

**Resisting Violence in the Shadow of the Law:
The legal consciousness and legal mobilization of battered women in
Phoenix, Arizona and Seattle, Washington**

Margaret Hobart

**A dissertation submitted in partial fulfillment of the
requirements for the degree of**

Doctor of Philosophy

University of Washington

2003

Program Authorized to Offer Degree: Political Science

UMI Number: 3111080

INFORMATION TO USERS

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleed-through, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

UMI[®]

UMI Microform 3111080

Copyright 2004 by ProQuest Information and Learning Company.

All rights reserved. This microform edition is protected against unauthorized copying under Title 17, United States Code.

ProQuest Information and Learning Company
300 North Zeeb Road
P.O. Box 1346
Ann Arbor, MI 48106-1346

© Copyright 2003

Margaret Hobart

In presenting this dissertation in partial fulfillment of the requirements for the Doctoral degree at the University of Washington, I agree that the Library shall make its copies freely available for inspection. I further agree that extensive copying of the dissertation is allowable only for scholarly purposes, consistent with "fair use" as prescribed in the U.S. Copyright Law. Requests for copying or reproduction of this dissertation may be referred to Proquest Information and Learning, 300 North Zeeb Road, Ann Arbor, MI 48106-1346, to whom the author has granted "the right to reproduce and sell (a) copies of the manuscript in microform and/or (b) printed copies of the manuscript made from microform."

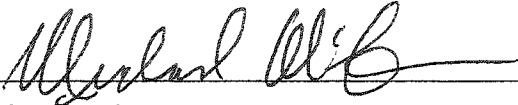
Signature Margaret Abbott

Date 1-9-01

University of Washington
Graduate School

This is to certify that I have examined this copy of a doctoral dissertation by
Margaret Hobart
and found that it is complete and satisfactory in all respects,
and that any and all revisions required by the final examining
Committee have been made.

Chair of Supervisory Committee:

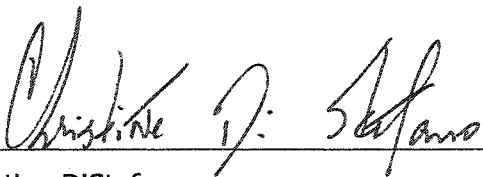


Michael McCann


Reading Committee:



Michael McCann



Christine DiStefano



Peter May

Date: 1.5.04

University of Washington

ABSTRACT

Resisting Violence in the Shadow of the Law:

The legal consciousness and legal mobilization of battered women
in Phoenix, Arizona and Seattle, Washington

Margaret Hobart

Chair of Supervisory Committee:

Professor Michael McCann

Department of Political Science

This study compares the legal consciousness and legal mobilization of battered women in two cities (Seattle, Washington and Phoenix, Arizona) with similar laws but different local response to domestic violence. The comparison between a Mobilization Facilitation environment (Seattle) and a Model of Legal Protection environment (Phoenix) allows increased understanding of how local policy implementation affects how people think about their rights, invoke law to one another and decide when to involve formal legal actors in their disputes.

Differences in local policy implementation significantly affected both legal consciousness and legal mobilization. When formal legal actors refused to intervene to end domestic violence then women perceived the state's law as illegitimate. In Seattle,

where legal mobilization regarding criminal acts of domestic violence is encouraged and facilitated (Mobilization Facilitation), women were more likely to feel sure that the state's law would meaningfully challenge their abusers' private tyrannies. In Phoenix, where the state makes little effort to minimize the risks of mobilizing law or encourage mobilizing (Legal Protection), women were unlikely to feel that the state's law would interrupt the violence they experienced at the hands of their abusers. While Seattle and Phoenix have important differences regarding local response to criminal law, responses to civil law are similar and follow the Model of Legal Protection. Women in each whose primary contacts were with the civil system regarding custody had similar consciousness, seeing the state's law as inescapable, capricious, monstrous and thus illegitimate.

Domestic violence reforms enacted over the past 25 years have had uneven impact on battered women, but there is reason to be encouraged. The Seattle case demonstrated the usefulness of advocacy for battered women. The provision of advocacy through community based organizations as well as police, prosecutors and courts encouraged women made legal processes intelligible and meaningful to battered women, and encouraged them to feel they had rights the state would protect and to call on formal legal actors to intervene in abuse. Advocates functioned as insider/outside within systems, monitoring the quality of interventions and serving as a reminder of system accountability to battered women.

TABLE OF CONTENTS

List of Figures	ii
List of Tables	iii
Chapter One: Overview	1
Chapter Two: Violence and the Word	50
Chapter Three: Domestic Violence Disputes and Mobilizing Law	88
Chapter Four: Legal Consciousness and Legal Mobilization in Phoenix	104
Chapter Five: Legal Consciousness and Legal Mobilization in Seattle	156
Chapter Six: A Note About Civil Law, Particularly Custody	198
Chapter Seven: Conclusion	223
Bibliography	256
Appendix A: Cases and Methods	262
Appendix B: Recruitment Flyer	323
Appendix C: Consent Form	324
Appendix D: Interview and Survey	326

LIST OF FIGURES

Figure 3.1	A Disputing Pyramid for Battered Women, considering a single incident of abuse	101
Figure A.1	Income Distribution Comparison (Source: US Census 2000)	268
Figure A.2	Percentage of 911 Domestic Violence Related Calls Resulting in Incident Reports and Arrests (Source: Phoenix Police Department)	290
Figure A.3	Seattle: Percentage of 911 Domestic Violence Related calls Resulting in Incident Reports and Arrests (source: Seattle Police Department)	293
Figure A.4	Reports and Arrests as a Percentage of Domestic Violence 911 Calls in Phoenix and Seattle Average for 1995-1999 (sources: Seattle and Phoenix Police Departments)	294
Figure A.5	Age Distribution	313

LIST OF TABLES

Table 1.1	Dimensions of Legal Consciousness	22
Table 1.2	Comparison of Dimensions of Legal Consciousness.....	47
Table 3.1	Women’s Evaluation of Law’s Role.....	92
Table 7.1	Abuser’s Tyranny vs. State’s Law in Battered Women’s Consciousness	232
Table 7.2	Battered Women’s Evaluation of Risks	234
Table 7.3	Dimensions of Legal Consciousness	236
Table A.1	Population Comparison.....	262
Table A.2	Phoenix Race Distribution	264
Table A.3	Seattle Race Distribution	266
Table A.4	Written Law in Seattle and Phoenix.....	270
Table A.5	Advocacy in Seattle and Phoenix.....	272
Table A.7	Police Response	286
Table A.8	Phoenix Police Department Domestic Violence Related Calls for Service, Reports and Arrests.....	289
Table A.9	Seattle Police Department Domestic Violence Calls for Service, Reports and Arrests.....	292
Table A.10	Prosecutor Response	297

Table A.11 Judicial Response	304
Table A.12 Race Identifications of Women Interviewed	311
Table A.13 Time since Breakup and Most Recent Assault.....	314

ACKNOWLEDGEMENTS

I must first thank the battered women I met while working on this project. They took the time to tell me their stories in the hopes that doing so would help make things better for battered women. It is my sincere wish that this work is worthy of their generosity and honesty.

I could not have completed this work without the assistance, support and encouragement of many people.

My partner Linda has been unfailingly confident in my intellectual abilities, and consistently supportive throughout the process of conceptualization, research and writing. It is not possible to overstate the importance of her support and patience.

Beth Harris, Karen Stuhldreher, Judy Aks and Lisa Miller all provided moral support, insight and inspiration over the years. Recalling Lisa's words "it's just a dissertation" often made it possible to keep writing. Judy's thoughtful comments on a near final draft greatly improved the clarity of the work, and provided a critical reality check for me as I came into the homestretch. Karen Stuhldreher has my gratitude for the many thoughtful conversations we have had over the years which helped develop my thinking. And Beth Harris helped me immeasurably with her steadfast friendship, her willingness to discuss anything

in exhaustive and thoughtful detail, and her ability to be a respectful and challenging friend and colleague. The pleasure of becoming friends with these women certainly balances out the any unpleasant moments experienced on the path to the Ph.D.

Karla Fischer and Anna Maria Marshall provided warm and humor filled support at Law & Society meetings for several critical years. Their enthusiasm for this project helped me sustain my commitment, and conversations with them taught me and helped me push my own thinking.

I have had many good teachers, but a few stand out. The very early genesis of this project lies in the seeds Jane Jacquette planted years ago; thanks to her for taking me seriously, teaching me about how to think about power, and making me take feminist theory seriously. Thank you to David Allen for a class on feminist methods which inspired me to continue in my studies. Finally, I am grateful to Michael McCann for his ability to see the potential for a research project in my interests, his consistent assurance that this was a worthwhile project, and for teaching me new ways to think about law and institutions.

Many of my compatriots in the battered women's movement helped me by providing entrée and encouragement, giving me interviews and passing on information they thought might be relevant. In Arizona, Bahney Dedolph has my

gratitude for opening doors for me which I might never have been able to open myself. My sincere thanks go to Ginny Ware for being such a gracious first contact with the battered women's movement in Seattle so many years ago (and to Beth Harris for introducing me to Ginny.) I am grateful as well to Judith Shoshana for her graciousness. Karen Rosenberg for her thoughtfulness, and Lois Loontjens for her thoughtful feedback on the project. Thanks generally to the staffs of New Beginnings and Sojourn shelters for battered women, for facilitating my research by allowing me to contact women via support groups. I am also indebted to the staff of the Arizona Coalition Against Domestic Violence.

I want to thank Mary Pontarolo for encouraging me to finish this project by telling me that "we need women like you with Ph.D's." Those words meant a great deal to me.

My coworkers at the Washington State Coalition Against Domestic Violence found the perfect balance between supporting my pursuit of my Ph.D while not asking about it overly often or expressing puzzlement at the glacial pace of the process. Leigh Hofheimer, Nan Stoops, Judy Chen, Lupita Patterson, Tyra Lindquist, Kelly Starr, Joanne Gallagher, Grace Huang, Christine Olah, Kelsen Young, Malaika Edden, Teresa Atkinson, and Jessica Amo have all taught me and provided inspiration and insight during the writing process. Christine Olah has a special claim on my gratitude for stepping in at the last minute and providing me

with sensitive, tactful, detail oriented copy-editing which allowed me to keep my own "voice" while at the same time improving it.

I also want to thank Susan Hannibal for her generosity in giving me interviews over the years, patiently providing me with local history and background regarding Washington State, King County and City of Seattle domestic violence policy. I also am grateful to her for lending me library of reports and policy statements issued in Washington regarding domestic violence over the past 15 years.

Thanks as well to my parents for their concern and support through the years I worked on this project.

I also want to acknowledge a very small boy who taught me a very hard lesson about letting go. That lesson made it possible for me to write this dissertation. Perhaps most importantly, I wish to thank my daughter Ella for inspiring me to renew my commitment to a peaceful and just world.

Although many people allowed me to interview them, and shared resources, opinions and information, I must acknowledge that the findings and conclusions here are mine alone.

DEDICATION

To the brave and generous battered women who took the time to tell me their stories
in the hope that doing so would help other women.

CHAPTER ONE: OVERVIEW

Introduction

This study comes out of my own work with battered women over the past nineteen years. Advocating for battered women as they sought to end the violence in their lives, to escape abusive relationships and to protect their children, I have seen clearly how legal institutions have profound effects on the intimate lives of women and children. Talking to women about their experiences with police, prosecutors and courts, I have heard many times that a substantial gap existed between what battered women *thought* it meant to invoke their rights and law and what it actually meant once they did.

Observing the passage and implementation of new laws aimed at strengthening and improving the criminal justice system's response to domestic violence through the 1980s and 1990s raised questions in my own mind regarding the meaning of rights and the relationships between law, power, violence, gender and the intimate realm. Often, legislation aimed at stronger consequences for abusive men has had unintended consequences for battered women. For example, in many jurisdictions which implemented a mandatory arrest policy, arrests of battered women who were defending themselves increased substantially, at least initially. Talking to a woman who called the

police filled with terror and a hope for justice, only to find herself arrested along with her abuser because she left a scratch on his arm (while his attempts to strangle her remain uninvestigated), brings one in touch very quickly with a concept familiar to legal scholars: that simply passing a well-intentioned law does not automatically change people's material realities for the better.

Domestic violence reforms illustrate another important point about legal reform: law is implemented locally, which results in a great deal of variety in legal responses to battered women. Many cities and counties have implemented extensive programs to improve their civil and criminal justice system response to domestic violence. It is possible to travel within a single state and find substantial differences in what I have come to think of as the *local implementation infrastructure* regarding domestic violence. While some municipalities' responses have not changed much since 1970, others have created infrastructures for responding to domestic violence which would have been almost unthinkable twenty-five years ago. Elements of these infrastructures include:

- strong written policies and extensive training regarding domestic violence response for police, prosecutors and (much less often) judges emphasizing battered women's safety as an organizing principle for intervention

- the clear commitment on the part of local leadership (mayor, police chief, city and county prosecutor's office) to a strong response to domestic violence
- the presence of legal advocates in community-based agencies, law enforcement agencies and courts
- dedicated units for responding to domestic violence within law enforcement and prosecutors' offices
- ongoing domestic violence task forces with representatives from law enforcement, prosecutor's office, batterer's treatment providers, advocates, medical providers, and other social service providers

The wide differences in local response to domestic violence in the face of substantially similar written law point to the limits of measuring change in terms of changes in written law. Instead, it forces us to recognize the local, dynamic nature of law, which is necessarily brought to life at the community level. It also raises questions about how the local implementation structure surrounding a particular written law may affect individuals' perceptions of their rights and legal options and their willingness to invoke legal remedies for the abuse they are experiencing.

Goals of the Study

My goals in this study are intellectual, analytic, academic and policy oriented. As both an activist and an academician, I have found myself pulled between an approach to law which emphasizes its nuances, ambivalences and paradoxes, and a more pragmatic approach which seeks to identify the "right" way to do things and garner evidence to support arguments for those particular policies. In the end, I think this work reflects both of these approaches.

While conducting this research, I started the Washington State Domestic Violence Fatality Review, a project which tracks domestic violence fatalities throughout the state and conducts in-depth examinations of the circumstances leading up to particular fatalities. My work with the Fatality Review has inevitably shaped my thinking in writing up this study. It decisively closed the door on (the already minimal) possibility that I could (or would want to) approach this study "objectively." Fortunately, I find myself in good company. Many feminist and critical scholars have argued that in fact, objectivity can be a burden on creating knowledge rather than an asset, because of the risks of "othering" the people studied; implying a more definitive and total description of "reality" than is in fact possible given the limits of an individual researcher's perception; and replicating (and justifying) relationships of domination and

oppression (Collins 1991; Lather 1991; Mies 1991; Rosaldo 1993). Rejecting objectivity, these theorists encourage researchers to work from the understanding that one's own views are partial, and that one's interpretations are shaped by one's social position. Further, when doing work based on interviews with individuals, one must be aware that what people's willingness to talk about their lives, and what they choose or decline to reveal, may be shaped by their perceptions of the researcher herself and her relationship to them. Maria Mies argues that we should seek to attain "partial identification": a consciousness of both what binds and what separates the researcher and the researched (Mies 1991). Lather calls for researchers to "foreground an awareness of our own structuring impulses and their relation to the social order" so that we can be critically aware and even work against them (Lather 1991, p89). In her description of an alternative black feminist epistemology, Patricia Hill Collins calls for research which is based on dialogue (a collaborative construction of meaning), an ethic of caring (the presence of appropriate, empathetic emotion on the part of the researcher) and personal accountability (the credibility of the researcher should be affected by an understanding of their ethics) (Collins 1991). Renato Rosaldo warns against relying on disciplinary norms of "objective" description and analysis when describing the subjects of ethnography which would sound absurd when used to describe the researcher's

own life. Generally, these feminist/critical scholars call for researchers to position themselves as equals with the subjects of their research, and refuse to pretend to be invisible, neutral purveyors of truth. Some (but not all) insist that research should play a role in social change.

A common thread in work which rejects traditional objectivity and positivism is the effort to make the researcher's subjectivity visible to the reader, bringing the teller back into the narrative in order to emphasize the active, positioned and partial construction of the narrative. In this spirit, I must acknowledge my acute awareness that the close proximity I have had to the suffering and struggles of battered women and their children—as an advocate for battered women, as a scholar interviewing battered women and as an activist researcher investigating the deaths of battered women—has led me to feel that the policy questions here are of considerable urgency. The interviews with battered women that form the heart of this project were intense conversations which deeply touched me. Several women have kept in touch with me in the years since; I have worried over the fates of others of them, and of their children. Becoming a mother during the course of this study added additional poignancy to the work, and made women's stories of their custody battles and their inability to enlist the state's assistance in protecting their children all the more concrete and painful.

Because of my work on the Fatality Review, I am very aware that in the

years since I began my interviews and worked to write up my data (early 1997 to August 2002), 140 women were killed by their current or former husbands or boyfriends in Washington, 22 of them in Seattle (an average of 4 per year in Seattle)[Hobart, 2002 #73; Hobart, 2000 #83]. The Arizona Coalition Against Domestic Violence began tracking domestic violence fatalities in 1998. Since then, 141 women were killed by their current or former husbands and boyfriends in the state, 42 of them in Phoenix (an average of 9 per year).¹ Immersing myself so intensely in the reality of women's murders has had a sobering influence on my write-up of this study. Certainly my interviews showed that overall, battered women felt more positively about their experiences with the legal system in Seattle, and were more likely to feel that their experiences with police, prosecutors, judges and courts conformed more fully to their sense of what "law" should be than the women in Arizona. On the other hand, my work on the Fatality Review provided an unavoidable reminder of the limitations of

¹ Information from the Arizona Coalition Against Domestic Violence. The reader should note that these numbers do not indicate the complete death toll of domestic violence for either Washington or Arizona. In both states during that time period, abusers killed their children along with their partners, or to punish their partners for leaving. They also murdered their partner's mothers, brothers, new boyfriends and friends. Several law enforcement officers were killed. In all, in Washington, domestic violence abusers killed 216 domestic violence victims, their children or friends and family members between 1997, when I began researching this dissertation, and August 2002; an average of 36 murders per year. In Arizona, 319 domestic violence homicides occurred between 1998 and May 2002, an average of 70 per year.

legal interventions into domestic violence—even those implemented in a positive policy environment—to help some battered women. At the same time, the much higher murder rates in Phoenix than in Seattle may be interpreted to confirm what battered women there told me: legal officials did not take action to curtail men's violence against them.

