that Miranda had obtained a protection order against Ralph from the local circuit court both for herself and Lila three months after his arrest. The protection order judge ordered Ralph to turn over his "personal" (non-military issue) guns to the sheriff and to attend the local BIP. The order also provided for "no violent contact" and granted Ralph contact

with Miranda "so long as it was regarding the child." Miranda filed for divorce one month before her death; she was represented by counsel. Among other things, autopsy results showed that Miranda was two months pregnant and that at the time of his death, Ralph had a blood alcohol level of .12, significantly above the legal limit.

A fatality review team looking at the life of the Bonifay family would have access to a great deal of public information relating to Miranda, Ralph and Lila, even absent specific fatality review team statutory authority (1). This could include:

- Media accounts (newspapers, television, radio, etc.)
- Protection order documents (petition, ex parte order, final order, history of violations and enforcement)
- Criminal histories (arrest and disposition data, on both adults)
- Police files (closed files of homicide/suicide investigations, arrest report and investigation)
- Medical examiner's report, if available
- Court records in the divorce (petition, docket, preliminary determinations regarding child custody, financial affidavits)
- Concealed weapons permit



Our mission is to spearhead an initiative toward reviewing domestic violence related deaths with the underlying objectives of preventing them in the future, preserving the safety of battered women, and holding accountable both the perpetrators of domestic violence and the multiple agencies and organizations that come into contact with the parties.

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data

- Reports to animal control (if pets were harmed)
- Statements from her employer, friends, family
- Statements from his friends, family

However, the team would likely *not* have access to the following non-public information, such as:

- Substance abuse treatment histories
- Lila's school records
- Probation records (attendance and compliance at BIP, drug and alcohol test results, treatment history)
- Military records regarding Ralph, Miranda and Lila, as he was an active service member
- Contacts with local domestic violence or sexual violence programs
- Mental health records
- Attorney client or other privileged communications, such as clergy
- Physical health records (family physician, Miranda's obstetrician/gynecologist, dentist)
- Autopsy reports, including photographs
- Gun purchase and background check records

How effective can a fatality review be if some of the information is confidential and the team cannot have complete

access to it? When does the team cross the line into discovering or discussing information that is private and should be kept out of the public eye? What impact will the disclosure of information to a fatality review team have on a domestic violence victim's desire to access a shelter, to call law enforcement or to hire a lawyer? Laws regarding an individual's right to privacy and the public's right to know attempt to balance these interests. Often positioned between these two interests is the work of the domestic violence fatality review team. When teams meet, they process all levels of information – some public, some private and some in between. It is essential that the fatality review teams respect both the privacy of the persons whose lives, and deaths, it studies.

Teams also must respect the public's "right to know" and should deliver to the public information about what a community should do to intervene in and prevent domestic violence, including domestic violence homicides. Finally, team members must remember to respect the work of the team, its member agencies and organizations and their team review activities.

The laws regarding confidentiality and information used by a fatality review team differ widely across state and tribal lines. Generally, this information falls into two major categories. First, there is information relating to the lives and deaths of the people the team is reviewing. Second, there is information regarding the fatality review process itself such as its members, deliberations, findings, work products and reports. All of this information can be both public and non-public. State and federal laws, rules, regulations, and codes govern the confidentiality of both personal, case-specific information and information concerning fatality review team processes. It almost goes without saying that a fatality review team should examine these laws and rules prior to beginning a review to be in compliance with them as it begins work, however, doing so is not as straightforward as it seems.

The web of law governing confidentiality (2)

A. Federal Law

1. Substance Abuse

Federal laws that specifically deal with information sought by a fatality review team preempt state law and will govern

National Conference on Domestic Violence Fatality Review was a success!



Over 300 people gathered in Phoenix, Arizona, August 19 –20, 2002 for the first NDVFRI Conference. We would like to thank the participants, presenters, and all those who worked at the conference. We would also like to thank the Office on Violence Against Women for supporting and funding the conference. Stay tuned for details about future NDVFRI conferences.

the team's request for data (3). In the scenario above, Ralph was ordered by the court to undergo substance abuse treatment and to submit to random drug testing. While a fatality review team could know the terms of punishment from an order in the public record, Federal law bars disclosure of information by either the probation department or the substance abuse program as to whether or where Ralph sought or obtained treatment. Nor could the team know the results of his treatment, as there are also strict limits on both disclosure and redisclosure of substance abuse treatment information (4). The intent of the Federal law (and similar State laws) is to protect the privacy of patients and so promote treatment (5). Probation officers who are members of a fatality review team can provide a great deal of information, nonetheless. For instance, they could state whether Ralph kept his appointments with the probation officer or was violated for any reason. They might also describe contacts with Miranda and whether they told her of Ralph's terms of probation and served as resource for her.

2. *Domestic violence shelter records and location*

Federal law also mandates that state family violence prevention and services programs hold client records and shelter address information confidential (6). "Shelter" means what is commonly understood as a local domestic violence program and includes an array of services such as emergency shelter, non-residential coun-

seling, and children's programming. Many state laws mirror this requirement and so also would prohibit a domestic violence center representative from disclosing information relating to a particular client.