It is possible that my position as a white, educated, middle-class woman predisposes me to more optimism than is warranted regarding the potential of the civil and criminal legal systems to help abused women become free of violence, even in the face of the tragic murders I have studied over the past few years at the Fatality Review. Having not personally experienced the legal system as capricious or dangerous, I may be too quick to place my faith in the possibility of useful reforms. I may hold out more hope than some for the potential of reforms to the civil and criminal justice systems. My history as an advocate and my interviews with women for this project also convince me that legal institutions affect women's lives whether they like it or not or choose it or not, and so given this reality, I am additionally invested in making them work as well as possible. I have sought to work against possible blind spots, and will return to them when critically assessing the findings reported here in the conclusion section.

All that said, this study has five primary goals. The first four emphasize the

intellectual questions at stake and the last encompasses the policy dimension of the study. I hope to build on the efforts of legal scholars to understand how law constitutes everyday life by looking deeply at one aspect of everyday life shared by many women: law's role in shaping responses to violence and abuse in intimate relationships. By comparing battered women's legal consciousness in two cities with similar written law but significantly different local policies and efforts at implementation, I hope to expand our understanding of how local context may shape legal consciousness and legal mobilization, even when substantive law is quite similar.

This study pursues an insight articulated by Michael McCann in his work on pay equity. He found that invoking law, threatening to sue or take other legal action allowed pay equity activists to compel concessions from employers. In other words, just the threat of legal action was sometimes enough to accomplish changes in practice. Thus, law can have an important role in disrupting power imbalances (McCann 1994). Other scholars have suggested that a similar dynamic occurs on the individual level: that as individuals negotiate conflicts, bringing up the possibility of taking legal action may compel concessions from those individuals with whom they have a dispute (Miller and Sarat 1981). When individuals invoke the law with one another as a bargaining tool (by threatening legal action or asserting their "rights"), they stand in the "shadow of the law"—

their negotiations are shaded by what they think might happen if they stepped into the physical structures which house our formal legal system.

In asking how (or whether) legal reforms had affected battered women's legal consciousness and mobilization, I had several key goals for the study:

1. *To explore the relationship between legal consciousness and legal mobilization.*
2. *To explore how law affects power between disputants, and pursue how people think and operate in the shadow of the law.*
3. *To examine legal consciousness and legal mobilization in two distinct environments.*
4. *To gain a deeper understanding of the relationship between violence and the law.*
5. *To understand more fully the ways in which legal reforms in the past twenty-five years have affected battered women's quality of life.*

My central arguments are that:

- The local implementation infrastructure significantly affects legal consciousness and legal mobilization and the degree to which law can be an effective resource for challenging power imbalances between

individuals in the shadow of the law.

- That law, in the form of police, prosecutors and judges, can, in some contexts, facilitate violence and actually work to augment the power disparity between individuals, and that this in itself is a form of violence. When this happens, written law, the legal system and its representatives (police, prosecutors, judges) become delegitimized for the victims of violence.
- When the local policy is designed to facilitate battered women's individual legal mobilization by increasing access to legal information and advocacy, invoking rights or threatening to involve legal officials (e.g., the police) can become a relatively effective tool for resisting violence and traditional power imbalances, at least for some women.

Goal #1: Exploring the Relationship Between Legal Consciousness and Legal Mobilization

The first goal of the study is to come to a greater understanding of the relationship between legal consciousness and legal mobilization. This requires an understanding of the concept of "legal consciousness."

The Shadow of the Law

In his 1983 essay, "The Radiating Effects of Courts," Marc Galanter pointed out that law's effects do not end with the individuals who bring a particular case to court, or with those people upon whom the law is directly applied (e.g., the person who goes to jail). Rather, he argues that law's actions also have "general effects" on people who were not in court. These could include changing the moral evaluation people have of particular types of conduct, strengthening a norm, or providing instruction as to how to use law. He points out that through general effects, the courts (or law more generally) "not only resolve disputes, they prevent them, mobilize them, displace them and transform them" (Galanter 1983, p123).

The police station, law offices and courts all have what Galanter would call a "radiating effect": they inform people's notions regarding the nature of the conflicts they experience, their role in them, their rights, what is lawful or unlawful, and what is likely to happen if they invoke law. In this sense, people internalize the institution of law and enact it, even when they are outside formal legal structures. Galanter's observations point to what some scholars call "the shadow of the law." This is the impact law has beyond the courts and locations where it is most obviously carried out. For some, like Alan Hunt, this has led to

the conceptualization of the law as a "constitutive form of regulation" (Hunt, 1985). In other words, law should be conceptualized not just as a set of written rules and actions that happen within the confines of court buildings, but instead as a regulatory scheme initiated and enforced not only in courts but also in other institutions throughout society and ultimately within people's consciousness. Law, broadly construed, along with other social processes (which themselves may influence law and be influenced by it), actually constitutes our identities and how we interpret the world. Thus, people may invoke legal concepts (like rights) in their relations with one another, envision themselves within highly legalized environments, and experience their interactions shaped by law, all without the direct intervention of the state's legal officials or apparatus.

Consciousness, Ideology and Agency

While people have defined the term "legal consciousness" somewhat differently, it generally refers to the way law operates in people's imaginations and interactions as a point of reference, framework and a resource for negotiation. Sally Merry, for example, conceptualizes legal consciousness as a commonsense understanding, embedded in the way one sees the world and expects it to work that it is not easily accessed consciously (Merry 1990). Austin Sarat's definition of consciousness points more directly to the embeddedness of

the individual in social structures and the limitations on the individual's imagination as a result of that embeddedness. For him, "legal consciousness and legal ideology could be used interchangeably" (Sarat 1990).

Other scholars avoid making ideology and consciousness interchangeable out of concern that ideology can imply a fixed set of beliefs determined by social structure. Seeking a model which leaves room for agency and change while still acknowledging the effects of the social structure, Michael McCann emphasizes the dynamic and changing nature of legal consciousness. He points out that people's consciousness changes in response to the discourses and actions they see around them, and as a result of their own experiences. He defines legal consciousness as "the ongoing, dynamic process of constructing one's understanding of, and relationship to, the social world through use of legal conventions and discourses" (McCann 1994, p7). Patricia Ewick and Susan Silbey strive to articulate a definition of consciousness which "integrates human action and cultural constraint." Like McCann, they want to acknowledge the thinking, knowing subject as well as the constraints which exist outside the individual. In addition, they want to foreground the interaction between the individual and the social structure, arguing that these are mutually influential (Ewick and Silbey 1998).

Even with all these attempts at definition, legal consciousness can remain a

rather fuzzy concept. As the definition is broadened to encompass social and cultural practices, the dividing line between what constitutes consciousness about the world in general and legal consciousness in particular can become unclear. For my purposes, legal consciousness is distinguished by its connection to the potentially coercive power of the state. Thus while religion may form a particular sort of order and regulate people's actions, it is not directly connected to the state's power. "You can't do that, you're violating my rights!" carries a fundamentally different meaning than "You can't do that, it's a sin!" Both seek to invoke a powerful entity in order to change another's behavior, but only the first refers directly to the potential of the state to intervene and enforce the norms or principles at stake in the United States.

Scholars have noted that people frequently invoke law as they negotiate or think through their options, even when they have no intention of actually calling on formal legal structures for intervention. Patricia Ewick and Susan Silbey refer to this uncoupling of law from formal legal institutions as the active construction of "legality." They use "legality" to:

Refer to the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends. In this rendering, people may invoke and enact legality in ways neither approved nor

acknowledged by the law (Ewick and Silbey 1998, p22).

Thus "legality" refers to intent to invoke state power in advancing or defending a claim. It provides a conceptual tool for thinking about the way people's lives are informed by law without being directly subject to formal legal structures.

Categorizing Legal Consciousness

Clearly if the intent is to go beyond simply observing that people possess legal consciousness, the question of *types* of consciousness comes to the fore. Ewick and Silbey have gone the farthest in trying to articulate a model for categorizing legal consciousness. They introduce three broad patterns in people's consciousness of law, and argue that people's legal consciousness may be divided and even involve conflicting concepts. They propose that people's approach to law falls into these three categories: Before the Law, With the Law, and Against the Law. Briefly, "Before the Law" refers to the idea that law is a self-contained, logical and coherent system. In this way of thinking, law is reified, impartial, and separate from human whim and bias. They observed that people seem to hold these sorts of ideas about law and legal institutions even when their own experiences are to the contrary. "With the Law" refers to a consciousness of law as a game, a process, which one may play and influence.

Here, law is not seen as a lofty and pure, but rather is seen as grounded in the personalities and biases of the people in legal institutions, and subject to strategic action. Finally, Ewick and Silbey identify people who experience law very clearly as a system of power in which they are caught, and with which they must cope. They identify these people as having a consciousness which sets them "Against the Law." Here law is seen simply as a form of domination exercised by people in power, and therefore a legitimate target of resistance.

These categorizations are helpful in capturing the variety of ways people may think about law and the multiple ways in which it may form a filter for viewing experience. Their explanation regarding how these varied approaches to law exist in tension with one another, resulting in the maintenance of general acquiescence to the legal system, is especially insightful. They argue that if everyone thought law could only be impartial and transcendent, then when it wasn't, people would be outraged more often and the system would not command loyalty and acquiescence. On the other hand, if it were always perceived as cynical and a game then it would not succeed in securing loyalty. They posit that the mix allows people to keep believing in the legal system while not expecting it to be perfect (Ewick and Silbey 1998).

Ewick and Silbey's model instructs us to evaluate what people's stance may be towards law and legality when they encounter it, and consider how this may

inform the strategies they use as they interact with law. However, it does not provide much guidance for understanding how people may bring legality into their interactions with each other, outside of legal institutions and away from legal officials. I would like to argue that when people enter a dispute with one another or with legal officials, regardless of their general attitude towards law, they must engage in four processes which represent four dimensions of legal consciousness: they interpret events, assess their options, have a sense of their identity within the dispute, and form some idea as to how things should be.

The Four Dimensions of Legal Consciousness

Interpretation: Law informs and allows interpretation of the material world and events which take place in it. For example, the notion of "property" is soaked through with legal meanings and shaped by a long history of legalized disputes. Even the simple claim "he took my property" is laden with layers of legalized meanings. Along these lines, law also constitutes our experience of embodiment, pain and the way others relate to us physically and emotionally. Some physical, even painful, encounters between people are not classified as "assaults" or "wrong." (A stranger invades our personal space and steps on our foot in a crowd, for example.) Superficially similar events with the same pain level may have quite a different interpretation: if a man with a history of pushing

and hitting steps close to his partner and grinds his foot on hers, that woman may interpret that behavior as an assault, something which is wrong and violates her rights.

Tactics: Law shapes our assessment of options for acting in the world, and informs (but does not exclusively determine) tactical choices for behavior. Law provides a framework for deciding which actions may be appropriate or inappropriate: "I could talk to him, I shouldn't threaten him with a gun, I could report him, I shouldn't hire someone to kill him." Closely related to this, people have a pragmatic sense of what is likely to happen if they invoke law. Based on their legal consciousness, they may engage in cost/benefit analyses regarding varied possible responses to disputes. ("If I call the police, they may or may not help me, but they will certainly enrage him more; threatening to call but not actually calling may be the best option right now, if it makes him stop.")

The pragmatic sense of law that shapes people's choices of tactics may be based on their knowledge of the other disputant's attitudes and experiences with the legal system, their own past experiences with legal officials, what they've heard from friends and family, what they've seen on TV, etc. Pragmatic assessments regarding the potential utility of invoking law influence people's legal mobilization. This part of legal consciousness may be the one that most clearly evolves and changes with repeated interaction with formal legal systems.

Some people may start out thinking that what will *actually happen* when they invoke law will correspond closely with what they think *should* happen (normative ideal) or with written law (substantive knowledge). With repeated interactions, the pragmatic assessment may vary widely from normative ideals or substantive knowledge; this in turn will shape choices of tactics.

Aspiration: Law shapes aspirations, expectations and a sense of what's fair. Law provides a normative frame of reference. According to Frances Olsen, the idea of rights can convey the "kind of society we want to live in, the kind of relations among people we wish to foster and the kind of behavior that is to be praised or blamed. It is a moral claim about how human being should act toward one another" [Olsen 1984, quoted in (Schneider 2000)]. Individuals' notions of what should happen, how they should be treated, how they should treat others are shaped by law. For example, "He should not hit me. I have a right not to be hit." People hold normative ideals regarding the institution of law itself; these become a standard against which actual interactions with law, legality and legal officials may be measured. These normative ideals may be identical to how people think law *does* operate, or they may exist as an important point of reference for critically evaluating one's experiences with law. The ideal may be closely connected with knowledge of substantive law ("I know the policy and you're not following it") or it may nurture resistance and critique

of current legal practices ("that may be the law, but it's wrong"). This aspirational consciousness is most closely tied with people's sense of justice.

Identity: Law shapes people's sense of who they are. Law specifies relationships between individuals (wife, parent, dependent) and produces legal categories of identities (victim, offender, witness) which may be permeated with value-laden meanings (innocent victim, battered wife, vindictive mother, upstanding citizen). People's notions of their own identity are shaped by law, and the identity which legal officials and others may assign them is also shaped by law. Identifying as a battered women means identifying with a particular legalized relationship to one's intimate partner (legally recognized forms of intimacy like marriage, cohabitation or dating) and a particular legalized history of physical and emotional experiences with the partner (he assaulted me), identifying the partner as a particular kind of person (abusive). Inherent in the claim is an understanding of who is at fault (I am innocent; I did not ask for it; he is responsible for the violence). It may also imply a claim to rights: to be safe, to be protected from the abusive partner, to have the violence considered in custody disputes.

At the same time, the woman who identifies herself as battered may find herself and her problems defined by others—including legal officials—quite differently: perhaps as a vindictive wife, hysterical or crazy, unreasonable, out of

control, provocative, culpable. Each of these implies a quite different understanding of the identity of the woman and her partner, the history of material events, who is to blame, and what legitimate claims she has.

Table 1.1 Dimensions of Legal Consciousness

Dimensions of Legal Consciousness	Example	
Interpretation	Interpretation of the material world and events which take place in it	<i>"He assaulted me"</i>
Tactics	Pragmatic assessment of options and choices of tactics, based on expectations of legal actors' responses	<i>"I could hit him back, I could call the police...calling the police is risky because they may not help me, so I'll just threaten to call the police"</i>
Aspiration	Aspirations, expectations and normative ideals, sense of what is fair, what is just, what law "should do"	<i>"I have a right to police protection; he has no right to hit me"</i>
Identity	Sense of who one is in relationship to law, others, and to one's experience	<i>"The cops treated me like I was crazy and acted like they thought I was lying. I'm not the kind of person they are going to help."</i>

The Relationship Between Legal Consciousness and Individuals' Knowledge of Written Law

Knowledge of written law or formalized policies can form a backdrop for legal

consciousness and mobilization. Law does not function solely in the legal imagination of those who invoke it. Legal scholarship has made it clear that legal officials do not always hew closely to written law, and in any case, interpretation of that law is always at issue. Even so, a body of written law does exist which citizens and legal officials may refer to in order to legitimize claims and decisions. In many "law and society" studies, it seems that people's ideas about their rights and about law are quite disconnected from any knowledge of the substantive law (Engel 1984; Ewick and Silbey 1998; Greenhouse, Yngvesson, and Engel 1994; Merry 1990). However, concrete knowledge of the written law may shape how people conceive of their rights and discuss them when in conflict with other citizens and legal officials.

In an effort to begin building general theory about how people think about law, the distinction between how people think about barking dogs, domestic violence, trespassing, and personal injury suits has not been clearly drawn. Studies which examine legal consciousness regarding "law" as a general concept necessarily flatten out the differences in how people may think about particular areas of law (Ewick and Silbey 1998; Greenhouse, Yngvesson, and Engel 1994; Yngvesson 1993). However, scholarship which does focus on particular areas of law shows that people may have specific knowledge and attitudes about certain kinds of claims. People may be more familiar with the areas of law that affect

them the most, or may see some areas of law as more ripe for misuse than others (Bumiller 1988; Engel 1984; McCann 1994).

Attending to these studies, we see that "law" is not necessarily a monolithic concept in people's minds or daily lives. Education and information regarding some sorts of disputes are more available than for others. For example, because divorce is so common, and thus brings people directly in contact with law and legal officials, many more people may be able to provide a relatively accurate definition of the concept of "common law property" than could define legal terms relating to a wrongful death suit. Various groups have incentives to educate people regarding particular laws and rights, but other areas of rights may remain fuzzy and indistinct in people's minds. Advocacy organizations for particular groups, such as unions and issue organizations, may seek to activate rights consciousness in their constituents regarding particular sorts of grievances. Thus "law" may be much more defined and connected to written law in these areas for the recipients of that education.

Of interest for this study are the efforts made over the past twenty years to raise women's consciousness regarding their right to be free of violence in the intimate sphere. While the written law in all states has made physical violence against a spouse a criminal act since the early 1980s, efforts to enforce these laws and educate people about them have been uneven, and varied considerably

from locale to locale. Thus, one city may have made extensive efforts through radio public service announcements, bus posters, pamphlets and brochures, newspapers and public education to raise awareness of both the written law and the local policy with regard to domestic violence. Another city, perhaps even in the same state, may not have made any such effort.

Legal Mobilization

Law constitutes people's understanding of their everyday lives, their identities and their options for shaping their environment. Broadly speaking, how people's internal lives are shaped by law can be referred to as "legal consciousness." It also becomes clear that law, via legal consciousness, affects *behavior*. These behaviors (as distinct from how people think about law) may be referred to as "legal mobilization." Frances Zemans suggested that we see any invocation of the law as a form of legal mobilization (Zemans 1983). In other words, whenever anyone raises a claim to rights that the state may protect or enforce in almost any context, that act could be considered legal mobilization. If we take seriously Galanter's point that within the shadow of the law, disputes are prevented, mobilized, displaced and transformed by the radiating effects of courts, then it becomes clear that what people think about law, or their legal consciousness, influences when and how they make rights claims, bring up legal

concepts with each other, and threaten to or actually call on formal legal institutions for assistance with disputes. Legal consciousness and legal mobilization are closely related but separate concepts, the former referring to a set of ideas and perceptions, the latter to behaviors.