3. *Military*

The military keeps information about service personnel confidential to the public (7). Therefore, Ralph's interactions with his command, attendance at family advocacy programs (that include the military's equivalent of batterer intervention programs), prior violence or criminal record while in the service, military protection orders or any other information regarding Ralph would not be available to a team as a matter of law. It is possible, however, that fatality review teams can receive information regarding military personnel if they make a request to the proper authorities, on a case-by-case basis (8).

4. *First Amendment*

State and Federal Constitutions also prohibit forced disclosure of sources of information from the media under the first amendment right of freedom of the press (9). If the local paper conducted an investigation and learned key information about this case, the reporter could not be forced to reveal her or his sources. However, it may benefit a team to speak with any investigative reporters who covered this murder-suicide to see what information they are willing to share, including ideas about possible reforms.

B. **State Law**

1. *Privileged Information*

State laws regulate and "privilege" a host of communications between people in specific relationships to one another. Generally, confidentiality laws are broader than the statutory grant of privilege. Some of the privilege-protected relationships include attorney-client, physician and psychotherapist-patient, clergy (10), and domestic violence and/or sexual violence counselor-client. There can be exceptions, most commonly relating to child and elder abuse, neglect and maltreatment that pierce these privileges and allow disclosure. Except in these isolated instances, only the holder of the privilege can waive it. For example a client can waive attorney/client-privileged information by knowingly divulging it to a third party. In fatality review matters, it is rare to have access to this protected information and revealing it can subject the discloser of the information to civil and criminal liability (11).

2. *Domestic Violence Records and Child Abuse Investigations*

State law can also provide for confidentiality of information, such as records of a domestic violence program, from discovery except under specific circumstances (12). States also seal child abuse investigations (13). In the Bonifay scenario, a member of the local domestic violence center who sits on the fatality review team could not disclose conversations with Miranda or even state whether she contacted the domestic

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violence program for help. Local domestic violence programs often are troubled by this law, as they may want to give the team information about a former client, but cannot do so without running afoul of state and federal law.

Some domestic violence programs have considered asking clients to waive domestic violence counselor-client privilege as well as state confidentiality protections. This would give the domestic violence program permission to share information about the clients in the event of their death (14). This could allow a program to speak openly about a client, provided the waiver was valid, i.e., given knowingly and willingly. However, the use of a waiver is controversial and strongly opposed by some advocates. They question whether such a waiver could be truly informed and free of coercion and whether someone in crisis could understand all of the implications of signing it. They are also concerned that such waivers put the interests of the domestic violence organization and the fatality review team above those of the client being served.

Although the law prohibits them from disclosing case-specific information, domestic violence programs can play a critical role in the operation and success of fatality review teams. They can respond to hypothetical questions posed by team members and explain how their program might respond. They also are key interpreters of information received by the team regarding victim or perpetrator conduct and will likely be instrumental in promoting reforms suggested by the

team. Moreover, in cases of near-lethal violence, they could reveal information in instances where a victim has waived the domestic violence counselor-client privilege or consented to its release. Similarly, it is very important that child abuse investigators are present at domestic violence fatality review team meetings. Not only might they also be key interpreters of information the team receives, but they may also be members of local child death review teams. Child death review and local domestic violence teams may have liaison relationships with one another and combine meetings to discuss instances where both adults and children died.

3. *Privacy surviving death*
Laws differ on how they treat an individual's privacy upon death and whether the "right to publicity" tort claims extend past death. Laws may protect the right to privacy of a decedent absolutely. For instance, if the law says that *only* the client can waive the privilege, and that client dies without doing so, the lawyer or other party to the privileged conversation is forever barred. However, some laws, such as those governing substance abuse treatment laws, have been interpreted to allow surviving family members, such as a spouse, to assert or waive privileges held by the person during his or her life. Still other laws or privacy-related causes of action may provide that the right to privacy is personal and ends with a person's life because *that person* can no longer suffer harm.

There are other issues regarding the use of information concerning a decedent that teams should note. In one case, a court

found a spouse, child, parent or sibling could sue in tort for the reckless infliction of emotional distress if a decedent-relative's privacy is egregiously violated and they suffer harm on account of this violation (15). Privacy rights, and the right to sue, may be spelled out in state statute, but most of the law around privacy after death has been developed over time by case law.

Therefore, if Miranda disclosed information to her lawyer and to the counselor at the domestic violence center, could that information be disclosed by either of those individuals after Miranda's death? The U.S. Supreme Court recently has held that the attorney-client privilege survives the death of client, except under very limited circumstances, so the attorney could not speak (16). The same rules would also apply to confidentiality considerations, so that an attorney's work product would also remain confidential. Some of the same issues regarding attorney-client privilege, such as the client's expectation that information would remain confidential unless waived, would apply to the domestic violence counselor. Fatality review teams should carefully research their state laws, rules and professional codes on this topic and set out guidelines for their members as to information they can disclose.

4. *Fatality Review Legislation and Team Agreements*
States that have enacted legislation governing fatality review team operation have passed laws that deal with some or all of the above issues in a variety of ways (17). For instance, California has one of the most expansive laws, which allows the fatality review

team to receive (but not compel) medical, mental health, elder abuse, child abuse, firearms and probation reports, criminal histories, juvenile court proceedings, and lawyer – client, physician – patient, psychotherapist-patient, sexual assault victim-counselor information (18). Other states, like Florida, have a much more narrow view. However, Florida law still allows the fatality review team access to information that is usually shielded from public view, such as open law enforcement investigation files, but it does not allow teams access to privileged information (19) nor give the team power to subpoena records as does Delaware (20).

Laws regulating fatality review teams and the information that the team uses and produces also lay out what is public and what is not. This includes:

- Membership (names, address and other contact information, attendance records)
- Meetings, deliberations
- Working documents (notes, meeting minutes, communications between members, case summaries, data collection forms, interview notes, report drafts)
- Final reports
- Member statements, observations, comments during reviews
- Public access to meetings themselves

Teams also set out their own terms regarding confidentiality in “Confidentiality Agreements” that members and participants are required to sign (21). These agreements bar discussion and disclosure of fatality review team matters outside of the team and team meeting.

C. Professional codes of conduct

Codes of conduct for professionals such as psychotherapists, lawyers, mediators, health care providers and substance abuse providers deal with confidentiality and provide sanctions for violating these codes. These restrictions are usually very strong, because people will not seek out services from these professionals if they believe what they disclose will not be held private. This is in addition to criminal and civil liability that is provided by state law. Professional code sanctions can include suspension or permanently barring that individual from practice. In the above case, Miranda’s therapist might have valuable insights into both her and into Ralph’s state of mind prior to the homicide, but sharing that information could result in that therapist losing his license to practice, depending on what the psychotherapist’s professional code and state law would allow.

D. Personal ethics

Fatality review teams are collegial bodies and members often support one another both in and outside of team meetings. A fatality review team’s “no shame – no blame” philosophy requires members to trust one another and to not point fingers. Furthermore, team members must sign confidentiality agreements that prohibit disclosure of information beyond the four walls of a team meeting. What happens when a fatality review team member breaches that confidentiality based on ethical or moral reasons? He or she may believe such a breach is necessary in

order provide the team with information because without this information, the community cannot hold another member accountable? In the above scenario, what if that the court’s order was the fifth in a series of “no violent contact” orders where death or serious injury followed – and that the issuing judge who sits on the team maintains and that “parents always must be able to talk about children together” and that, moreover, “no violent-contact orders” are the best ways to protect women? Assuming all interventions failed, could the personal ethics of team members demand that they speak out to the community? When, if ever, should one’s own sense of “what is right” override confidentiality proscriptions? These are difficult questions that teams should process before and during their work, perhaps seeking the advice of counsel, other teams and the NDVFRI before acting.

E. Conclusion: Just because you can, should you?

No one in the community might have known that Miranda was pregnant when she died, until the autopsy was performed. If that information was shared in a fatality review team meeting, the team might have knowledge that even her family and close friends lacked. This is the type of information that should be treated with great sensitivity, and thought should be given to its overall relevance. Teams should carefully consider the impact that their discovery and use of information will have on the victim, the perpetrator, children and others in their lives, as well as upon the systems they are seeking to reform. Teams should carefully

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consider, and regularly revisit, their use of information and their mission. They should understand that the information they obtain, and their use of it, could affect the decision of a potential victim to access services -- if they think their doing so will be detailed in a report or the newspaper. Teams should reflect on their own roles as caretakers of highly personal data and realize that fatality review process confers rights, honors, duties, and privileges to investigate, discover and make conclusions based upon a death which is, after all, one of the most intimate moments of a person's life.

(1) Each state has unique laws and interpretations of them. This discussion presumes laws that are common to a majority of jurisdictions.

(2) The author and the National Fatality Review Initiative welcome commentary to this article, particularly additional laws and issues regarding confidentiality not mentioned here.

(3) For example, with substance abuse treatment, "state confidentiality law may be more restrictive than but may not override the Federal regulations. Where State law is not stricter and conflicts with the Federal regulations, State law must yield." Lopez, F., *Confidentiality of Patient Records for Alcohol and Other Drug Treatment*, TAP Series 13, US Dept. of HHS, p.2. (last reprint 1999).

(4) 42 U.S.C.A. s.290dd-2 (2002).

(5) Lopez, p.1.

(6) 42 U.S.C.A. s. 10402(a)(2)(E) (2002).

(7) Federal Privacy Act, 5 USC 552a, and (2) exception 6 under the Freedom of Information Act (FOIA), 5 USC 552(b)(6). Those laws cover active duty personnel, civil service employees, and the family members of active duty personnel and would include personnel, medical, Family Advocacy Program, and law enforcement records, which are governed by exception 7 of the FOIA. The person

whose record is being sought can give consent, and in the case of a minor, the guardian can give consent.