In this study, I will argue that legal consciousness and mobilization are influenced by the local legal environment, or the *implementation infrastructure* which is built up (or lacking) at the local level. This is amply demonstrated in Kristin Bumiller's work, *The Civil Rights Society*. Her subjects told her they chose not to invoke law even when they felt discriminated against and had the right to do so because they felt that, given the likely outcomes, it did not make sense to go through the trouble (Bumiller 1988). Their pragmatic assessment of options led them to avoid mobilization as a tactic for dealing with the discrimination they experienced. In contrast, Michael McCann found that pragmatic evaluations of the value of invoking law around the issue of pay equity encouraged mobilization on the part of the union members he studied (McCann 1994).

Bumiller's and McCann's work make clear that the existence of substantive law which may support one's claim alone is not a predictor of legal mobilization. Rather, the factors influencing mobilization may be complex: influenced by law directly, but also by other factors such as social support or isolation, social position and assessments of the likely utility of legal mobilization.

Goal #2: Beyond the Citizen/Legal Official Binary

The second goal of the project is to gain a greater understanding of how law constitutes power relationships between ordinary people.

In trying to understand the complex ways in which law constitutes everyday life, some scholars have focused a great deal on the interactions of citizens with formal legal actors in formal legal spaces, conceptualizing this as the primary power relationship at play (Engel 1984; Ewick and Silbey 1998; Merry 1990; Sarat 1990; Yngvesson 1993). These explorations have shown how legal officials may enforce/reinforce the morals and positions of the dominant local majority (which often corresponds to the majority culture in the United States). Typically less clear in these explorations is how power relations between the disputing individuals were shaped or reshaped in the shadow of these decisions. Thus, in Sally Merry's work, for example, we may learn of how a battered woman seeking help to control her abusive partner is perceived by legal officials as part of a lower-class, trashy, out of control sub-population. We come to see that this formulation shores up the overvalued middle-class, ostensibly controlled and rational identity of the court workers and other privileged members of the community (Merry 1990). What is *not* elucidated clearly is how the court workers' judgment that the battered woman's claims are "garbage" affects the

gendered and unequal power relations between the woman and her abusive spouse. Nor do we find out why the battered woman would seek the help of law, given that it is likely she knows that legal officials may look down upon her.

Power Relations Between Disputants and the Constitutive Nature of Law

David Engel's exploration of how law, legality and legal consciousness shapes relationships between established residents and newcomers in a small town provides a tantalizing look at how social relations are shaped in the shadow of the law. His study demonstrates the ways in which valued and devalued identities may be constructed and reinforced with reference to law, affecting relationships between people who never set foot in court (Engel 1984).

Engel's and Bumiller's work begins to show us how (through disputant's legal consciousness) law endows some people with power, even when it is not invoked or when disputes are not taken into formal legal realms. When both A and B believe that if they go through the formal legal system, the result is likely to come down in favor of B's position, this gives B an advantage. This belief may stop A from ever articulating the grievance. On the other hand, if A and B actually interact with a legal actor, it may become clear that the legal actor has a great deal of power over both A and B, and can, for example, increase A's power in relation to B if he or she favors A's position (or interprets law to favor A's

position). If we take as a given that A and B's disputes occur in a society in which some identities and claims have been systematically devalued through the various social institutions, and others unfairly elevated, then the picture becomes even more complicated.

As Rogers Smith illustrates so clearly, the United States has had competing traditions with regard to people's social standing: the tradition of inegalitarian ascriptive hierarchy (in which inherent characteristics such as race, gender, sexuality or religion automatically situate one in the hierarchy), and that of egalitarian liberal individualism (in which people are accepted as individuals, equally valued and hierarchy is based on merit) (Smith 1997). Our legal system has been a tool for furthering both traditions, and both traditions continue to resonate within law, resulting in conflicting legal norms and outcomes, and complicating people's view of law. Some identities have been systematically overvalued and others devalued (e.g., whiteness and maleness versus racial and gendered "otherness") within legal decisions and written law. Similarly, some claims have been legitimized while others have been ignored, prevented from arising, or delegitimized (e.g., marital rape, in contrast to property crimes). On the other hand, written law and legal decisions have functioned to challenge ascriptive hierarchies. Given this complex context, law may function in people's legal consciousness as an instrument of oppression and unjust hierarchy, or as

an aspirational institution which strives for justice and can disrupt the effects of the ascriptive traditions of the U.S.

Keeping all this in mind, it becomes clear that multiple dimensions of power are at play when we consider how law constitutes everyday life: the power of various social processes which shape the individual life histories of each disputant and determine their value in the dominant culture, and the differential power each may hold vis-à-vis each other as a result; the power of legal officials in relationship to the disputants; and the additional power law may give disputants vis-à-vis each other either through their legal consciousness or through formal legal officials' (police, judges, prosecutors) actual decisions and actions.²

Goal #3: Examining Legal Consciousness and Legal Mobilization in Two Policy Environments

A third goal is to study legal consciousness and legal mobilization in two

² The distinction between "social processes" and "law" is in itself somewhat artificial. Many of the social processes which shape people's experiences are (or were historically) shaped by or enshrined in law. However, when we consider the dynamics of race, gender and class, for example, while law has played a role in institutionalizing hierarchy along these lines, it is not the only factor driving these hierarchies. Here I wish to make a distinction between law in the diffuse "background to everything" sense and law in the more literal sense in which disputants may envision it, or may experience it at the hands of legal officials.

distinct environments, in order to have some basis for comparison across local contexts. Michael McCann has argued that "law is pluralistic and relatively independent of the state, [and]...its role in sustaining traditional hierarchies, and hence in structuring potential strategies of resistance, varies significantly among different terrains of struggle"(McCann 1994, p9-10). This project builds on this insight by working from the assumption that local differences in policy implementation may make a great deal of difference in the consciousness (and thus strategies of resistance) of battered women.

Legal Mobilization and the Local

A great deal of attention has been paid to the ways in which local legal officials' discretionary decisions often reflect dominant local norms and mores (Engel 1984; Ewick and Silbey 1998; Greenhouse 1982; Greenhouse, Yngvesson, and Engel 1994; Merry 1990; Yngvesson 1993). However, this focus on the local has not always resulted in case studies that lend themselves to comparison. This study attempts to build on earlier work with greater attention to written law and institutional contexts in order to facilitate case study comparisons.

Scholars emphasizing the constitutive power of the law have often conceptualized law almost exclusively as what legal officials *do*. However, the institutional context for mobilizing rights may vary widely. While many states

and cities have substantially similar written law regarding spousal assault, the institutional structures which respond to claims regarding spousal assault vary a great deal from place to place. For example, some cities publicize their "get tough" on domestic violence policies through public awareness campaigns and fund extensive advocacy services to assist and encourage battered women to invoke law on their own behalf. Some police chiefs are committed to the enforcement of these laws and institute policies, incentives and directives to this effect. Others are not.

Very little work has been done which compares mobilization between different institutional contexts or around specific kinds of claims. This has had the effect of allowing legal consciousness to be spoken of in terms which are often either falsely monolithic or particularistic. "Law" as a concept becomes monolithic when scholars treat people's accounts regarding how they think about one particular area of law as indicative of how they think about all areas of law, or law generally. People may have vastly different ideas (and thus may mobilize quite differently) regarding particular areas of conflict. On the other hand, studies of legal consciousness become overly particularistic when considered in isolation from one another and comparisons are not possible because the local policy environment is not well specified. It becomes difficult to distinguish between purely local and generalized phenomena.

The pragmatic calculations people make regarding whether to mobilize law or not are based at least in part on their knowledge regarding how legal institutions and legal actors work in their local context. In other words, while “law” in general creates a “shadow” in which ordinary people operate, the local courthouse and police station create *distinctive shadows* in each community. Understanding how law is implemented on a local level is integral to understanding legal consciousness and legal mobilization.

In order to do that, this study draws on the insights and strengths of several traditions within both law and public policy literatures. The work here is perhaps most closely tied to the tradition within law and society characterized as “constitutive.” In this tradition, scholars emphasize the ways in which law (the idea of law and legalized meanings, not necessarily formal law) constitutes everyday life and even people’s identities. This strain of scholarship holds an ambivalent and even paradoxical view of law and rights in particular, reflecting the ways in which key scholars in this arena have been influenced by both critical legal studies and critical race studies. On one hand, much of the “constitutive” scholarship points to the ways in which law or legalized interactions uphold social hierarchies, and the ways in which the promise of “rights” is an elusive one, particularly for marginalized people—building on insights from the critical legal studies movement (Engel 1984; Merry 2001b). On the other hand, these

scholars also demonstrate the power that law wields to structure people's lives, and to occasionally disrupt inequities—something critical race theorists have emphasized (Crenshaw 1991; Williams 1991). Similarly, I wish to show how law constitutes battered women's experiences of themselves, the emptiness of the promise of rights in some cases, and at the same time, the potential of that promise for affecting women's quality of life.

The constitutive literature has often emphasized the importance of understanding the local context of law and legal experiences (Engel 1984; Ewick and Silbey 1998; Greenhouse, Yngvesson, and Engel 1994; Merry 2001b). However, this body of work has generally not focused on the specific substantive law or policy at stake in examinations of how law constitutes everyday life; rather, it has emphasized local social structures and hierarchies (e.g., insiders vs. outsiders). From my own work as an advocate for battered women in a number of states and cities, I had a sense that the local policy context is critical to understanding legal consciousness and how law shapes experience, because local policies affect very powerfully the *experience* people have of law, which in turn shapes consciousness (Merry 2001a).

In turning to public policy literature, one may notice a similar divide as among the literature concerned with the workings of law in society. Scholars of policy originally focused on written policies only, with little attention to the actual

implementation of policy. As in legal studies, critiques of this approach resulted in gap studies which examined the gaps between written and implemented policy. Some policy scholars sought to understand the reasons for these gaps and identified the importance of local policy actors in shaping policy. While some argued that gaps between written and implemented policy could be understood in terms of "brute facts" and measurable variables like communication flow, agency budgets, and incentives for cooperation (Sabatier and Mazmanian 1979), a small cadre of policy scholars have sought to explore the ways in which meaning making, ambiguity and unspoken assumptions all inhere in the process of policy making and implementation, and how each stage of the process, from problem definition to implementation may be influenced by social hierarchies and local norms (Schneider and Ingram 1990; Stone 1988; Yanow 1996).

These sorts of explorations have been characterized as a "bottom-up" approach to policy, as opposed to the "top-down" approaches which start with the written policy itself and do not attend to questions of impact on individuals or meaning (Sabatier 1986).

With the exception of Dvora Yanow's work, "bottom-up" public policy literature has generally stopped short of examining how people who were the targets or users of a policy thought about it, experienced it, decided to invoke or not invoke it, instead focusing on the meanings and assumptions brought into

the policy process by policy makers and implementers (e.g., examining how status of the people who are the targets of policies may shape tools or strategies which policy makers see as appropriate in responding to the needs/problems of that population (Schneider and Ingram 1990). Yanow, in her examination of the meanings embedded in Israel's community center policy, interviewed people for whom the community centers were ostensibly built. These interviews enrich her examination and critique of the community center policy, and further confirm her theory about the messages and meanings regarding social structure which the community centers both communicate and represent (Yanow 1996). The richness of this study demonstrates the possibilities in examining consciousness in the context of specific policy environments.

In this study, I have sought to make a connection between the lived reality and consciousness of the people who are the supposed "targets" of law and the specific public policy environment in which they are located. While being concerned with how law works in battered women's everyday lives, I have also attempted to understand how both the substantive law and the implementation infrastructure which arises from it may differ from place to place and result in differences in legal consciousness.

To illustrate how different local policies may shape the implementation of similar written laws in ways which affect people's experience of the law and legal

consciousness, consider one example. Seattle, Washington and Phoenix, Arizona have similar criminal and civil laws regarding domestic violence. Both allow a woman to petition the court for protection from her abuser in a civil process, obtaining a Protection Order. Both cities also have local laws regarding taxation and the allocation of funds for criminal justice activities. However, in Seattle (because of the efforts of battered women's advocates), a portion of tax revenue designated for "crime fighting" had been allocated to fund community-based advocacy services for battered women (as opposed to hiring more police officers, for example). This funding allowed community-based agencies to hire advocates who could help women fill out Protection Order paperwork outside of the court setting, and then accompany women to court and provide support for them as they go through the legal process. Phoenix had no such policy. If a woman wanted a Protection Order there, she had to go alone (or perhaps with a friend) to court; find the paperwork; fill out the paperwork herself; figure out how to file it; and stand before the judge alone. This resulted in a significantly different experience of law, and, in turn, in a very different consciousness of the possibilities and resources that law may represent for responding to domestic violence.

While written law is similar, the local reality for battered women seeking protection is quite different. It is only by examining both women's consciousness

and comparing the specificities of local policy environment and its impact on legal experience that the importance of the local policy environment becomes clear.

Goal #4: The Relationship Between Violence and the Law

A fourth goal of the study was to gain a deeper understanding of the relationship between violence and the law by focusing on a particular form of dispute: violence perpetrated by one intimate partner against the other, and law's role in responding to it.

Robert Cover reminds us that "Legal decisions are made upon a field of pain and death" (Cover 1986). When a battered woman and her two-year-old child were murdered by her estranged husband after a court-ordered visitation in Seattle in 1998, an activist group of survivors of domestic violence distributed a flyer with the headline "Stop judicial decisions which kill women!" Cover and the activist group make the same point: law is not just series of words or assigned meanings, but instead is a force with physical, material impacts on human lives. In their own ways, Cover and the Seattle activists caution us against conceptualizing law separately from violence, and remind us that law is meaningful only when it can harness violence and coercive force to enforce or accomplish its ends. A complete understanding of legal consciousness and legal

mobilization cannot be attained without attention to the violence law perpetuates, facilitates and refuses to stop, and to the violence it must employ in order to interrupt other forms of violence. I will argue in the following pages that law's violence and the violence law does or does not seek to control constitute central touchstones for the women I interviewed in interpreting their experiences and shaping their plans for the future.

Goal #5: Understand How Legal Reforms Have Affected Battered Women's Quality of Life

A fifth goal of the study was to assess how the legal reforms regarding domestic violence have affected the quality of battered women's lives. For the feminist activists, the goal of the extensive reforms enacted in the last twenty-five years regarding violence in the intimate sphere was to make a difference in the intimate lives of women. Activists hoped that tougher sanctions on domestic violence and increased legal options would play a role in changing the balance of power between abusive men and their partners. As Susan Schechter relates in her 1982 history of the early years of the battered women's movement: "by making [domestic] violence a crime, the movement [hoped to offer] psychological, symbolic and actual relief to women in their search to free themselves from abuse and self blame" (Schechter 1982, p176). Surprisingly little

scholarship has directly addressed the degree to which this has been accomplished. Most studies regarding domestic violence reforms (e.g., (Sherman 1992) focus on their effect on the abuser and do not consider the impact on victims (Shepard and Pence 1999).

This study seeks to fill in that gap by asking about battered women: How does local implementation of law affect when or whether the legal reforms enable individuals to compel concessions or change behavior? Can legal sanctions against violence in the intimate sphere increase a sense of power and efficacy for battered women? When do women decide to invoke the law? What are the limits of legal reform when it comes to intimate violence? Can law's coercive power effectively end abusers' coercive power? Under what conditions?

Local Context, Legal Consciousness and Legal Mobilization

This project focuses on the legal consciousness and legal mobilization of battered women in two cities: Phoenix, Arizona, and Seattle, Washington. Interviews with battered women form the heart of the study. During 1997 and 1998, I interviewed a total of twenty-six battered women for the study, seventeen in Arizona and nine in Seattle. I contacted these women with the help of local battered women's shelters in each city. Interviews generally took between two and three hours. Most were conducted in person, but some took

place over the phone. I also interviewed legal officials and battered women's advocates in both cities.

Mobilization Facilitation vs. the Model of Legal Protection

While Washington and Arizona have similar written law, implementation on the local level of those laws differs significantly between Seattle and Phoenix. Briefly, Seattle's infrastructure actively seeks to facilitate individual battered women's mobilization of law (in terms of invoking rights to abusive partners and calling on formal legal institutions for assistance) by providing advocates in numerous legal and non-legal spaces who can provide women with support, information and assistance in accessing resources and legal assistance, and instituting training and policies which increase the chances that legal officials will be knowledgeable and helpful when battered women do contact them. I call this model the Mobilization Facilitation model. The Mobilization Facilitation model works from an assumption that battered women face specific challenges in mobilizing law as a result of their intimate relationship with the perpetrator, institutionalized biases within formal legal structures, and the social positioning of victims of domestic violence. The Mobilization Facilitation model attempts to remove barriers and encourage or actively invite legal mobilization.

In contrast, Phoenix's infrastructure passively offers the promise of legal

protection in the form of written law, but does little to encourage women to access this protection. Following Kristen Bumiller's characterization of anti-discrimination law, I call this the Legal Protection model. As Bumiller explains, in the model of Legal Protection, the "mobilization of law is the link between the people and the law...The assumption is that citizens discover and report violations in a joint effort with the state against the perpetrators" (Bumiller 1988, p10). In this model, the onus for actualizing rights rests almost entirely upon the victim. The state is not seen as responsible or implicated in facilitating that process. The assumption inherent in the implementation of the policy is that if the right exists formally, then it is accessible, and it is up to the victim to mobilize to protect that right. Bumiller further charges that the model of Legal Protection "reinforces a view of law and society in which the social and political realm is distinct from, and subordinate to, the legal. This view of the primacy of the legal order creates the illusion that law is a source of power and authority disconnected from other structures in society" (Bumiller 1988, p10). In other words, it ignores the ways in which power rooted in histories of race, gender and class may influence disputes and the willingness or ability of the victim to mobilize legal assistance with the dispute. It also ignores the ways in which race, class and gender may influence how legal officials make decisions and respond to the victim and perpetrator. The Legal Protection model embodies a

set of assumptions which erase history and culture and encourages the belief that written law is enough to guarantee rights.