(8) A fatality review team could try to obtain information regarding active duty personnel (including information after a death) in several ways. They can make a request in writing for the release of records under the civil law enforcement activity (exception 7) of the Privacy Act of 1974. A team also could ask a court to issue an order for the records under exception 11 of the Privacy Act. See <http://www.dtic.mil/whs/directives/> for further information (go to Department of Defense (DoD) directives 5400.7 and 5400.11). However, neither of these paths appears feasible for most teams as the team's work is not "law enforcement" and as courts rarely, if ever, order records for teams -- team members and others produce information voluntarily. The fatality review team can also contact the Freedom of Information Act (FOIA) office where the active duty person was most recently assigned, and discuss how to access the records. The chair should include a copy of any laws or other information that legitimates or authorizes the fatality review team to act. Note that teams may be referred to the Staff Judge Advocate (SJA) at the installation and might wish to call that office for help. Another resource regarding the DoD and Freedom of Information and Privacy Programs is Mr. Vahan Moushegian, Director of the Defense Privacy Office, Washington, 703/607-2943.

(9) *Branzburg v. Hayes*, 408 U.S. 665 (1972); see also s. 90.5015, Fla. Stat., Florida's qualified reporter privilege.

(10) See *Tarasoff v. Board of Regents of the University of California*, Cal. Rptr. 14, No. S.F. 23042 (Cal. Sup. Ct., July 1, 1976) 131, where the court held that a psychologist had a duty to warn his patient's intended victim, whom his patient later killed. This case carves out an exception for psychologists, and arguably other professionals, who also may have a "duty to warn." It is very relevant to fatality review deliberations when the team asks whether anyone knew the victim was in lethal danger and if they acted on that information.

(11) See Privacy Surviving Death, below, for further discussion of privileges.

(12) For instance, s.39.908, Fla. Stat. (2002) that provides "information about domestic violence center clients may not be disclosed without the written consent of the client... information about a client or the location of a domestic violence center may be given by center staff or volunteers to law enforcement, firefighting, medical or other personnel...". Some might interpret this section to allow a domestic violence center to ask a client to sign a waiver stating that, in the event of her death, any information held by the domestic violence program about her could be disclosed.

(13) E.g., s.39.908(3)(b), Fla. Stat. (2002) where it states that restrictions on disclosure or use of information about domestic violence center clients does not apply in cases of child or elder abuse.

(14) See note 12 and Washington State Domestic Violence Fatality Review Project (206) 389-2515.

(15) *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991) where the court found that the decedent's mother and sister could bring an action for intentional infliction of emotional distress against the City of Minneola when City police officers showed a video autopsy of the decedent at an officer's home in "a party atmosphere where the audience joked and laughed." *Minneola*, 685. The decedent was a 14 year-old boy who had died of a drug overdose.

(16) *Swidler & Berlin v. United States*, 524 U.S. 399 (1998) where the Court ruled that notes taken by a private attorney consulted by deputy White House counsel Vince Foster, after Foster committed suicide were protected by attorney-client privilege.

(17) Domestic Violence Fatality Review State-by-State Matrix, National Fatality Review Initiative (2002).

(18) Cal. Penal Code ss 11163.3-6 (2002).

(19) s. 741.3165, Fla.Stat. (2002).

(20) 13 Del. C. s. 2105 (2002).

(21) See Washington State Domestic Violence Fatality Review Project (206) 389-2515 and other examples available at www4.nau.edu/sbs/ndvfri.

FEMALE PERPETRATED DOMESTIC HOMICIDES: PART 2

This article was written by Dr. Kathleen Ferraro. Dr. Ferraro is the Director of Women's Studies at Arizona State University and the Coordinator of the Arizona Coalition Against Domestic Violence. Dr. Ferraro is currently writing a book on this topic to be published by Northeastern University Press in 2003.

In Part 1 of this series on female perpetrated domestic homicides, I reviewed the situational characteristics, difficulties in documenting prior abuse, and male and female suicides related to domestic violence. In this article, I discuss the role of alcohol and drugs, guns, response time delays, the unique situations of American Indian and immigrant women, misogyny, and the long-lasting effects of domestic homicides on female perpetrators. My purpose is to stimulate consideration of inclusion of female perpetrated domestic homicides in fatality reviews, and to suggest possible topics for examination and social policy implications.

Alcohol and Drugs. As prior research has indicated, alcohol and drugs are common components of intimate partner violence, with alcohol indicated as present in 55% to 75% of intimate violence cases reported to police (Easteal, 1993; Greenfeld, 1998). Of the 29 cases of intimate partner homicide or attempted homicide I have worked with, five (17%) did not involve drugs or alcohol at the time of the offense. In one of these cases, the abusive male partner suffered from a serious mental illness. Three cases involved third party murders where drugs and alcohol had been present during prior beatings, and one was an attempted homicide where no drugs or alcohol were used at the time of the shooting, but had been present during prior abuse.

Thus, in only one case was there an absence of drug and/or alcohol abuse before the homicide. In fifteen cases, it was the man alone who abused alcohol and/or drugs and in nine cases both the woman and her partner abused alcohol and/or drugs. Although the causal role of alcohol and/or drug abuse in intimate partner violence is a matter of debate in the field, female killers I interviewed perceived alcohol/drugs as potent factors in the homicide. For most men killed by their intimate partners, there was rarely a time when they were not under the influence of alcohol and/or drugs. Those men who did have periods of sobriety were described as nice and mild mannered when not drinking and their high level of intoxication was perceived by their partners as contributing to their rage and violence at the time of their deaths. One man who was killed by his wife while they fought in a field late at night would not have died if he had not been so intoxicated. Hit over the head with a rock, the man passed out and choked on his own vomit. Men addicted to methamphetamine often stayed up for days, became paranoid, and were the most viciously violent of all abusers. Although the alcohol and drugs may not have been the cause of the man's violent behavior, their presence exacerbated his violence and her response to it.

Weapons. Guns remain the main weapon in intimate homi-

cides, despite federal legislation prohibiting the possession of firearms among those convicted of misdemeanor domestic violence crimes. Many women who kill their abusers use the guns their partners gave them or one of the guns kept loaded in the house by their abuser. In most of the cases in which women have used a gun to kill their abuser, the victim had a fascination with guns and had them stashed throughout the household. In one case, the man had approximately twenty guns in his home, with several kept within arm's reach of the easy chair in which he spent most of his time consuming alcohol. The only time he left the house was to attend gun shows. He was shot and killed when he dropped the gun with which he was threatening his wife and she retrieved it. In other cases, women used the gun their abuser had given them to protect themselves from other violent men whom the abusers believed were an ever-present danger. This was especially true when men had addictions to methamphetamine or schizophrenia, both of which cause paranoid delusions. In many cases, there has been no prior police involvement before a domestic homicide. However, anecdotal evidence that the prohibition on firearms for domestic violence offenders is not being enforced consistently should be considered in the light of the common use of firearms in domestic homicides of both male abusers and female victims.

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Delayed response times. Several women killed their abusers after waiting many hours for assistance from law enforcement. This was only the case for rural women, particularly women living on remote parts of Indian reservations. In these areas, law enforcement is performed by tribal police or, off-reservation, by the county sheriff or state police. Officers cover hundreds of miles of territory and may take hours to respond to a domestic violence call. It is common for low-income rural women to lack telephone service and to live in areas where there are no cell phone signals (see Websdale, 1998). In one case, a woman had to run to a near-by pay phone in order to call 911. Her abuser had threatened her life, then left their isolated trailer

home. Because he was not on the premises, the dispatcher told the woman to call back when he appeared. The woman tried four times to obtain help, and the dispatcher finally told her to stop calling. After dark, her abusive partner returned and attacked her. She ran from him, carrying a loaded rifle that she fired behind her as she ran. She hit and killed him and was originally charged with first-degree murder. After spending several months in jail and being separated from her year old son, the charges against her were dropped. Another woman killed her husband with a knife as he reached through the car window to choke her. They lived on a remote corner of the Navajo reservation, and she had tried for five hours to get police to

come and protect her. In these cases, better communication and more rapid, effective police responses could have prevented homicides.

Unique needs of American Indian and immigrant women. In addition to lack of responsiveness, women in rural communities, especially on the reservations, face extraordinarily limited alternatives. On some reservations, the unemployment rate is 75%, and people are tied closely to their land and extended families so that moving to an urban area is not desirable. In addition, women who return to their reservation in an attempt to escape an abusive partner usually find their orders of protection not honored by the tribal courts. Both escape and protection are especially difficult to accomplish for women in violent relation-



World Report on Violence and Health United Nations, World Health Organization

Up to 70 percent of female murder victims worldwide are killed by their male companions and as many as one-third of girls are forced into their first sexual experience. The report urged countries to no longer treat violence solely as a "law and order issue." Rather the report urges seeing this violence as a public health issue. Etienne Krug, director of the Department of Injuries and Violence Prevention at the World Health Organization and editor of the report, observes that, "Violence is often only addressed in the context of war or the context of crime. By doing so we miss some of the violence that is not necessarily crime: violence in the home, bullying, and suicide." The United Nations first declared violence a worldwide public health problem at the World Health Assembly in Geneva in 1996. Krug said that the report could strengthen the use of international human rights conventions such as the Convention on the Elimination of All Forms of Discrimination against Women, known as CEDAW, which has been ratified by 170 countries. "We see the collaboration of human rights and public health as a very important one," he said. "I think the report can contribute to the efforts around CEDAW."