My central argument is that the local implementation infrastructure (Mobilization Facilitation vs. Legal Protection) makes an important difference in legal consciousness and legal mobilization, as illustrated in the particular arena of coping with violence in intimate relationships, largely because women's experiences of law were very different, depending on the local context. Broadly speaking, the Mobilization Facilitation model in Seattle did encourage women to mobilize law on their own behalf, and resulted in experiences with law which more closely conformed to battered women's notions of what law should be (especially in the criminal arena).

This is not to say that everything went smoothly for every woman in Seattle. In fact, it seemed that women of color generally had less confidence in the legal system and more negative experiences than white women. I will argue that this is at least in part due to the way in which the term "battered woman" has come to imply a deserving, innocent victim, and that women of color almost never will qualify for this status in the eyes of most legal officials. At the same time, the plethora of advocates (including those serving particular communities) in Seattle and King County did seem to have the effect of mitigating some of the biases often found in legal system response to domestic violence.

In Phoenix's Legal Protection environment, women had also mobilized law on their own behalf, but their experiences often led both white women and women of color to have a deep sense of disappointment with and distrust in law.³ In spite of these disappointments, women in Phoenix held onto strong ideas as to what law should be, and these formed the basis of a resistant consciousness.

Women in Seattle and Phoenix faced similar problems: a physically violent and threatening partner, and the need to protect their children from fathers they felt were abusive and inappropriate. The women I interviewed had similar interpretations of events: that violence was wrong, and that they had a right to be physically safe and keep their children safe. They also had very similar aspirations for law: they felt that legal officials and institutions should hold the abuser accountable for violence and help them protect their children. Quite different, however, were the Seattle and Phoenix women's assessment of options and tactical choices for behavior. These differences can be attributed to the very different local policy environments in which they operated. Women in Phoenix

³ I had initially intended to interview women who had chosen not to mobilize law as well as those who had. In fact, I did not succeed in locating any battered woman who had not attempted to enlist the help of the police or courts at least once. Some women had gone for long periods without invoking law, but every one of the women I interviewed had either called the police for help, filed a Protection Order or filed for divorce. This may be a function of the limitations of my recruitment methods, which centered on contacting women via support groups for battered women in each city.

were much less likely than women in Seattle to view calling the police or invoking their rights as a useful tactic for getting help or stopping the abuser.

Regarding custody proceedings, women in Seattle and Phoenix expressed quite similar interpretations of their experiences, assessment of options and tactical choices. I will argue that this is because in the civil/custody arena, environments in Phoenix and Seattle are relatively similar: family court judges, guardians ad litem and court-appointed psychologists have not had adequate (or sometimes any) training in domestic violence in either city. Nor has this area of conflict between intimates been the focus of reform efforts parallel to those in the criminal justice system. As a result, judicial decisions frequently seemed to ignore or even facilitate the abuser's violence, and thus were incomprehensible to the women involved. Finally, women's support systems for getting through these processes were similarly sparse in both cities. Generally women had to rely upon private attorneys to guide them through these processes; women could attend battered women's support groups, but no focused advocacy existed for battered women around custody issues in either city.

In the arena of identity, women in both Seattle and Phoenix identified themselves as rights bearers. However, women in Seattle were more likely to express confidence that this identity would be recognized and acted upon by others than women in Phoenix. While some of the women in Phoenix seemed to

have given up on being respected as a rights bearer by legal officials, some had taken on the identities of fighters, activists or survivors as a result of their experiences with law. They all continued to think that legal officials *should* recognize their rights, and the disjuncture between their sense of rights entitlement and their treatment by legal officials led to a sense that local legal institutions were critically flawed and perhaps even illegitimate. In both cities, particularly when discussing custody issues, it was clear that women approached law and interacted with legal officials with their motherhood and their identity as a protector of their children as a primary reference point. This subject position sometimes formed the basis of their critiques of law, in that they thought if they as a mother knew something was bad for their children, then it must be wrong, and if the written law and legal officials did not recognize that, then something was wrong with them.

Running throughout all the conversations I had with battered women in Phoenix and Seattle was the clear acknowledgement that legal actors' roles in regard to their abuser's violence could not be neutral. Directly or indirectly, contacts with legal officials and institutions either facilitated or encouraged the private violence, or law intervened or interrupted the violence. Whether it did the former or the latter strongly shaped women's sense of the legitimacy of legal officials and institutions and the concept of law itself.

Table 1.2 provides a broad comparison of the Four Dimensions of Legal Consciousness for women in Seattle and Phoenix:

Table 1.2 Comparison of Dimensions of Legal Consciousness

Dimensions of Legal Consciousness	Seattle / Mobilization Facilitation	Phoenix / Legal Protection
<i>Interpretation of events</i>	Generally, women were clear that the violence was wrong and they didn't have to take it.	Women related feeling unsure for longer whether or not the abuse was against the law, although all women interviewed had come to the conclusion that the violence was wrong and should be illegal.
<i>Aspiration</i>	Women were clear about their right to live without assault and how they should be treated by the police, courts and advocates.	The women had come to the conclusion that law should protect them and their children from abuse (but were also clear that it did not).
<i>Assessment of options and choice of tactics</i>	<p>Women expressed feeling confident that they would call the police again; in contrast, they felt their options for having the violence recognized as significant in custody determinations were narrow. Women looked to advocates as a resource for support and information in response to problems with the legal system.</p> <p>Women used the police and Protection Orders as tools to interrupt violence.</p>	<p>Women felt they had very few options for holding their abuser accountable, protecting their children and themselves in both the civil and criminal realm.</p> <p>Women did not consider the police a useful, reliable tool and emphasized alternative strategies for getting safe.</p>
<i>Identity</i>	<p>Some women described having their identity transformed by positive police/court intervention: moving to a sense of themselves as deserving and entitled to be free from violence.</p> <p>In custody matters, women identified themselves as mothers and protectors of their children who needed the assistance of law, but did not consistently get it.</p>	<p>Women described fighting against perceptions that they were crazy, lying, vindictive, bad mothers, undeserving of assistance.</p> <p>In custody and criminal matters, women identified themselves as mothers and protectors of their children who needed the assistance of law, but did not consistently get it.</p>

Overview of Chapters

Chapter Two focuses on law's difficult relation to violence and makes the argument that in both contexts, violence can only be understood through the lenses of gender, race and social power. In this chapter, I begin to draw on the interviews with battered women in order to place the problem of domestic violence in the larger context of the inquiry into law's relationship to violence. Chapter Three provides a brief discussion of battered women's experiences in the context of mobilization and dispute resolution literatures. Chapters Four and Five explore the differences between battered women's experiences of mobilization and legal consciousness in Phoenix and Seattle. Over twenty-five intensive interviews with battered women in both cities form the heart of these chapters. The implications of this for domestic violence law and for battered women's mobilization of law are explored, noting the difference that the local context can make. Chapter Six discusses women's experiences with custody and civil law in both Phoenix and Seattle, and Chapter Seven concludes by summarizing the findings and suggesting the policy implications of this study.

In order to provide context for the specific politics and policies regarding domestic violence which are examined here, Appendix A goes into greater detail regarding the policy environments in Seattle and Phoenix by drawing on

interviews with people who play institutional roles in both those cities, as well as by comparing characteristics and histories of some of the key institutions themselves. These institutional arrangements include the police, courts, and battered women's advocacy programs.

CHAPTER TWO: VIOLENCE AND THE WORD

Law, Violence and Battering

The Persistence of the Humiliation of the Body in the Intimate Realm

Examining legal consciousness in relation to woman battering is particularly powerful because it brings us so unambiguously to the relationship between law and violence. As Robert Cover insists, this relationship is as unavoidable as it is complex. In talking to battered women, Cover's pronouncement that "legal interpretation takes place in a field of pain and death" returned to me repeatedly⁴ (Cover 1986).

In Western societies, we generally congratulate ourselves on moving from making a public spectacle of destroying or humiliating the body as a form of punishment, to one of restricting the body as a means of restricting rights. As

⁴ Conversations with battered women reminded me constantly that pain and the fear of death are closely intertwined with mobilizing law and how people think about and evaluate their interactions with legal officials. Battered women's stories were scattered with references to physical consequences of battering and their relationship to their perceived rights and law. Women talked about the value of the marks on their bodies as "proof"; their experiences of extreme physical violence prior to calling the police; of thinking they were going to die, shaking and trembling in fear, and having their bodies racked with sobs as they had their children taken screaming from their arms to be handed over to abusers in court. Consciousness of the law should not be conceived of as something purely abstract and intellectual, but as deeply connected to embodied experiences of law, and decisions of legal actors. The sheer physicality of being hit, choked, kicked, raped, or the agony of watching one's children be abused were closely tied to women's evaluations of law. To the degree that legal officials ignored the realities of physical assault and violation, women found it increasingly illegitimate.

Foucault relates, with the advent of penal reforms, legal officials acting on behalf of the state "no longer touched the body, or at least as little as possible, and then only to reach something other than the body itself...From being an art of unbearable sensations punishment has become an economy of suspended rights" (Foucault 1977). Even when the state extracts the ultimate penalty in the form of imposing death on the prisoner, one supposed goal is to make the process as painless as possible. Of course, as Cover makes clear, the ability of the state to suspend individuals' rights rests on the understanding of the state's legitimate claim to coercion and violence, and an institutional apparatus to enforce those claims. But the state no longer claims to have the right to torture its citizens, nor does it hold out inflicting pain itself as the point of punishment.

Like all stories, this story of the transformation of punishment from something physical, brutal and focused on pain to something controlled and focused on rights, is dependent on certain erasures in order to maintain its coherence. Monopolization of the legitimized use of force (and a concomitant prohibition on the illegitimate use of force) is one of the classic markers of the state. However, states do not intervene in or forbid all other uses of force. Force which does not threaten the state or which strengthens it may be tolerated. As R. Amy Elman points out, "Through the defining of public policy [and law], states thus ignore, tolerate and even encourage particular expressions

of force and violence, while discouraging others" (Elman 1996, p2). The erasures here involve ignoring the fact that the state has neglected to actively prohibit extra-legal violence when the targets of that violence have been people, who because they are devalued through systems of gender, class or race, have somehow forfeited their rights to the state's protection from violence (or were never included in this right in the first place).

In the liberal tradition, a great deal of scholarship and philosophy has been devoted to the relationship between the individual and the state and contemplation of how to have an effective state which protects individual rights (generally conceived of as property and economic rights), while at the same time avoiding heavy-handed action on the part of the state that would threaten civil rights. This emphasis on the state as the primary threat to the citizen represents the gendered legacy of liberal theory, which from the beginning devoted little attention to family relations and did not envision women as the socially contracting citizen. As Pateman says, "Women have no part in the original contract...What it means to be an 'individual,' a maker of contracts and civilly free, is revealed by the subjection of women in the private sphere [by civilly free male individuals with the state's de facto complicity or approval]" (Pateman 1988, p11).

In any study of law, to the degree that the citizen is conceived of as

primarily concerned with protecting himself from the state (and is thus assumed safe from other threats), that subject carries an unmarked, privileged masculinity. For women, the greatest threats of physical harm originate from men known to them, and the home has traditionally been a potentially unsafe place (Peterson del Mar 1998). For this reason, women's relation to violence and the state has generally been quite different than men's. While some forms of violence have become much more regulated in Western states (particularly the state's overt violence against individuals), we have been much slower to regulate (both in written law and in actual practice) other forms of violence. Two notable sites where male extra-legal violence has been (for the most part) allowed are the prison and the family. For battered women, as explained later in this chapter, these two sites have more in common than one may think.

In seeking to understand law's role with regard to violence between intimates, one must keep in mind the multiple and even contradictory stances law has taken towards the family. On one hand is the myth of a "private sphere" separate from the reach of the state. On the other is evidence of extensive intervention in certain types of families (poor) and a systemic refusal to intervene in particular kinds of family conflicts (e.g., violence). Feminist scholarship has pointed to the many ways in which the state has regulated the family (Fineman 1995; Gordon 1988; Peterson del Mar 1998; Pleck 1987).

Frances Olsen persuasively argues that there is no such thing as a "private sphere," if by that we mean a place where the state does not intervene. For Olsen, both intervention and non-intervention demonstrate the state's power to define family life, and the state's regulation and construction of the concept of "family." Both intervention and refusal to intervene make clear the values the state wishes to enforce, and its power to do so, and together point to the fact that the family does not exist in a realm separate from the state (Olsen 1985). Highlighting the determining role of the construction of gender and the assumption of male privilege in the construction of the family, Martha Fineman points out the way in which the state has recognized the (so-called) right of privacy for some "families" (those which conform to traditional ideas of heterosexual marriage) and not for others (such as low-income single mothers and their children). Discussing single mothers, divorcing mothers, mothers who accuse their husbands of child abuse and others who are treated as "deviants" before the law, Fineman demonstrates the way in which constructions of gender and class have informed the state's willingness to intervene in families (Fineman 1995).

In short, protection from state intervention has primarily been extended only to class-privileged men; poor families and single mothers have historically been targets for extensive state-sponsored intervention, generally with the rationale of

"protecting" the family. However, even these interventions have not included strong and consistent efforts to end men's violence towards their wives (or children), in spite of the fact that in many cases victims of family violence sought out the assistance of the state (Gordon 1988; Peterson del Mar 1998). The state's refusal to act effectively to stop violence perpetrated by husbands and fathers even in the face of its multiple interventions into so-called "private" or domestic sphere makes clear the ways in which the promise of rights has been unevenly extended along gender lines.

While in this country's early history men had explicit rights to beat their wives, those rights eroded by the late 1800s. By then, some states had enacted statutes prohibiting wife beating. According to Elizabeth Schneider, "by the late 1870s, there was no judge or treatise writer in the US who recognized a husband's prerogative to chastise his wife" (Schneider 2000, p16).⁵

By the mid-1980s, almost every state had enacted laws defining domestic

⁵ At the same time, masculine authority in the intimate sphere has historically been closely aligned with state authority. Schneider quotes William Blackstone's commentaries illustrating the close conceptual alliance between male authority and the state: "If a baron kills his feme it is the same as if he had killed a stranger, or any other person; but if the feme kills the baron, it is regarded by the laws as a much more atrocious crime, as she not only breaks through the restraints of humanity and conjugal affection, but throws off all subjection to the authority of her husband. And therefore, the law denominates her crime a species of treason, and condemns her to the same punishment as if she had killed the king" (Schneider 2000, p114, quoting Blackstone's *Commentaries on the Laws of England*).

violence as a special category of crime, and prohibiting any form of assault between intimates, including marital rape. In spite of this change in substantive law, however, state institutions continued to do very little to actually stop woman battering. This apparent contradiction can be understood in terms of legal pluralism. In essence, battered women live within multiple legal orders: a formal legal order which asserts all people are rights bearers and prohibits wife beating; another (when the state refuses to take effective action to interrupt domestic violence) in which the ability to get the state to act upon one's rights has been determined largely by gender, race and class, and a third order (facilitated in its creation by the second)—the private, repressive, law-like regime in the family, headed by a tyrannical abuser. Rights are promised within one legal order, but denied in the others. As I will argue more fully later in this chapter, the state's history of authorization of violence by men against women, and its more recent reluctance to interrupt violence even when written law instructs it to do so, has had the effect of allowing individual men to deprive their female intimate partners of rights, making them virtual prisoners in their own homes. Like the state's prisoners, battered women are controlled with the threat of violence, denied autonomy and restricted from acting as full citizens. Like the state's prisoners, sometimes they are killed.

When women are the targets of their male intimate partner's violence, the

problem becomes not heavy-handed action on the part of the state, but rather, a lack of action. For the battered women I interviewed, their abusers became a very personal form of law-like order; they lived under repressive private tyrannies where punishment still entailed pain and humiliation to the body. (For example, 88% of the women I interviewed had been hit, slapped or punched. 68% reported forced sexual contact.) Historically, the state's formal legal systems have given these kinds of private tyrannies de facto approval (Peterson del Mar 1998; Pleck 1987; Schechter 1982). Throughout most of the history of this country, and in many places even today, legal actors' reluctance to intervene in domestic disputes has amounted to an endorsement of this private form of law.⁶ However, after talking to battered women in Phoenix and Seattle, I believe

⁶ Elizabeth Schneider identifies three categories of feminist legal descriptions of family violence. Broad: "descriptions that attempt to capture interrelated aspects of coercion, power and control and are not limited to physical abuse"; political: descriptions which "use conventional statist imagery to detail the experience of battering" and finally, "descriptions that explicitly link violence, gender, and women's equality" (Schneider 2000, p.46). Because of the emphasis on battering as a tyrannical, law-like system, this work would fit into the second of those categories. About this approach, Schneider points out that invoking such language has strategic dimensions: "This use of deliberate statist imagery highlights the degree to which intimate violence is understood within a broader public-private dichotomy, and challenges this dichotomy to describe the 'personal' and 'domestic' problem of intimate violence as a problem of public dimension" (Schneider 2000, p.48). I suppose that is true in this case as well; and that the emphasis on abuse as a form of tyranny may betray my primary concerns about the impact of battering. However, I do not think this is the only legitimate or accurate way to describe abuse, and would argue that Schneider's typology of approaches does not describe mutually exclusive understandings and that each of the approaches to describing domestic violence have merit, speak to the truth of the experience for battered women, and help illuminate important deficiencies in the social response to male violence against women.

that under particular circumstances, the state's law *can* serve as a competing legal system, interrupting and discrediting that power.

Women in Seattle and Phoenix evaluated the usefulness of invoking formal law against their abusers' law very differently. As explained in Appendix A, Seattle and Phoenix have similar written criminal laws regarding domestic violence, but substantially different implementation of those laws. Reflecting these differences, battered women's consciousness and material experience of law and violence were quite different in these two cities. On the other hand, Seattle and Phoenix do not differ very much in their implementation of divorce, custody decisions and the formation of parenting plans. Neatly lining up with this, battered women's experiences of this realm of law were quite similar across the two sites.

Violence and Legal Interpretation

How is it that similar acts of violence are treated so differently by legal officials when the victim and perpetrator are intimately involved versus when they are strangers? Or in one jurisdiction versus another? In his essay *Violence and the Word*, Cover starts out, "Legal interpretation takes place in a field of pain and death...Legal interpretive acts signal and occasion the imposition of violence upon others...Interpretations in law also constitute justifications for

violence which has already occurred or which is about to occur. When interpreters finish their work, they frequently leave behind victims whose lives have been torn apart by these organized, social practices of violence" (Cover 1986, p203). Cover reminds us of the way in which violence inheres in law by focusing on judges' decisions regarding the death penalty. However, the principle he articulates holds just as true for the multiple levels of the legal system. Like judges, police and prosecutors must also interpret law, and these interpretations may result in the imposition of violence, or justify it.

He essentially goes on to argue that law is meaningless without violence and violence is meaningless without law. In other words, unless the coercive power/violence exists to enforce legal interpretations, those interpretations are empty. Even when overt violence is not used (as when a defendant is led calmly to prison), it is the possibility and specter of violence operating in the background that we must attend to. Further, and just as crucially, the state's violence must be legitimized through "law," which is a series of interpretive acts conforming to agreed-upon standards. Agreement with the connection between the interpretation of law (the Word) and the coercion to be imposed upon the subject (the Violence) is what actually makes it possible for the multiple actors (the prison warden, the executioner) to carry out their part of the violence. When those who mete out violence are no longer subject to law (as in the case

he describes of a prisoner tried in an American court but held in a foreign prison), then that violence is no longer meaningful, no longer morally intelligible as the legitimate practice of law.

Cover is primarily concerned with the imposition of law's violence upon defendants. Like most legal scholars, his primary concern centers on the relationship between the citizen and the state. However, when we remember that for women, the primary sources of danger come not from the state but from within the intimate realm, it becomes clear that we must reconsider Cover's insights keeping in mind that citizens may exercise extreme violence against one another. Conversations with battered women make clear that sometimes, legal actors' interpretations result in a *refusal* to wield law's violence to control batterers. These interpretations *also* take place upon a field of pain and death, but here, law provides tacit permission for one citizen to impose extra-legal violence upon another. In observing the legal consciousness of battered women, it is clear that this seemingly legalized permission for violence by men against their intimate partners makes law meaningless and even dangerous. Thus, we must extend Cover's analysis and entertain that a refusal to wield law's violence can result in the legitimation of extra-legal violence—thus law's inaction can also be a form of violence. According to Cover, when legal interpretation results in orders for legalized violence, additional "pressure upon the word" exists—the

interpretation must strike the hearer as morally intelligible if law is to remain legitimate. Similarly, when legal interpretation results in permission for extra-legal violence, pressure increases as well. I would argue that here, too, the interpretation must strike the hearer as morally intelligible as well. For battered women who perceived legal actors as endorsing their abuser's violence, the word crumbled under this pressure; legal actors' interpretations became morally unintelligible, and the state's law (as they saw it enacted) lost its legitimacy.

Law's Relationship to Violence: What Makes Violence "Visible and Vivid"

In his essay *Narratives of Violence in Capital Trials*, Austin Sarat picks up on Cover's analysis and eloquently demonstrates the way in which violence and its relation to law is intelligible and legitimized only through representations of that violence. Violence is not transparently good or bad, it must be represented and then interpreted.

"The proximity of law to, and its dependence on, violence raises a nagging question and a persistent doubt about whether law can ever be more than violence or whether law's violence is truly different from and preferable to what lurks beyond its boundaries. To answer that question and to quiet that doubt is for law a continuing necessity. It is achieved,

to the extent it is achieved at all, in the representational practices and discursive modes deployed to speak about violence inside and outside law . . .” (Sarat 1993, p20).

In particular, Sarat is concerned with how capital punishment is distinguished from the murders for which it is the punishment. In his close observation of a capital murder trial in which an African American man (William Brooks) who brutally raped and killed a white, virginal woman (Janine Galloway) is found guilty and sentenced to death, Sarat focuses on how violence is necessarily understood through the lens of race. The importance of gender and the intersections between race and gender also become clear in his essay. Representing violent acts like this one in ways which invoke the dominant culture’s historical hatred and pathologizing of black male sexuality and reverence for white female virginity (as the prosecutor did) increases the horror of the violence. Sarat observes, “Violence is visible and vivid. It speaks loudly, arouses indignation, and as a result, its representation threatens to overwhelm reason.” The effect of the telling of the defendant’s physical violence towards his victim, for these reasons, has much greater resonance than the telling of the pain and (less physically direct) violence of racism and poverty that the

defendant has suffered.⁷ Sarat concludes that "The problem of representing violence would seem to be one of taming and disciplining its representations" (Sarat 1993, p21).

Controlling Images as a Way to Dull the Effect of Violence or Heighten It

It may be particularly difficult to "tame and discipline" representations of violence when the acts on view resonate so powerfully with the images which were used for centuries to justify and rationalize white men's domination of black men and white women (e.g., black men's rape of white women) (Hall 1992).⁸

The same principle (that violence is perceived and judged through racialized and

⁷ Sarat wants to make a point about the diffused, but still violent, nature of poverty and racism, and how this violence is not visible and vivid. However, the mitigating factor brought forward in the trial that he describes in the greatest detail is the defendant's experience of abuse in an intimate setting: his years of child abuse at the hands of a stepfather, and witnessing his mother's abuse. Racism may have played into the lack of intervention and help offered the defendant when he was a battered child, but more likely, his experience was shared across races as non-intervention in intimate violence was a norm. The roots of this non-intervention had more to do with gendered relations (supremacy of the male head of household) than racism. So it seems to me that Sarat's own argument puts him in a difficult position in relation to violence in the law, as it could be argued that more intervention, more of law's violence, might have saved the defendant from his terrible childhood.

⁸ Patricia Hill Collins powerfully demonstrates how "controlling images" (like the dangerous black man, black woman as whore, the mammy) serve as representations which justify, normalize and rationalize injustice (Collins 1991). Jacqueline Dowd Hall neatly demonstrates how the supposed exalted status of white womanhood in the slaveholding south was intimately tied to racial/gender domination. White women's fragility and purity (constructed in contrast to white men's powerful virility and black women's degraded sexuality) justified their brutal "protection" from "dangerous" black male sexuality by white men. White women necessarily paid for their exalted position with lifelong subordination to the white men who "protected" them. This quadrangle of racialized/gendered images continues to resonate throughout our culture, as in the murder trial Sarat observed (Hall 1992).

gendered lenses) holds true for intimate violence, although with the opposite effect. Men's violence towards their intimate partners stands in stark contrast to the sort of violence Sarat hears described in the murder trial. While the rape of the white woman by the black man represents the insubordination of the racialized other and a threat to the status and power of the dominant group, intimate violence instead reinforces gendered power relations. As such, its representation has not necessarily incited outrage. Instead, the culture is replete with what Patricia Hill Collins would call "controlling images" which make this form of violence and injustice seem natural, normal and inevitable (Collins 1991). These images or tropes for making violence intelligible generally move the listener to one of two conclusions: "nothing happened" or "if something happened, it's her fault (and so doesn't really matter)."

The understanding that women lie in order to hurt men or gain power over them runs deep in our culture. The vindictive, lying woman image shadows rape victims and battered women. The crazy, lying woman or the hysterical, exaggerating lying woman are all variations on this theme. Several women in my study related experiences of being accused of lying, or of being labeled crazy or hysterical in some way by their abuser and then by police or courts. In each of these cases, being labeled this way made the violence they had experienced less visible, less vivid to the interpreters of law. Other dominant images affect

how violence is viewed. Women may find themselves blamed for the violence done to them if they have somehow forfeited status as an "innocent victim." The qualifications for this status are quite narrow and correspond closely with traditional notions of femininity, whiteness and middle-class appearance and behavior. Advocates in both Seattle and Phoenix noted more vigorous criminal justice system response to women who were conventionally pretty and possessed middle- or upper-class manners. The controlling images which are quickly attached to women who forfeit this status are the usual set of degrading labels by which women are devalued: slut, whore, bitch, bad mother, sloppy, slovenly, addicted, alcoholic.⁹ Their claims may be relegated to "garbage" as Sally Merry found was often true for battered women in her study of courts in New England (Merry 1990). For the battered women I interviewed, the problem became not "taming and disciplining" the representations of violence, but *inciting* indignation, and thereby enlisting assistance in their attempts to resist the intimate tyrannies they lived under.

⁹When I was training LA County Sheriff's Department deputies on domestic violence in the 1980s, one of them explained to me that "you just have to hit some of these women to shut them up." So of course, one could not blame the man, as he was only doing what was necessary.

Law, Violence, Representation and Legitimacy

Sarat and I are both concerned that law's relationship to violence may lead to its lack of legitimacy; that the relationship between law, legal interpretations and the use of the state's coercive force may be too tenuous for law to hold onto moral intelligibility in people's minds. We both agree that "...law is violent in many ways—in the ways it uses language and in its representational practices, in the silencing of perspectives and the denial of experience, and in its objectifying epistemology. Its linguistic, representational violence...is inseparable from its literal, physical violence" (Sarat 1993, p21). However, we approach the question of law's relation to violence from significantly differing vantage points. Observing the state's meting out of the death penalty, Sarat suspects that law is, in fact, too eager to use violence, and that legal actors and the state engage in rhetoric, rationalization and representation regarding law's violence which seeks to obscure the excessive use of force. On the other hand, observing the state's response to domestic violence, I suspect that in some places, law/legal actors and the state are, in fact, too reluctant to use force, and then obscure the violence done through denial of experience and refusal to act. In both cases, the relationship of violence to systems of gender and race privilege inform law's response, be it over-eager or callously passive. In both cases, law's moral legitimacy is threatened, at least in the minds of the subjects of law's violence.

Sarat points out that law and legal institutions must "mute...the violence of law itself. This is done in the hope of affirming the social value of law, of reassuring citizens that its use of violence is somehow different from and better than illegal violence" (Sarat 1993, p25). If the violence that law did were as visible and vivid as the violence of the rapist-murderer, then law's violence would be indistinguishable from the violence law seeks to control. My research shows that law (via legal actors like the police, prosecutor and judges) may mute the violence that law *refuses* to act upon as well; and that in doing so, the inaction of law becomes indistinguishable from the violence law refuses to stop in the minds of battered women. Many of the battered women to whom I spoke felt that their (and their children's) experience of pain and violence at the hands of abusers were erased, trivialized, minimized or ignored, which in turn made them vulnerable to more abuse; their experiences of violence were not visible and vivid to the interpreters of law they encountered. It was only when law did not mute the batterer's violence that law's violence became meaningful and distinct from extra-legal violence.

The erasure of domestic violence by legal officials is not a universal phenomenon. The implementation infrastructures in my two case studies significantly affected the possibilities of arousing indignation and action on the part of the legal system. In fact, it seemed that the sort of structures in place in

Seattle had a (limited) ability to mitigate and challenge the culture's deep-seated tendency to read the pain out of battered women's stories of violent victimization, resulting in stronger response to domestic violence, and more effective challenging of abusers' power. While my study sample was not large enough to make definitive statements regarding race, it should not be surprising that the benefits of these policies accrued unevenly between the white women and women of color I interviewed. In other words, while battering against white women in particular was more likely to be treated as if the violence were visible and vivid in Seattle, it seemed that attacks against women of color, particularly Native American women, were less likely to be taken seriously. Overall, however, it appears that feminist interventions in legal institutions make those institutions more viable alternatives to the batterer's private order, by making the violence perpetrated against women visible and vivid, and by facilitating women's legal mobilization. As a result, these legal institutions interrupt abusers' private tyranny more effectively more often. On the other hand, it became clear that when legal actors did not intervene, then through its inaction, law did violence to battered women. Inaction on the part of police and prosecutors opened the door to more violence by the abuser. To the degree that it appeared to legitimize and allow their abuser's power, the state's law became increasingly delegitimized in the minds of battered women.

State Law and Private Tyrannies

Many of the battered women who spoke with me described their abusive intimate partners in terms which made it clear that they had become a very repressive ordering principle in their lives. Essentially, they became a form of law, but not in the sense of law as we usually use it, connoting something connected (however loosely) to the modern liberal state. Rather, abusers became a very private form of repressive tyranny, a law-like order, but one more like a repressive, dictatorial regime, untethered from the liberal rule of law.¹⁰ At

¹⁰ Defining what actually is law is more complicated than it may seem on the surface. To say that law is the written words on paper which make up individual cities', states' or nations' legal codes will not tell us very much about law in people's everyday lives. It will not allow us to see with greater clarity the ways in which those written laws do or do not impact people's decision making about naming rights violations and acting on them.

Another possible approach would be to say that law is what people associated with formal legal institutions do: what the police, prosecutors, defense attorneys, court clerks and judges do. This is somewhat more satisfying than the first option, as it captures the dynamic and local nature of law. It still does not tell us much about how people make decisions in their everyday lives.

If we say that law is a constitutive form of regulation, something that people internalize and act from, invoking certain terms and ways of naming conflicts which are socially legitimized, this moves us into the realm of legal consciousness—a fair distance from written legal codes and interactions in the courtroom. Such a frame opens up the possibility that multiple systems operate in "law-like" ways: with rules which shape behavior, provide ways to name and claim with regard to disputes, and frameworks for deciding courses of action and resolutions to dispute. However, if we call every ordering system "law," it becomes difficult to distinguish between "law" connected to formal legal systems and "law" meaning anything that orders people's behavior (e.g., religion, social convention, workplace etiquette). For the purpose of clarity, I prefer to reserve the concept of "law" for those forms of order which draw their power and legitimacy from their connection to formal law in the modern liberal state. Ewick and Silbey usefully develop the concept of "legality" to refer to "the meanings, sources of authority, and cultural practices that are commonly recognized as legal [connected in some way to formal legal structures], regardless of who employs them or for what ends" (Ewick and Silbey 1998, p.22).

the same time, the battered women became rightless people, living in virtual prisons of their batterer's construction.

Batterers as Repressive Law-Like Regimes

I found that for the battered women in my study, abusers often served as a very privatized, intimate, law-like order, more immediate and powerful than any other system. In fact, the hallmark of abusers is their success at setting up small but powerful systems of tyrannical rule in their relationships. Parallel to formal state law, these rule systems were intimately tied to socially legitimized violence. The challenge for battered women and the rest of the community is to interrupt those tyrannies with another form of law which holds out more hope of justice, and delegitimizes the violence which gives intimate tyrants their power. The risk of not doing so is that the state's law becomes meaningless in the lives of battered women.

In their classic argument for "responsive law," Philippe Nonet and Philip Selznick define (and reject) "repressive law" (Nonet and Selznick 1978). In it, they set forth five distinctive characteristics of repressive law, paraphrased below:

- Law is identified with power and subordinated to *raison d'état*.

- The conservation of authority is an overriding preoccupation; the benefit of the doubt goes to the holder of power.
- Specialized mechanisms of control become isolated from moderating social contexts.
- A regime of "dual law" institutionalizes, consolidates and legitimizes systemic subordination.
- The rules mirror the powerful person's mores/whims; that person's moralisms prevail (Nonet and Selznick 1978, p33).

I found these characteristics of repressive regimes echoed in battered women's stories of living with their abusers. Nonet and Selznick conclude in their discussion that repressive law may be effective for control in the short term, but proves less stable in the long run because it may become delegitimized, and cannot gain solid, stable consent. Similarly, it seems that abusers' repressive regimes suffer from similar challenges: although women felt at times that they had no choice but to bow to these regimes, they did not think of them as legitimate, and sought to escape them. However, what determined their lasting power was not women's attitudes towards the regime, but rather, the degree to which formal legal structures intervened effectively, and supported the delegitimization of the repressive regime.

Intimate Regimes: Batterer as Rule Maker

Karla Fischer argues that the "culture" of a battering relationship "consists of two roles within the family: that of rule maker/rule enforcer and the one(s) who follow the rules" (Fischer, Vidmar, and Ellis 1993, p2126). She quotes two of the women she interviewed describing their abusers: "[His attitude was] I'm the ruler, you go by my rules. If you don't, you know, you have to pay the consequences" and "He was a dictator in this house" (Fischer, Vidmar, and Ellis 1993, p 2127). Sometimes batterers actually write down their rules and conditions for their partner's behavior. Angela Browne gives an example of an abuser whose written rules included that he was to have absolute freedom to come and go, total sexual access to his girlfriend, and that the children were to keep their rooms clean without being told to do so (cited in Fischer 1993, p2127). Similarly in my study, women in both Phoenix and Seattle spoke of their batterers' rules. Telling me about how her husband related to their newborn baby, Gloria related how he started "screaming" the first day the baby was home, because it was sleeping. I asked why he was mad that the baby was sleeping and she told me "He felt that the baby needed to adapt his hours to what my husband's were. You don't work around the baby's hours, the baby has to learn to work around [his] hours." This typified the batterer's rules for their children and partners in that the batterer's needs were central, and the rules had

little relation to the needs of others in the family. Batterer's rules enforced their ability to access their partners, control information, gain acquiescence and increase isolation.

Access: One common rule seemed to be "I get to have total access to you whenever I want: sexually, emotionally, physically." Several women talked about a spoken or unspoken rule that they had to be home to receive their abuser's telephone calls. Nicole was required to come to the bar where her boyfriend worked if she had the night off, and sit in his section of the bar, so he could keep an eye on her. "Or he would tell me I could go home *if* he could call me every half-hour to make sure I was there." Similarly, Gloria's husband wanted to be able to reach her by phone anytime, at work or at home, and was furious when he could not.

Women related not being allowed privacy, having abusers routinely search their purses, computer files and address books. Rebecca had succeeded in separating from her husband and had established a delicate equilibrium in which he paid child support and did not challenge her being in the house, but it was premised on his continued sexual access to her; if denied, he "starts getting violent with the kids, unplugs the phone when the kids come over so they can't call for help." Lupe described the one time she refused her husband's requests for sexual access and he threatened her with a knife. It was the last time she

ever refused. Nicole's abuser's system of rules left no room for her to both refuse sex and stay in his good graces. If she refused sex, then "I was a bad girlfriend...I was mean to him...he was my boyfriend and he had a right...and...either I was not attracted to him or I was sleeping with someone else, or both, so I really am just a bad girlfriend."