For more information:

World Health Organization - Violence and Injuries Prevention:

http://www5.who.int/violence_injury_prevention/main.cfm?s=0009

United Nations Division for the Advancement - of Women State Parties to CEDAW:

<http://www.un.org/womenwatch/daw/cedaw/states.htm>

International Center for Research on Women: <http://www.icrw.org/>

ships on the reservation. When American Indian women living on reservations use lethal violence to protect themselves, they fall under federal jurisdiction and are judged by non-Indian FBI agents, federal prosecutors and federal judges, and if they go to trial, usually by non-Indian juries. Stereotypes of American Indian women as strong and tough can bias legal actors' perceptions of the danger they faced and the alternatives available when they killed their abusers. It is ironic and disturbing that the strength required for low income women, particularly women of color, to survive difficult circumstances and support their children, limits the ability of legal actors to recognize their fear when they use violence to save their lives. Immigrant women also confront unique barriers to escape, since lack of legal documents make their and their partners' legal and occupational status tenuous. There have been no systematic investigations of intimate partner homicides of immigrant men or women in the U.S., but research in Australia suggests that immigrant status creates increased risk of domestic homicide (Easteal, 1993).

Misogyny. Although racism and classism distort views of the danger faced by battered women, misogyny and ignorance frame perceptions of female perpetrated homicides when the deceased abuser was sexually involved with other women. The presence of a new sexual partner for a woman is one of the primary precursors to male perpetrated domestic homicides. The motivation in these cases is sexual jealousy and proprietariness (Wilson and

Daly, 1985; Websdale, 1999). It is quite common for abusive men to have relationships with women in addition to their wife or intimate partner, but women's responses to these relationships are very different from men's. Some women are relieved that he has another partner, as it gets him out of the home and gives her some safe space. Other women know that his infidelities will trigger more violence against her, particularly if she dares to question him about it. Certainly some women are jealous and hurt by knowledge of their partner's affairs, and may even act in a violent or aggressive way toward him or his lover. However, it is extremely unusual for women to kill an intimate partner in retaliation for his affair, as is so often the case with men.

When infidelities are present in a female perpetrated domestic homicide, however, the woman's jealousy rather than her fear is often the focus of prosecutorial and judicial attention. For example, an American Indian woman who killed her abusive husband as he ran at her yelling obscenities with outstretched arms had been very upset to learn that she was babysitting for her friend's child, fathered by her own husband, while her friend and her husband went out drinking together. She confronted the woman, argued with her and slapped her. She intended to leave her husband, with whom she shared three children and a twenty-year relationship. From the time their relationship began when she was fifteen, he had beaten her, broken her ribs and held loaded guns to her head and in her mouth. She was jeal-

ous and upset about his affairs with other women, but it was her fear of his violence that led her to kill him. Nevertheless, the federal judge in her case (a non-Indian) said that he saw no fear, only jealousy, in her actions, and sentenced her to twelve years in prison.

Lasting effects of abuse.

Although some women feel relief when their abuser is no longer physically present to hurt them, most women continue to suffer from trauma, both physical and emotional. Post-traumatic stress disorder (after battering) has been documented in shelters (Kemp, Rawlings and Green, 1991) and prisons (Browne, Miller and Maugin 1999). One woman who is still incarcerated told me that she has to sleep in a bed against the wall to subdue her fear of being attacked from behind while sleeping as happened when her husband was alive. This is a problem when she is in lock down where the bed is in the center of the room. She also told me that she had recently vomited at the smell of an officer's cologne which reminded her of the cologne worn by her husband who was killed by a third party in 1992. Women must also cope with physical impairments that, in addition to violent felony convictions, limit their employment opportunities. But what many women find most painful are recurring memories of degradation and control combined with ambivalent but enduring feelings of love for their deceased partner.

Sometimes I feel like cryin', screamin', even now, as I say that, I'm not really free. I'm still scared. I guess after about seven

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years of bein' scared, and not sayin' anything, just got to be a habit...It's so hard. I don't miss the beating part, but it's just that I miss him. I tried so hard to make a good life, but then, it just got bad.

Women speak of controlling their words, actions, even their eye movements in ways they learned to adapt to their deceased partners' demands. Even in death, the terror inflicted by violent partners continues to haunt women's daily, and nightly, experience. Women who are incarcerated are also separated from their children and confronted with the discipline and deprivation of prison life. As one incarcerated woman expressed it, "Even when he's dead, he's got me. He did what he said he was gonna' do."

The losses incurred from

domestic homicides committed by women extend beyond the male victim to the woman, her children, their extended families, and the larger community. Attention to some of the issues raised here, such as more consistent removal of guns from violent men, better and faster responses to rural battered women, and recognition of biases against women of color, especially American Indian and immigrant women, should guide efforts to reduce domestic homicides. Women who kill their abusers also require legal counsel, physical and mental health services, assistance in maintaining relationships with children and in making the transition back to the community.

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Research Note

Civil Protection Orders and Risk of Subsequent Police-Reported Violence

Authors: Victoria L. Holt, PhD, MPH; Mary A. Kernic, PhD, MPH; Thomas Lumley, PhD; Marsha E. Wolf, PhD; Frederick P. Rivara, MD, MPH

Recent research published in the *Journal of the American Medical Association* (August 7, 2002, Volume 288, No. 5) argues that permanent, but not temporary, civil protection orders in domestic violence cases are associated with a "significant decrease in risk of police-reported violence against women by their male intimate partners."