Controlling information: The corollary to the access rule was often "you only get to know what I decide to tell you." Sarah, reflecting on her husband's internet activities, said "He had this secret life, that it was none of my business. He would tell me 'Oh, it's none of your business'...but he had to know everything about me." Rebecca's husband was very clear with her about this, saying "God damn it, I'm not accountable to you!" Other women did not know how much money was in the bank, what their husbands made, how or if the bills got paid.

Acquiescence: It seemed some batterers could not tolerate the notion that their partners had an independent thought. Sidney told of her boyfriend getting furious when she had a different idea about where to go for pancakes, even when she immediately acquiesced to his preference. Rebecca said of her husband, "[I can't] disagree on anything whatsoever. Zero, I can't disagree on any minor thing at all." Sarah noted, "Any time he didn't get his way, that was when he'd get in my face and call me a bitch, and [start in with] 'do you want to fight?' and just be intimidating."

Isolation: Rules to enforce isolation were common. One woman said that her abuser was "essentially the only person I was allowed to know." Sidney's abuser forced her to call every friend in her address book and tell them that she wasn't going to talk to them anymore. Perhaps the most frequently occurring rule to enforce isolation was "don't call the police." Abusers explicitly told women that if they called the police they would kill them, or made clear that women would bear the weight of their retaliation.

As in Nonet and Selznick's scheme, the rules women described to me all tended to reflect the abuser's idiosyncratic moral whims (characteristic #5). They were also designed in large part to preserve the abuser's power by keeping their partners: socially isolated, constantly mindful of the abuser's demands, in a state of fear; alienated from their own opinions and desires; separated from potential sources of help; ignorant of helpful information; and in fear of challenging the abuser (characteristic #2). Abusers got to make the rules because they had the power to cause pain, access to economic resources and the complicity of the community, civil and criminal justice systems (characteristic #3). Finally, abusers certainly were not subject to their own rules, or any their partners might dare to suggest. They operated under different rules or no rules (characteristic #4).

Intimate Regimes: Batterers' Symbolic Threats

The uniformed police officer on the street serves as a symbolic reminder that a system of formal law exists, with mechanisms for enforcement and control. When people see a State Patrol car parked by the freeway, they frequently slow down, reminded by that symbol of the state's authority of the rules and the consequences for not following them.

Fischer argues that batterers institute similar symbolic systems. In this way, "A gesture which seems innocent to an observer is instantly transformed into a threatening symbol to the victim of abuse. It is a threat that carries weight because similar threats with their corresponding consequences have been carried out before, perhaps many times." She gives an example of a woman whose abuser would draw a line with his index finger, which was "his big signal to make me shut up" in social situations (Fischer, Vidmar, and Ellis 1993, p2120). These symbols could also be a facial expression, "code words" or threatening gestures.

The women in my study mentioned these symbolic threats as well. Sidney related her abuser threatening to stay home all day. In most situations, this would not necessarily be heard as a threat. However, she knew it meant he'd be monitoring her all day, and possibly seeking to pick a fight. As she put it, "That was the big threat: 'you'll have to deal with me all fucking day.'" Constance's

husband would bring up divorce when he wasn't getting his way. If Constance said, "Okay, let's talk about it" then he'd get increasingly abusive. Bringing up divorce was his way of saying, "either back down or get ready for more abuse." He would also demand to hold the baby when he was angry as a way of controlling her behavior and reminding her of the harm he could do. Rebecca's husband would get angry with the children as a way of controlling her. Vincent, Sarah's abuser, would goad her with "Do you want to fight?" as a way of reminding her of his physical advantage. Abusers often reminded women that they were in possession of a weapon: 68% of the women in my study reported being threatened with a gun or knife. Walking to a gun case, cleaning a gun, holding a hunting knife while setting forth rules: behaviors like these functioned as powerful symbolic threats.

Intimate Regimes: Batterers as a Source of Punishment and Prison

Prison: Cover characterizes the experience of the prisoner as one of being "violently dominated, and it is colored from the beginning by the fear of being violently dominated" (Cover 1986, p 212). This background reality of violence is what makes it possible for the legal system to frequently avoid the appearance of outward violence: "Prisoners walk into prison because they know they will be dragged or beaten into prison if they do not walk. They do not organize force

against being dragged because they know that if they wage this kind of battle they will lose—very possibly their lives.” Battered women experience a similar dynamic, with their house and relationship a prison into which they seemingly walk “voluntarily.”

Key to prison is a loss of freedom, rights and autonomy, a loss the battered women in my sample experienced. They described having their movements monitored and restricted. Many had their whereabouts checked with constant phone calls. Several described being “imprisoned” in their own house.

Constance said about her husband, “He was...into holding me down, locking me in the house...locking me in the bedroom and standing by the door not letting me out.” Rebecca felt imprisoned in her house, even after her batterer left the home. He monitored her comings and goings carefully, and had threatened to ruin her financially and hurt the children if she pursued friendships with adults or spent too much time away from the house. For most of the women I spoke to, the necessity of obtaining their abuser’s permission or approval for just about all of their activities, especially those involving leaving the house and interacting with other adults, was largely taken for granted.

Escape from these private prisons was not necessarily easy, especially for women with no access to cars. Trina told me about her abuser trying to prevent her from leaving the house: “He would push the couch up against the door to

keep me from getting out...trying to make me a prisoner in my own house.”

When he became concerned that she might just leave, her abuser would also monitor what she took with her to work every day, refusing to let her take her jacket, or too many of her possessions at once, so that she would need to come home again in the evening. After extensive and careful planning, she was finally able to make a break for it, running out of the house, leaving most possessions behind, hoping to catch a bus before her abuser could catch her. Trina and Maureen both talked about their abusers taking their ID to prevent them from being able to access resources, and in Maureen’s case, get on an airplane and fly home to a neighboring state. Talking about her coping skills in the face of these attempts at imprisonment and control, Trina told me she’d read about POWs and how they coped, and learned from that.

Like prison administrators, abusers attempted to reduce the chances of “escape” and sought to return “escapees” to their realm of control. Trina’s partner would not allow her to take too many of her possessions out of the house at any one time, and would literally block the door with furniture. Maureen described trying to escape her abuser after a weak police intervention in which they did not arrest him, but allowed her to leave the house. She had no car, so he knew she would be at the bus stop. He showed up there to retrieve her: “He goes, ‘Okay honey, time to go back home’...I was scared. I’d be

shaking. I was shaking just like, you know, let me go on my own...why don't you get a little break from me?" In the end, she was forced to return home with him.¹¹

Punishment: Abusers reserved the right to mete out punishment when their rules were not followed, their demands were not met, or they were displeased. Violence was justified in terms of punishment (e.g., "If you hadn't done x, I wouldn't have had to hit you") or the threatened punishment for rules infractions. "Punishments" frequently took the form of violence, but not always. Punishment could also include emotionally abusive arguments, grilling or "the third degree," bad behavior in front of friends or family, new prohibitions on behavior, or rape. Women frequently described being punished for having called the police or being threatened with punishment if they did. For example, when Rebecca called the police on her husband the night he attempted to strangle her,

¹¹ In the years I worked with battered women, I heard many "prison stories." One of the most extreme involved a woman whose husband would chain her to their bed frame when he left the house. Other women were locked with their children in their homes with double-keyed deadbolts to which only the abuser possessed the key. Others were trapped in rural areas with small children and no car and/or no phone. Some abusers kept track of the number of miles on the car, wanting each accounted for, and scrutinized phone bills. Examples of imprisonment and constant monitoring abound in the stories of battered women. When a woman was killed by her husband of over 30 years in Seattle in 1998, her children told the investigating officers that their father was unemployed and that his "full-time job" was watching his wife and monitoring her movements.

he violently raped her after they left to assert his power and punish her. When Nicole called the police, she was convinced that her boyfriend would kill her if he found her on the phone with them, and was terrified when the dispatcher wanted her to stay on the line, lest he see her in the act of speaking to the police.

Expressing an independent thought, refusing the abuser's demands, disagreeing, insisting on one's own opinion or asserting the right to some form of independence were all possible grounds for punishment at the hands of the abuser, and in this, delineated the narrow confines of the prisons they had constructed to attempt to contain not just their partner's bodies, but their thoughts as well. Lupe's husband threatened her with a knife when she refused sex, telling her he was going to kill her. Nicole's boyfriend simply raped her if she said no to sex, as did Gloria's. Nicole described being thrown around, dragged by her hair, strangled and smothered by her boyfriend if she didn't behave exactly as he prescribed (and even if she did). She also was not allowed to refuse sexual access to her boyfriend.¹² Sidney told me about one evening

¹² 68% of the women reported forced sexual contact.

when she just decided to stop engaging verbally with her abuser, challenging his authority to enforce continued argument: "I was like, 'I've had enough, I'm not arguing any more, this is the last thing that I'm going to say' and I stopped talking. He freaked out. I was going to talk, come hell or high water. ...[He was] banging my head on the floor, strangling me...dragging me around and I didn't say anything." The punishment for her defying his wishes stopped when "I finally realized just how much my life was in danger and I spoke. What else was I going to do?"

Mistreating children also served as a means of punishment. After Rebecca's husband was arrested for felony aggravated assault in a neighboring state, he moderated his physical violence towards her. However, he abused and terrorized the children instead. She said "...he would only beat them when he was mad at me." When she got a job, he did not object directly, but to express his displeasure, he spanked the children so badly while she was at work that they vomited and got bloody noses, forcing her to quit in order to be home to protect them.

In defining repressive regimes, Selznick and Nonet note that "agencies of control, such as the police, become independent centers of power; they are isolated from moderating social contexts..." (Nonet and Selznick 1978, p33).

Similarly, abusers' creations of "prisons" and use of "punishments" frequently operated beyond social controls. Not only is the locus of coercion and control isolated from the social context, so is the subject of that control. It was clear from the my interviews with battered women that these moments of control and imprisonment were very isolating, creating a feeling that the batterer was very powerful, no help existed, and the abuser could do as he wished to their (and their children's) bodies.

Foucault argues that "the body as the major target of penal repression disappeared" in the formal legal system (Foucault 1977, p8). However, it never disappeared from the private tyranny of the "head of household." In the home, the body has historically been, and continues to be, the focus of punishment. Although the state came to reject physical violence as a form of punishment, it has often turned a blind eye to violent "punishments" meted out by dominant males towards certain functionally rightless people in particular contexts. One of those places is the home, which can be very much like a prison for battered women.¹³ Foucault concludes that the "disappearance of public

¹³ Another place is the literal prison. While the state does not officially reserve the right to humiliate the bodies of prisoners, prison officials often turn a blind eye to the violence men perpetrate towards other men in prison. In prison, men frequently assault, rape and even kill (continued on next page)

executions...marks the slackening of the hold on the body [by the state]" (Foucault 1977, p10). Talking to battered women, the story seems more complex. What becomes clear is that the state may have slackened its direct hold on the [male] body, but it also has frequently functioned to authorize men's holds on women's bodies, as is illustrated in the discussion of the case studies.

Intimate Regimes: The Batterer as Constitutive

In some ways, law is most effective when it is the least overtly invoked: when it regulates because it has been internalized as opposed to regulating via explicit mobilization and coercive external forces. Battered women describe a similar "constitutive mode of regulation" by their abusers. Fischer refers to this as self-censorship and internalizing the rules, and points out that the process is aided by gender socialization and expectations. Women tried to avoid the abuse by avoiding breaking the formalized or informal rules.

(continued from previous page) one another in the interest of creating and maintaining hierarchies. "Homicide is the leading cause of deaths during imprisonment." In prison, according to one expert, "Life becomes a milieu of tension, fear, and force in which violence is an accepted response and coping mechanism. In such a life of degradation, devoid of power, sex and identity, an act of violence or sexual aggression acts as a manifestation of power or status" [Colin Carriere, *The Dilemma of Individual Violence in Prisons*, New England Journal of Prison Law, Vol 6, #2, 1980, quoted in (Mann 1993)].

Nicole described how she came to stop attending a support group she was in when she met her current abuser, because she had to suffer "punishment" each time she went. "At first he was really unsupportive of it, and I said, 'It really bothers me you are unsupportive of it, I feel like you should really support it, something that is good for me', and he said, 'You're right, I should, I will be [supportive],' and he stopped complaining about it and talking about it in a negative way and saying 'you should go to your support group' and this and that. And then he would start a fight with me after I went to support group. Every time afterwards when I went to see him, he would start a fight with me. It would never be about support group, and he would always speak very positively about it. And I didn't really think about it, I just stopped going. You know, I just [said to myself], I don't need another fight tonight and never really thought about how the process went and why there was going to be a fight."

All of the women had altered their behavior in various ways in the hope of avoiding conflict: giving up friends, not seeing family, giving up access to money, allowing unreasonable expenses, managing the children differently, quitting or getting jobs in response to the abuser's implicit and explicit demands, silencing their preferences, acquiescing in disagreements. As a woman in Fischer's study put it, "You might be able to prevent [the abuse] by suppressing so much of yourself, learning to avoid the kind of behavior that precipitates it. But then that

in itself is a form of violence" (Fischer, Vidmar, and Ellis 1993).

Cover makes the point that in the context of law, even when it appears that actions are voluntary, the threat and knowledge of coercion shape the behaviors. Batterers often succeed in setting up a similar dynamic.

Conclusion

Battered women are caught in a web of multiple legal and law-like orders: the state's formal promise of rights, the actual local legal response determined by local legal officials, and finally, the batterer's private regime, a tyrannical repressive law-like order. Rights are promised in the first one, but frequently denied in the second, and consistently denied in the third. Because batterers' regimes are not premised on any notions of fairness, and depend on subordination, they cannot gain a permanent and stable loyalty from battered women, just as the repressive law regimes Nonet and Selznick describe are always vulnerable (Nonet and Selznick 1978, p52). Nonetheless, these regimes can thrive in the absence of a competing system of law which challenges and delegitimizes their violence and control. The task for the state is to provide a viable challenge to these regimes, and use law's violence in ways which render the state's law more meaningful than the batterer's order. When legal officials fail to ensure this happens, the state's law, through its inaction, does violence to

battered women; in the face of this violence, the distinction between law's violence and the violence law (should) prohibit fades in battered women's minds.

In the next two chapters, I will argue that Seattle's Mobilization Facilitation model largely succeeded in challenging batterers' regimes (with some caveats), often freeing women from their private prisons by bringing the force of law against their abusive partners. In contrast, Phoenix's Legal Protection model failed, leaving women continually vulnerable to their abusers, and apparently endorsing their violent regimes.

CHAPTER THREE: DOMESTIC VIOLENCE DISPUTES AND MOBILIZING LAW

Women in Both Seattle and Phoenix Were Careful/Reluctant to Use Law

Isolation and Lack of Access to Information

Women in both cities were unclear about local policy regarding domestic violence, and many did not know about battered women's shelters until just before they got into one. All the women felt that the violence they were experiencing was wrong, but most were not sure what constituted a reportable assault, and all of them were unsure what the legal consequences of domestic violence assault were likely to be. Women in Seattle were not consciously aware that Seattle had a policy of strong response to domestic violence; however, more of them expressed certainty that something would be done if they called the police. This is in spite of the fact that both cities (although to a greater extent in Seattle) have had extensive news coverage about domestic violence over the years highlighting the system's response to it. Both cities (but again, to a greater extent in Seattle) have had public education campaigns regarding domestic violence.

Most of the women also told me they didn't know about battered women's

shelters until just recently. As one woman said in response to my question about whether or not she ever knew someone who went into a shelter: "No, I don't, no I don't [know anyone whose used a battered women's shelter]. I mean, I thought there was shelter only for homeless people. I never knew there would be shelters for domestic violence or anything, or any other type of shelters. I always thought there was shelters just for homeless people, and I knew there was rehabs, but other than that I didn't know."

This lack of information may be directly linked to the isolation many battered women experience. For almost all of the women in my study, isolation figured largely in the pattern of abuse. Many women related their abuser's hostility to their efforts to maintain friendships and even family relationships. Even when women were "allowed" social contacts, it had been difficult to discuss the abuse. In many cases, it seemed that friends and family had not identified the abuse or had been reluctant to bring it up. As a result, it seemed that it was very difficult for the battered women I interviewed to get information and support until they encountered the battered women's programs where I contacted them.

Past Negative Experiences

Additionally, some women had had negative experiences with the police in other jurisdictions or states and/or many years prior to their most recent calls.

In these cases, it was clear that women generalized their experiences with law enforcement, thinking that how it was in 1978 or how it was in Idaho was an accurate indicator of how it would be now, in Seattle or Phoenix. A lack of information or substantive knowledge about domestic violence policies, combined with past histories of poor police response and limited means of gaining information about criminal justice system response to domestic violence, meant that women in both cities were frequently surprised by the police response they got: either they were stunned that so little was done, or they were shocked that their claims were taken so seriously.

Generally, my case studies revealed that their experiences led the women I met in Phoenix to see law and legality as an important component of their domination at the hands of their abuser. On the other hand, for most women interviewed in Seattle, legal interventions (with the exception of custody proceedings) frequently led to a diminishment of their abuser's control and an expansion of their self-determination.

Mobilization Overview

My interviews made clear that while the experience of being battered is similar from place to place (women encountered very similar threats, forms of violence, and emotional abuse from their abusers in Phoenix and Seattle), the

experience of mobilizing law differed in critical ways. Women in both cities shared a hesitation to call on police or courts for help based on past negative experiences, isolation and lack of information regarding substantive law. Once they called, battered women's experiences with legal actors were quite different based on the implementation infrastructure in which they were embedded. Women's different experiences of law resulted in different legal consciousnesses (particularly with regard to their pragmatic assessment of what tactics to pursue to stay safe, and evaluations of the distance between ideal and reality with regard to law), which in turn shaped their subsequent decisions about whether or when to mobilize law or "lump" their grievances. Key to explaining these differences in experience and consciousness is the very different implementation infrastructures in Phoenix and Seattle. Phoenix's Legal Protection approach and lack of advocacy at the lowest levels of the legal system, coupled with a lack of leadership on this issue at the highest levels, resulted in legal interventions which left abusers' private tyrannies unchallenged, and encouraged women to feel that they might as well forego invoking rights. Seattle's Mobilization Facilitation model, with its numerous advocates within and outside of legal institutions, and strong leadership on this issue from within key institutions, resulted in interventions which (with some exceptions) surprised and pleased battered women, rendered the state's law a meaningful alternative to the abuser's regime,

and encouraged them to feel that there was value in invoking their rights.

Women's evaluations of the utility of invoking law with regard to domestic violence were quite different in Seattle and Phoenix, as illustrated by Table 3.1.

Table 3.1 Women's Evaluation of Law's Role

	Seattle (n=11)		Phoenix (n=13)	
	#	%	#	%
Law improved my situation	4	36%	2	15%
Law made my situation worse	1	9%	7	54%
Law made no difference	4	36 %	1	8%
Missing data	2	18%	3	23%
Totals*	11	99%	13	100 %

* note numbers do not add to 100% because of rounding

Of fourteen women interviewed in Phoenix, ten answered a question on the survey asking whether they thought involving law made their situation better, worse, or made no difference. Of that ten, 70% felt that law's involvement had made their situation worse. Another 10% felt that it had made no difference, and 20% (two women) felt it had improved their situation. One of these was Rebecca, who was just grateful that the police stopped her husband from killing her, even though they did not take a report or arrest him, and then left him in the house to attack her again. This might indicate that the threshold for "improved my situation" is rather low in Phoenix. Only 9% of the women in

Seattle (one woman) felt that that invoking law made their situation worse. Interestingly, in Seattle, women were much more likely to say that law made no difference than that it made their situation worse; for most of the Seattle women, law was either neutral or positive. In Phoenix, women generally agreed that it made things worse.

A refusal by the criminal justice system to attempt to control these private tyrannies affected the balance of power between these women and their abusers. It made crystal clear to both the battered women and their batterers that threats or attempts to mobilize law would amount to nothing, thus deflating any power that rights talk may have had in the relationship.

Considering the police more specifically, six out of seven (86%) of the women in Phoenix who rated their satisfaction with the police said they were very dissatisfied, whereas eight out of ten (80%) Seattle women who rated their overall satisfaction with the police said they were satisfied or very satisfied. Generally, women in Seattle and Phoenix shared a similar idea about what law "should" be and do. However, for women in Phoenix, their actual experiences diverged so widely from their hoped-for experiences that the state's law was often rendered meaningless or even monstrous in their eyes.

Disputing and Domestic Violence

Work in the arena of individual mobilization around civil disputes provides some insight into the position of battered women with regard to mobilizing law in response to their abusers' assaults. Miller and Sarat's classic model usefully breaks down the steps individuals take prior to ending up in court with a dispute. In their model, a grievance (perceived wrong) may lead to a claim, which may lead to a dispute if the other party refutes the claim, which may lead to contacting lawyers, which may lead to ending up in court. A person may decide at any point in this process to "lump" their grievance (take no further action attempting to resolve the problem or gain redress) (Miller and Sarat 1981). Sarat and Miller argue that the majority of grievances are never pursued to the level of formal legal processes. (Overall, about 90% of the grievances in their sample were resolved or lumped without going to court.) Their study showed that in most cases in which people felt they had a grievance, they made a claim (brought that grievance to the other party's attention), and frequently those claims were resolved without further dispute. Parties only got to the point of disputing (disagreeing about the existence of or the fix for a problem identified in the claim) in about 20% of the cases. In about half of those cases, the parties enlisted the help of lawyers, and it was only in about 4% of all the grievances identified that the parties ended up in court. This pattern resulted in the term

"disputing pyramid" which visually describes the decreasing numbers of people pursuing their grievances at every step, with the smallest number pursuing formal legal processes. Interestingly, Miller and Sarat found that the pattern for discrimination grievances deviated significantly from the general trends. A much larger group of people who felt they had experienced discrimination immediately "lumped" the grievance (did nothing, did not attempt to bring it to the other party's attention with a demand that the situation be rectified) than people did with any other sort of problem.

Pursuing this finding, Kristin Bumiller explored why people did not pursue discrimination grievances. Bumiller develops the idea that victims of discrimination face a different sort of cost/benefit analyses than in most other grievances. This is because the victims of discrimination are (by definition) themselves devalued in our culture's hierarchies of race, class and gender, and their claims are tied in complex ways to rights which are only recently and imperfectly articulated, and are still contested and treated ambivalently within the larger culture. Bumiller describes a legal system for responding to discrimination claims that operates off what she calls the model of Legal Protection, in which the burden of acting is placed on the individual who perceives they have been wronged (the state does not take affirmative action). This model assumes a coincidence between rational actors pursuing their own

interests and seeking legal redress for wrongs committed against them. But Bumiller's work demonstrates that these frequently do not coincide. Rather than being self-evidently linked, pursuing one's interests and seeking protection from the law are much more tenuously related: "The rationality of the response to a legal problem [grievance] is defined by the situation" (Bumiller 1988, 112). The people Bumiller spoke with felt that they had a right to be treated differently, and that what happened to them was wrong, but did not trust the system to vindicate this right, and in fact, often felt that claiming the right might ultimately disadvantage them even further. As Bumiller sums up about discrimination victims, "To act aggressively and battle for principles requires 'irrational' sacrifices. To act in a passive manner appears irrational [because it would seem the victim of discrimination is not pursuing her interests], yet assures the victim's survival" (Bumiller 1988, p112). This formulation was echoed by battered women when they spoke about how they made decisions about invoking law. Women in both cities certainly did not call the police or seek legal help in response to every assault or act of abuse. In fact, they mostly did not invoke their rights, at least out loud, to the batterer. Most of the women I spoke with had both called the police and obtained a Protection Order, but that is largely a function of when and where I met them (in domestic violence programs, after they made a decision to leave their abuser). However, it is notable that most of

these women endured numerous threats and assaults prior to seeking out help from the state or social service agencies.

A Cautionary Note

While I wish to make use of the insights that can be gleaned from Bumiller, Miller and Sarat's work, I do not wish to blithely categorize battered women's experiences of being assaulted by their intimate partners as a "dispute" like any of the others Miller and Sarat studied. The danger of a conceptual model such as this one (for "disputing") is that fundamentally different experiences may be grouped together within a taxonomy in a way which actually obscures what is important instead of elucidating it. At some level it is possible to make some comparisons between how battered women think about mobilizing law in response to the assaults they suffer at the hands of their partners and how people think about mobilizing law in response to perceived civil grievances. But I want to be careful to highlight that being physically assaulted—being choked to the point of a blackout, being thrown around so forcefully that pain becomes a regular part of one's life, being hit so hard that your bones break—by someone who lives in your home, controls your money, knows all your most intimate secrets—and does it again and again, is not something that should not be carelessly compared to feeling that one was sold a defective product by a

stranger, or even that one was treated unfairly by an employer. To too glibly call both of these experiences "disputes" runs the risk of erasing the material, embodied differences between them and ignoring the assaults' embeddedness in highly patterned socially constructed power relationships.

Additionally, the context of invoking rights or disputing when the matter is criminal assault rather than civil is different in important ways. "Claiming"—pointing out the problem to the wrongdoer and requesting they rectify it—takes on a very different meaning when the rights violation was a physical assault, and the potential claimant lives with the wrongdoer, and has no place to go to escape them. Further, in civil disputes, the litigant is in control of the process of getting to court—assuming one has the resources, one can hire a lawyer and pursue the dispute regardless of the merit others see in it. The petitioner in a civil process can stop the process by dropping the matter. In contrast, in the criminal system, a person has some control over calling the police or not, but someone else may call regardless of one's preferences, and the police and prosecutor may decide to pursue or not pursue the case regardless of one's wishes.

Cost/Benefit Calculations: The Pragmatics of "Lumping It"

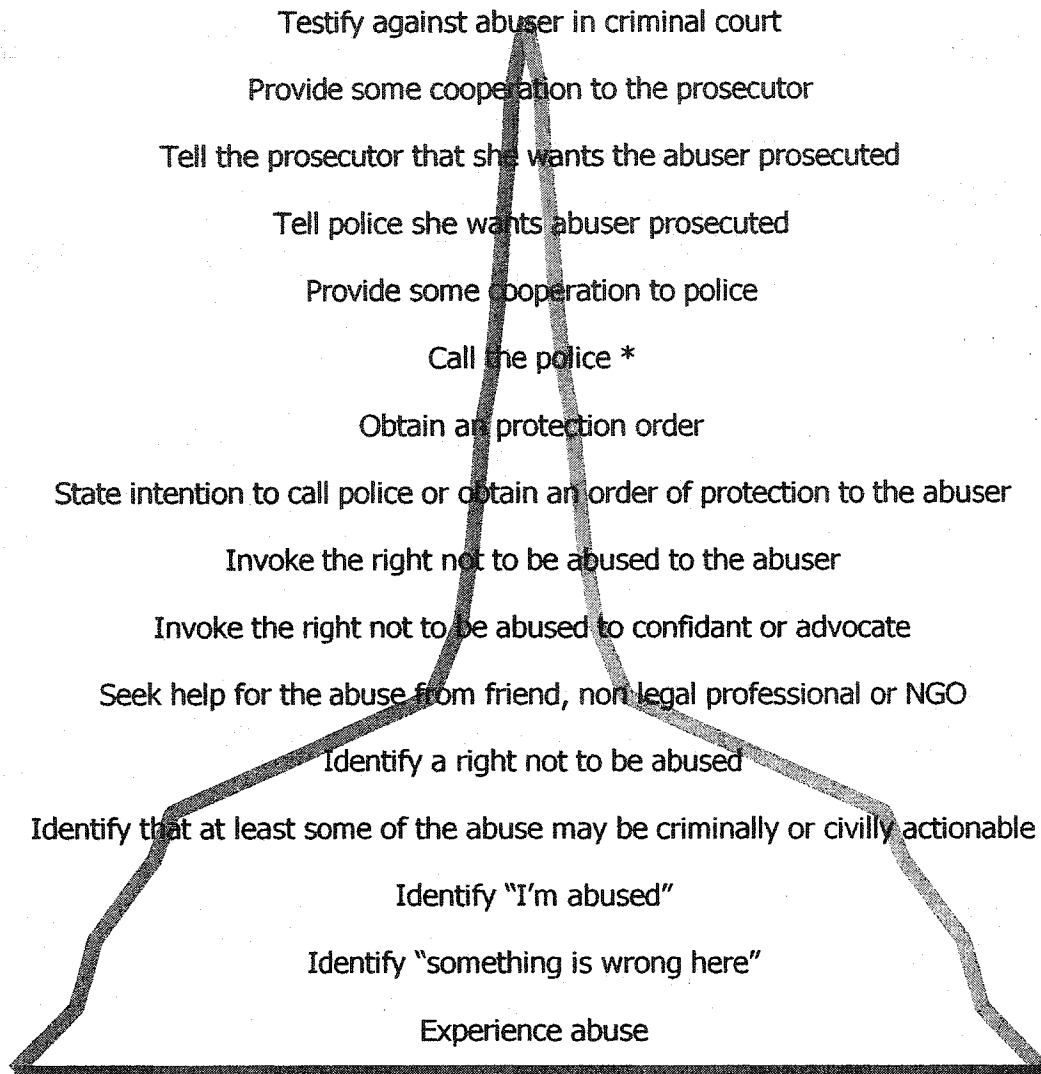
These caveats in mind, Bumiller's careful examination of the consciousness

of discrimination victims' particular struggles with disputing offers some useful insights into battered women's legal consciousness and decisions regarding mobilization. Like discrimination victims, battered women found that when they considered their options for mobilizing law, their pragmatic assessments of the likelihood of the legal system's ability to jeopardize or enhance their well-being largely determined their willingness to take that step. In Phoenix, in the context of the Legal Protection model, women often chose not to mobilize, or "lumped" their grievances/assaults, even after they left the abuser and/or obtained support from battered women's programs. As Miller and Sarat summarize with regard to discrimination victims: "Availability is not accessibility; just because mechanisms exist [in written law] does not mean they are in fact, attractive to, or usable by, people seeking redress" (Miller and Sarat 1981).

In considering the risks/rewards of invoking rights by calling the police, women had to weigh the abuser's access to their body, their children and information about their lives against the chances that the criminal justice system would actually help them to stay safe. Most felt that invoking law could be dangerous and called only when they felt they were in intense danger and had no other way to interrupt a violent episode. In Seattle, women often lumped their grievances as well, based on past experiences with law which led them to believe that calling the police would not be helpful. However, once they did

make the call, many found that the supports which are part of that city's Mobilization Facilitation model led them to feel that calling the police was a viable option and increased their feeling that they would do it again in the future.

Women in Seattle were actually surprised by the law enforcement/prosecutor/court response to their calls for help. For these women, formal law became a viable and important alternative to their abuser's private tyrannies, interrupting and delegitimizing the abuser's violence. In Phoenix, on the other hand, women found that calling the police frequently did more damage than good, because their abusers were emboldened by their lack of accountability and the apparent endorsement of their violence when police and courts refused to take action to hold them accountable for it. These differences in women's consciousness highlight the importance of understanding local context when exploring people's legal consciousness regarding topics which depend so heavily on local implementation.



*Note that from this point forward, the ability to continue to mobilize depends on others and will be affected by the local policy implementation infrastructure.

Figure 3.1 A Disputing Pyramid for Battered Women, considering a single incident of abuse

The "disputing pyramid" for battered women in the tradition of Miller and Sarat in Figure 3.1 gives an idea how most of the women in this study responded

to incidents of abuse. (Please note that unlike Miller and Sarat, I do not have quantifiable data to represent here, and that this is a representation of the patterns identified in my interviews.) The pyramid follows the pattern of identifying a grievance, naming it, claiming it to the wrongdoer, and then pursuing formal state interventions. Much of this process takes place in the "shadow of the law"—decisions to lump or pursue one's rights are influenced by one's sense (and the sense of one's abuser) of the likely legal response if one did pursue formalization. Invoking rights, or threatening to pursue formal processes means little if both parties know that the state's legal system will refuse to recognize or act on the claim. As McCann says (referring to threats to sue in the context of pay equity struggles): "It is the common knowledge of judicial endowments, as both a source of moral right and threat of potential outside intervention, shared by antagonistic [parties] that renders" the threat of legal action potentially effective (McCann 1994, p150). Battered women make decisions about whether or not to make this threat in a context in which, historically, "judicial endowments" have been meager. Even when positive change regarding the criminal justice system response to domestic violence has taken place, in many jurisdictions it has been so recent that women's memories of their last experience with the police may reflect the old way of doing things. Because of this, even women who lived in Seattle, where strong policies were in

practice, were very cautious about invoking law and had low expectations of the assistance that the system might bring them.

What follows is a more detailed exploration of battered women's legal consciousness in Phoenix and Seattle. Each section starts with some representative stories from battered women, and concludes with some discussion regarding what those stories and others told me about women's legal consciousness, mobilization and the ability of law to challenge or enable domestic violence abusers' private tyrannies.

CHAPTER FOUR: LEGAL CONSCIOUSNESS AND LEGAL MOBILIZATION IN PHOENIX

Rebecca Miller's Story

Rebecca Miller, a white, petite, college-educated woman from the East Coast, was forty when we spoke. Rebecca's husband was an ophthalmologist. She had three children, ages six, nine and fifteen at the time of our conversation. Rebecca had lived all over the country with her husband. Moving frequently seemed to be one of his strategies for avoiding legal accountability for his violence and keeping his family isolated. He had beaten her in several states, and she had called the police in several states. Her husband had only been arrested a couple of times, and in those cases, she was unclear about whether or not the prosecutor had actually filed charges and prosecuted her husband.¹⁴ In any case, in spite of repeated beatings and calls to the police, he had never spent any time in jail. At some point, in another state, he had been arrested for aggravated felony assault (which indicates that the beating was extremely

¹⁴ This confusion was not unusual. Several women described being unsure about whether or not their abuser was prosecuted, found guilty or acquitted. This confusion indicates the lack of communication and accountability to the victim which existed in the criminal justice system, as well as the lack of consequences which would be recognized by victims as meaningful.

severe, as most domestic violence arrests are for misdemeanors) and Rebecca had left him for a time. She returned, thinking he had changed after undergoing substance abuse (alcohol) treatment as part of his sentence. In fact, he did reduce his violence towards her, but began to beat the children when he was angry instead. "He would beat them only when he was mad at me" she told me, as a means of controlling her.

He was quite brutal with the children, traumatizing the middle child to the extent that Rebecca had to take him out of school for a time. Realizing she needed a way to get out but seeing money as a primary obstacle, a few years prior Rebecca had obtained a job working evenings in retail. However, she had to quit this job, because her husband was beating the children when she was working. "My daughter would call me up at work and say, 'Mommy, you have to come home. Daddy is beating the kids and they are bleeding and vomiting.' I would leave my job in the middle of work and race home....He spanked them so hard their noses were bleeding and they both vomited." The boys were eight and five at the time. Around this time, Rebecca called CPS for help. (Several women told me stories about interactions with CPS when I asked them about their interactions with the legal system. Like many women, Rebecca conceived of CPS as part of the legal system, sort of like law enforcement for issues relating to children. Reasoning around this usually ran something to the effect of child

abuse was against the law, CPS was the state agency designated to respond to child abuse, therefore CPS must be part of the legal system.) She gave them some background on his abuse of the children as well as herself. "[I said to them] please help me. They said, 'Are you telling us that you are going to work and this is what's happening?' And I said yes, I am. And the woman on the phone said that 'we are going to take the children away from you. And I said 'you are going to take my babies away from me?' and she said 'because you are giving passive consent [to the abuse] every time you go to work.'"