The authors point out that approximately 20% of the estimated 1.5 million women victimized annually by intimate partner violence obtain civil protection orders. They note that researchers have yet to clearly document the effectiveness of such orders. Holt et al studied 2691 adult female residents of Seattle, Washington, who reported intimate male violence between August 1, 1998 and December 31, 1999. They tracked these cases for 12 months from the time of the initial incident and logged any subsequent physical or psychological abuse reported to the police and evidenced in police reports. Examples of physical abuse included assault, reckless endangerment, or unlawful imprisonment. Examples of psychological abuse included harassment, menacing, stalking, criminal trespass, and property damage. Women in the study, including those who did and did not obtain protection orders – were similar in terms of age, pregnancy status, and history of intimate partner violence.

Holt et al also concluded that having a permanent protection order (one lasting at least 12 months) is associated with an 80 percent reduction in police-reported physical violence during the first year after an IPV incident. Women with temporary protection orders, however, were more likely to have experienced psychological abuse reported to the police and equally likely to have experienced physical abuse as women without any protection order at all.

Digital Photos: A News Note



Excerpted from Sarah Kershaw, Digital Photos Give the Police a New Edge in Abuse Cases, New York Times, September 3, 2002.

The New York City Police Department, which handles about 90,000 domestic violence cases annually ~roughly a third of which lead to arrests and enter the courts,~ is starting to gather evidence using digital photography, a tool that experts say could drastically reshape the way these cases are prosecuted. Digital photography captures more details of injury than the standard Polaroid photographs and can be transmitted to system players far more swiftly. Prosecutors contend that the use of Polaroid snapshots, standard practice for gathering evidence of injuries in New York and elsewhere, is problematic. Often all but the most serious injuries are unrecognizable, they say, especially if the victim has a dark complexion. Because of the time and paperwork required to get a Polaroid photograph from the police to prosecutors, those snapshots often do not make it to court in time for arraignment, which is typically held within 24 hours of an arrest.

The new advances have drawn criticism from those who worry that digital photographs are too easily manipulated, and from others who fear it will give prosecutors more license to pursue a case against

the wishes of the victim.

Prosecutors in Queens say the innovation is helping victims. Since all 16 police precincts in the borough began using digital photography, sending the photographs straight into prosecutors' computers, convictions in domestic abuse cases have risen sharply and dismissals have plummeted, according to the Queens district attorney's office. According to District Attorney, Richard A. Brown, the digital photography "makes it impossible for the defendant to deny the seriousness of the crime."

Critics of mandatory prosecution say digital photography may give law enforcement agencies license to disregard the wishes of victims who change their minds after calling the police.

"We need to encourage a dialogue, not discourage it with these mechanisms that trump a victim's voice," said Linda G. Mills, a professor at New York University's Ehrenkranz School of Social Work. "If they have a photograph, the prosecutors can just sit down, throw it on the table and say, 'Either you are with us or you aren't,' and it doesn't matter what the

woman wants."

Professor Mills also predicted that by making stronger cases against accused batterers, digital photography might discourage some victims from coming forward.

"This kind of thing sends women underground," Professor Mills said. "There's no turning back. When women call the police, they want the violence to stop, they don't necessarily want their husband to go to prison."

However, some advocates for domestic violence victims disagreed, and said the digital photographs were powerful tools they could use to help keep a victim safe. One way might be showing a victim photographs weeks or months after an incident as a reminder of the ordeal.

"It has been really beneficial in terms of letting the victim see herself," said Rita Asen, director of the Queens Criminal and Supreme Court counseling program for Safe Horizon, a citywide advocacy group that, among other services, assigns court counselors to victims. "We think this makes victims more willing to go ahead and cooperate."

Suicides Associated with Intimate Partner Violence: Perpetrator suicides under recognized

This study was completed by Joe E. Thornton, MD, William Spears, Ph.D., and Margaret H. Brackley, Ph.D., RN
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In general, the examinations of suicides associated with intimate partner violence have been limited to murder suicides (Felthous & Hempel, 1995). Some work has attempted to identify the contributing factor of intimate partner violence (IPV) to suicidal behavior in women (Kaslow et al 2002). Recent work by Conner et al 2002, has explored the implications of suicide behavior and suicidal ideation in perpetrators of IPV. This report describes suicide of men who have evidence of involvement in intimate partner violence but who did not murder or attempt to murder their partner at the time of the suicide. We report on data from our local adult fatality review team.

Methods: Under Texas Statue Chapter 672 we formed the Bexar County Death analysis and Review Team (BC-DART) in January 2002. The team represents multiple disciplines and the demographic diversity of the community. As a function of the team, we receive monthly reports from the Bexar County Medical Examiner's Office. These Medical Examiner's (ME) reports are semi-structured to include identification, demographic and vital statistics data. For deaths investigated as suicides the ME reports systematically

comment on mental illness, threats of suicide, suicide notes and prior attempts. All ME reports include a brief narrative of the circumstances leading to the death in addition to the autopsy report. Supplemental information from law enforcement and family may also be included. The investigators abstracted the ME report data for location, cause of death, manner of death, age, gender, race, and circumstances of death, presence of mental illness, evidence of substance abuse, evidence of relationship discord, evidence of medical illness, legal problems and other issues.

Results: We report on all 65 suicides for the first half of 2002. Males accounted for 75% of suicide deaths. The median age was 46 the mean age was 46.7. Causes of death were gunshot wound, hanging, jumping, stabbing, and overdose. Analysis of groups by gender and age found the most consistent association with evidence of a mental disorder. Preliminary analyses of data for homicide victims for the same period indicate that the homicide victims are younger than suicide victims and that the majority have legal records and substance abuse problems. The medical examiner's reports provided descriptions of

several suicides that occurred in the context of a threat of suicide as a means to control the partner, or as a hostile act or shortly after arguments with an intimate partner but without a written report of a threat. For 27 reports that had some description of an intimate partner, 21 reports had evidence of a disturbance in the relationship. Ten suicide deaths were estranged, 6 deaths occurred in the context of an argument, 5 men had documented IPV, three suicides occurred without evidence of relationship disturbance yet while the partner was in the house. Other suicides followed a pattern of a context of a volatile relationship, the couples are out drinking, an argument ensues and within 12 hours the suicide occurs. For example 3 men killed themselves within minutes of a threat of suicide if their partner left the premises. Two men hanged themselves on the property of ex-partners.. There was one occurrence of a intimate partner murder-suicide. Of the 65 suicides reviewed to date, we do not have data yet on any abuse victim committing suicide as an apparent means of escape.

Conclusions: Our data suggest that IPV pepe-

trator suicide has been under recognized. Clinically we have observed reports by victims of IPV that the threat of perpetrator suicide is a powerful factor influencing their decision to stay in the relationship. Threats of perpetrator suicide are also a risk factor for subsequent femicide (Campbell et al, 2002). In counseling victims whose partners threaten suicide, we provide information on this risk, and support them by counseling they are not responsible for the violent behavior of their partner. We also use the threats of perpetrator suicide as an opportunity to offer treatment. Efforts at

preventing suicides will need to include interventions for substance abuse, mental disorders and improved skills for resolving interpersonal conflict without violence. Further work is needed to help threat assessment and to identify proximal modifiable risk factors for suicides associated with intimate partner violence.

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NDVFRI GUIDING PRINCIPLES

In preparation for our August 2002 conference NDVFRI developed guiding principles. Below are these principles that will guide and inform our work.

- The numerous and complex issues that death reviews address call upon us to emphasize the importance of having discussions about ETHICS, CONFIDENTIALITY, and RESPECT for all those who conduct or are involved in the death review process.
- We will continually emphasize the importance of the *no blame and shame philosophy* as a touchstone for review activities. When we talk with folks from different agencies they have different feelings about this philosophy. Discussions of PHILOSOPHY are central to the death review. So are concerns that agencies and individuals be accountable for their actions. Balancing *no blame and shame* with the notion of ACCOUNTABILITY is another theme that undergirds death review work.
- Issues relating to culture ought to permeate all of our work. We must be careful! If we only identify those aspects of CULTURE that appear to cut across domestic violence homicides, then we may obscure the idiosyncrasies of particular cultures and particularly the role of history. We need to weigh carefully the role of culture in domestic violence deaths. Our experiences in researching homicides in different cultures are that there are similarities but also important differences. Another key issue is whether we are actually seeing the effects of culture, or the effects of poverty. Some would argue it is impossible to separate these two issues. Of course, another important issue is whether the dynamics of gender and arguments regarding power-control are applicable in different cultures, same-sex killings, and so on.
- We encourage teams to CONFRONT A FANGE OF DEATHS as being traceable to domestic violence. Here we include phenomena, such as suicide, accidents, HIV deaths, deaths of prostitutes, the killing of men by women, the deaths of children, and so on. Some folks have been working on resurrecting old cases and using child witnesses to reconstruct cases now perceived to have been homicides. There are many more deaths traceable to violence against women than at first meets the eye. We ought to emphasize those

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- deaths and the value of exploring them.
- We are asked all of the time, "Do these reviews work?" We're never sure what people mean by this. Nevertheless, we ought to discuss the importance of AFFECTING CHANGE, however, seemingly small. We ought to also recommend that teams DOCUMENT SYSTEM CHANGES they implement and try to reflect upon the IMPACT of such changes. It is unlikely we will ever show that death review reduces domestic violence. Those who crunch numbers might disagree.
 - TRUST and COLLABORATION are critical to conducting death reviews. Building trust involves individuals and agencies negotiating ideological differences. This has to involve more than paying lip-service to what others think. This matter might inform our work as we move toward the common good (whatever that is).
 - Given we have a wealth of experience across the country on issues related to death review, our technical assistance will be interactive and will allow for us to learn from you. In this way we would hope to share and discuss emerging practices from across the country.

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*Are you currently conducting fatality review? Are you considering forming a fatality review team?
We would love to hear from you!*

National Domestic Violence Fatality Review Initiative

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