The quick reversal of responsibility for the abuse that took place in that phone call surprised Rebecca. In her mind, working was a positive, active and necessary step toward leaving, which she needed to do in order to protect her children. Rebecca had thought that mobilizing CPS (which she associated with the legal system) would give her greater leverage with her abuser, and that state intervention would make him realize he could not continue the violence. She had hoped that minimally, "They would be supervising and maybe come by and talk to him and warn him that he can't hurt like that and there will be consequences if he did" or "better yet, saying that you have to move out." After asking him for two years to move out, she had been unable to make him leave. She hoped that CPS might be able to make it happen. Instead, for reasons she could not understand, CPS blamed her for his abuse and threatened punitive action against

her. So, "I hung up. I gave up. She said that if they had to file another report on him, there was a strong chance I would lose my kids." From her perspective, the action the CPS worker threatened (removing her children, not the abuser) would not ensure her children's well-being but would harm them further. The threat to remove her children and the blame placed on her for his assaults scared her into silence, and she quit her job and vowed never to call CPS again.

Her experience of attempting to mobilize law (in the form of CPS) to stop her husband's abuse led Rebecca to lump not only this particular claim but also to lump all future claims regarding her husband's child abuse. Because she felt that law (in the form of CPS) had nothing to offer in terms of controlling her husband's assaults against her children, she had to stay home in order to be present to attempt to protect them. As a result of her experience with CPS in that one phone call, Rebecca's abuser's economic control was solidified; further, Rebecca's perception of the state's law as irrelevant and her abuser's tyranny as preeminent was also solidified.

Finally, at the advice of a psychologist, Rebecca did succeed in filing for divorce, and her husband moved out of the house. He immediately began an affair and made sure she knew all about it. Soon after that, he had a major heart attack. Rebecca, for a time, clung to the idea that the abuse had been caused by his heart condition, until finally a doctor told her that was not the

case. Even so, Rebecca took him back in and nursed him back to health. Once he had recovered, her husband announced to her that he no longer loved her, that he had fallen in love with an Asian woman who was passive and subordinate to him, unlike like Rebecca who was "overbearing." He also went into a detailed catalogue of Rebecca's physical inadequacies. Around this time, Rebecca attempted suicide by taking prescription pills. She did not want to talk a lot about this but she had obviously survived the effort and was no longer suicidal.

At the time that we spoke, in spite of the fact that her husband was in another relationship and living elsewhere, he still spent a great deal of time at Rebecca's house. Rebecca had gotten a job again, but being very isolated and with almost no spending money, she had few options for childcare when she worked. She had asked her husband to babysit the children one night while she worked late. In a move she characterized as self-destructive, she decided to go out for a drink after work that night, rather than come directly home. She arrived home several hours later than expected. Her husband was enraged and asked her where she had been. She said to him, "What's good for the gander is good for the goose!" (She told me that in retrospect she saw this as a terrible mistake.) In response, her husband looked at her and said "I am going to kill you." He leapt upon her and began dragging her around the room and strangling her. Rebecca said, "It was the only time in my life that I thought I

was dying." Her children heard her cries for help, and her eight-year-old pulled him off of her. Rebecca ran into another room and called 911. The police came. By the time they arrived, her husband had gone to bed and pretended to be asleep. Like many women who are generally reluctant to call the police, Rebecca called this night primarily because she was afraid of what her husband might do, and felt her life threatened. She wanted the violence to stop and did not see a way to bring that about on her own. In terms of disputing, her call represents an effort to formalize the conflict by involving state actors, but that desire came primarily out of desperation to end the violence in the moment.

Rebecca said, "I told them everything that happened. I tried very hard not to exaggerate anything, because that is one of the weapons he used against me. He always tells people, 'Oh yeah, Rebecca, she's right. I did mess [with her] a little bit, but she is exaggerating.'...He did that for years, so I am very careful not to exaggerate." The police told Rebecca that there was not enough evidence on her body in the form of marks or bruises to carry forward a prosecution without a witness. They made making an arrest or not contingent on her committing to

them that her eight-year-old son would testify about the assault.¹⁵ Feeling her son had endured enough trauma, Rebecca would not make this commitment, so the police refused to arrest her husband. Rebecca's husband invoked two powerful controlling images in order to convey that "nothing happened": the crazy woman and the slut. He told the police Rebecca had recently overdosed on drugs and had a tendency to exaggerate, and that she had been out with another man. Refusing to acknowledge the violence, the police left. Almost as soon as they were out the door, Rebecca's husband, enraged at her having called them in the first place, turned upon her and began to violently rape her. The refusal on the part of the state's legal officials to act resulted in their enabling Rebecca's abuser to perpetrate more violence. This time her children stayed in their rooms. Rebecca fought back, eventually made it into one of the children's rooms and called the police, "because I thought he was really going to kill me." Again, the police came out. Again, her husband denied trying to rape her or threaten her with death. One of the officers took Rebecca aside and said, "Do you know it is five years hard time guaranteed if he is convicted of rape?"

¹⁵ In fact, it is the job of law enforcement only to determine if probable cause exists to believe an assault took place and gather appropriate evidence. It is the prosecutor's role to determine what sort of testimony and witnesses are necessary to proceed with prosecution.

Just like if it was a total stranger.” The second officer, a woman, reinforced this: “She said, ‘If you choose to prosecute, he’ll get five years hard time.’”

Rebecca felt that what her husband had done was wrong, but that it was not like a stranger rape (which she had experienced as a teenager). Somehow, the idea of five years “hard time” violated her sense of fairness, her sense of proportion for that particular crime. “I thought, okay, five years hard time for the rape is not fair. I would have liked it for the [attempted] murder. I would have said yes to that but I really was really upset for the rape; that is not right.” Picking up on the officer’s language which made her the locus of responsibility, she said “So, I did not prosecute him for that one.” The officers made her husband leave the house that night, and Rebecca went to bed. In this conversation with the police, law in action did not conform to Rebecca’s sense of how law should work—her ideal sense of law. It was very important to Rebecca to maintain her sense of principle and integrity in the face of her husband’s abuse. Thus she rejected the possibility of punishment she saw as unreasonable for her husband’s rape, although the same outcome would have been acceptable to her for his attempt to kill her by strangling her. In the course of these two contacts with the police, the state’s law (in action) became increasingly less meaningful to her, and less connected to rationality; she clung to her own set of morals and standards as an alternative.

When she got up in the morning and went to take a shower, she saw that she had bruises all over her arms and legs. She told me "I thought, 'Yay! Proof!'" Thinking that this was the physical evidence necessary to prosecute her husband for the assault without the help of her son, she called the police and said "Last night, my husband tried to kill me. He announced he was going to kill me. He attempted to kill me. He got away with it because there were no marks. Guess what, nobody looked at my arms and legs! We were all looking at my throat. And while he was holding me down, you know, getting me to the ground [he made them]. Do you want to see them?" The officers said no. They told her, "You could have done that yourself with a baseball bat. You could have been making up that story and then the next morning, you know, you have 'proof' after we left and we can't use that as evidence." Rebecca was devastated, and this answer was a final verification that the state's law was not useful for her. Even when she had the evidence that the officers demanded, she could not meet their unreasonable (and inconsistent with written law) demands.

Still working in a legalistic frame, Rebecca turned to her psychologist, trying to find someone to "witness" the bruises on her body. "He said he didn't want to be a witness" but suggested she get a neighbor and "let them witness or photograph it." Rebecca's neighbor was the wife of a federal prosecutor and was herself an attorney. Rebecca went to her and showed her the bruises. She

said to her neighbor, "I need help. Would you just look at this just so people know I'm not lying about what happened last night." The neighbor agreed to look at her bruises, to "witness" them. They didn't take pictures, but Rebecca felt that this woman was "very credible." It was comforting and important to her to have this woman "witness" her injuries and validate that her husband beat her. In the following weeks, searching for resources, Rebecca called up the Arizona Coalition Against Domestic Violence to tell them about what happened, and find out what she should do if it happened again. The coalition staff told her about the shelter and support groups and Sojourner.

In spite of all this, Rebecca saw the police intervention as a success, because her husband didn't succeed in killing her. She said "[the] good guys got here in time; I'm pleased, it's a success." However, she felt that the police did not see it quite that way. She told me she thought "the [cops] seemed disappointed that I wasn't dead. If I had been dead, then they would have prosecuted him for murder," the implication being that would have been more exciting. When I explained the way the written law allowed and even required the police to make an arrest if they had probable cause to believe an assault had been committed, Rebecca said, "I wish they had. I wish he was in prison...That would make a big difference..." and then she went on to explain how she felt entrapped by what was likely to happen if she got a divorce: "Because you know why I can't get a

divorce. If I stay here and get divorced, my life will be hell and my children's lives will be hell. If I go home [back east] he will kill me [a threat he made regularly]. And I have to stay. And if I stay, then he gets half the house which means I get no house and the kids have no home. And... he's only required to pay child support. He's not required to pay alimony...And I don't mind working...But if I go to work, who's taking care of the kids? No one."

She felt her husband had gotten worse once he consulted a lawyer and learned his rights with regard to divorce. She said, "Last year was a revelation to him. If anything, the emotional abuse has gotten much worse. When he found out how much power he had financially, that he did not have to give me the house, that he did not have to give me alimony, that I would basically be...heading toward my fifties with no income, no resources, no family to say [to me] here, move in [with us]," he told her, "I'm not giving you a dime...you'll have to fight me and then you're gonna lose." Reflecting on the legal system and her husband's assurance that he was impervious to the processes of law available to her, Rebecca said, "He's got it made. He's got the best support system in the world." By the time we spoke, Rebecca had decided, based on negative past experiences, not to call the police, not to call CPS, and not to pursue a divorce. She was living in a delicate balance with her abuser, trying not to disagree with him or incite his anger, hoping he'd be less abusive to her

children, and forced to provide him sexual access in exchange for being "allowed" to continue living in their house. In essence, Rebecca had decided to lump any grievances/assaults she sustained in exchange for being able to live with and protect her children in her house. This was the exploitative separation agreement the abuser had constructed—Rebecca was still subject to his repressive order, and felt that the state's law would be no help to her.

Gloria Meyer's Story

Gloria Meyer is a fifty-three-year-old white woman. She was with her abuser, Ron, almost twenty-four years and lived in Phoenix all of that time. During the course of her marriage, Gloria went through periods of calling the police and not calling. She told me she "started calling the police [again] in the '90s," perhaps in response to renewed claims of "getting tough" on domestic violence in the media, but even then, the police never arrested Ron. Trapped economically, scared for her four children, Gloria stayed with her abuser until 1994.

Abuse started early in the relationship. Her blue-collar husband discouraged her from working, controlled all the money and was extremely physically violent with her children. He would yank Gloria around and throw her around the house. In the early 1980s, he injured her neck so badly, she was incapacitated

for five months and had to stay in bed. Gloria had two miscarriages during her marriage, and blames her husband's unwillingness to respect her need to avoid heavy lifting and rest adequately for these losses. "He said I was babying myself too much [during the pregnancy], and I said 'Well, if I don't at this point, I'll lose the baby. And...he said [his project of building] the garage was more important.'" Soon after the first miscarriage, he raped her, impregnating her too soon to give the second baby a good chance. While she was supposed to be on bed rest, he insisted that she provide childcare for a co-worker's active toddler.

Over the twenty-four years of her marriage, Gloria talked to numerous people about the abuse: her doctor, the pediatrician, CPS, her children's high school counselor and her pastor. No one offered her any real help, dealt directly with the danger she was in, or talked with her about resources for battered women. When she was disabled from her husband's assaults, she called Adult Protective Services, with the understanding that they provided assistance to the elderly and disabled. However, they did not see her situation as falling under their purview, because she was disabled *as the result of an assault*, not *prior* to it (had she been disabled and *then* assaulted, they might have acted). Gloria could not understand this. The refusal to help made no sense to her in light of her sense of how law should work; at the time of our interview (about fifteen years later) she still thought it was wrong that they refused to provide her assistance.

At one point, Gloria sought a medical explanation for Ron's abuse. She thought that his violence stemmed from heavy metal poisoning from a broken coffee machine at his workplace. She consulted a "holistic" doctor about this, who agreed that it was a possibility, and prescribed a detox program which included vitamins and minerals. In the late 1970s, when her children were young, Gloria talked to her doctor about the abuse of herself and the children. The doctor framed the problem in terms of parenting and ignored the danger, telling her, "It just takes some men longer to learn how to parent." The authority figures Gloria talked to avoided providing her any substantive support for the problems she faced and instead helped keep alive Gloria's hope that her husband could change and the abuse would end.

Gloria described calling the police numerous times throughout her relationship. She would call to describe or report violence and "the police would say, 'Well, just call us if there's more problems.' But then at one point the police said 'don't call anymore... if you call again we will arrest you.'" She describes their responses to her claims of assault in a tired voice, imitating them in a tone which speaks to her despair. "How do we know you didn't break your own glasses?...I didn't see anything happen...I can't arrest him. Uh...why did you hit your head against the wall? Did you take your medicine today?" Perhaps most devastating, she recalled that "Even when he would tell the police he'd injured

me, they still wouldn't do anything about it." Ron was never arrested, although he abused her throughout their relationship, and for at least ten years after Phoenix instituted its "presumptive arrest" policy in 1983.

Ron beat the children throughout their marriage. Gloria describes riding her bike home one day in time to see her three-year-old son sitting quietly outside looking at the car, but not touching it. As she watched, her husband came up from behind the child and "kicked him so hard he could have killed him. He went flying." Like Rebecca, Gloria perceived CPS as part of the legal system. She called CPS around this time to ask for help, but they would not take action. Gloria stopped calling CPS for help, even though she continued to think the abuse was wrong and should have been illegal. Apparently either no teacher or other mandated reporter ever called, or if they did, CPS took no action. The children paid dearly for the child protection system's inaction. One child became so violent towards Gloria in his teens that she felt forced to call the police for help. That child, an adult now, had disappeared. Based on her description of his behavior, the other son was quite disturbed, or possibly mentally ill.

As the years went on, Gloria increased her efforts to get "proof" of the assaults. At one point, Gloria took her son to the doctor to have his injuries from abuse documented. When she took the records to the police, the sergeant said, "You took him to a woman doctor? We can't accept this." Another time, she

had gone to a chiropractor to have injuries documented and treated, "and they [the police] said 'You went to a chiropractor? We don't accept chiropractic reports.'" More recently, her husband had raped her just a couple of years prior to our interview. The assault was so severe it was about seven weeks before she could walk without pain. She went to the emergency room of the hospital and asked for a rape exam,¹⁶ but basically got a "go home" message there: "Number one, they would not allow me to have a chaplain. They would not allow me to call my pastor. They would not allow a volunteer from the Center Against Sexual Assault to be with me. And they insisted that I lay on a cold, undraped table [waiting for the doctor to come in and do the exam] because they said 'if we put on sheets then we can't get a valid specimen.' And so I lay there all afternoon freezing. And the police never did come in. And finally I checked myself out. And three weeks later the police would still not take a complaint." Gloria just wanted her injuries documented. At some point she also called the prosecutor directly to ask that they press charges, but they told her, "We don't have a police report'...And basically the police...they would never write

¹⁶ A rape exam is a specialized examination conducted to get physical evidence for use in rape prosecution. In this way, the medical establishment becomes part of the legal system. In Gloria's mind, she was taking legal action against her husband by requesting the rape exam.

up a full report." Gloria's repeated efforts to mobilize law were thwarted and rebuffed.

Gloria, like Rebecca, felt that her batterer was encouraged and emboldened by police inaction and lack of consequences for his abusive behavior. Looking back on her frustration, Gloria commented, "I did all that stuff [calling the police, trying to report the abuse] but I wasn't going to complain about the police to *him* [her husband/abuser]. I mean, it's enough encouragement to the men to not have any responsibility [for the violence, without being reminded that the police would not do anything about it]."

What Happened When Women Mobilized: The Context of Consciousness

Experiences with legal officials and the results of their interventions shaped women's legal consciousness. In Phoenix, women often felt that their abuser's violence had not been stopped, that their stories had been trivialized and that they had been perceived negatively. These perceptions shaped their pragmatic evaluation of the utility of invoking law and involving legal actors when coping with abuse.

The Refusal to Act and Expansion of the Abuser's Power

Gloria and Rebecca's stories are typical of those I heard in Phoenix, and

Phoenix is not unusual in terms of its response to domestic violence. Like many jurisdictions, even after changes in state law, intervention in domestic violence remained a low priority within the criminal justice system (Websdale 1998). Multiple studies conducted all over the United States have confirmed that the most common response to domestic violence by police is to avoid arrest, regardless of local law. As Neil Websdale sums up, "There is widespread agreement about the historical failure of the police and courts to confront domestic violence" (Websdale 1998, p76). What came through so clearly in my interviews with women in Phoenix was the way in which this inaction on the part of the criminal justice system had the effect of expanding their abuser's power over them, and the profound ways it shaped women's legal consciousness.

Inaction as Violence

Women's stories in Phoenix were characterized by legal (and social service) actors' repeated and clear refusals to act or hold the abuser accountable in ways which were meaningful. Frequently it was unclear to the women why the police had not arrested, why the prosecutor dropped charges, or why the judge was so lenient. Legal actors' inaction was often tied, in women's minds, to the need to obtain the right kind of proof or evidence (more about this in the next section). Inaction on the part of legal actors frequently opened the door to more violence

and abuse. It also emboldened abusers to feel confident that they would face no consequences for their abuse. In Rebecca's case, as soon as the police left, her husband violently attacked her again. For Gloria, repeated refusals to act by the police, Child Protective Services, Adult Protective Services and medical providers increased her feelings of entrapment, and left her not knowing where to turn. In particular, the mocking and condescending treatment she received from the police clearly communicated to her husband that he was free to use violence against Gloria and her children as he saw fit, and that no one would stop him. His sense of entitlement to physically use and punish Gloria extended to the very recent past, when he had raped her; his certainty that the state would allow this behavior was once again borne out, even though the laws were very different then from when he began abusing Gloria in the early 1970s. For Gloria, the inaction of the police and all the others who had the opportunity to support her rights claims but refused (CPS, APS, doctors) expanded her abuser's power and opened the door for more violence.

For most women, calling the police was their first attempt to formally mobilize law, and it was at this level that most women encountered an initial refusal to act. However, some women experienced the law's refusal to act at the prosecutor or judicial level. In Lupe's case, the police did make an arrest, but the lack of strong accountability subsequent to the arrest made the legal

intervention meaningless in her eyes. Lupe (a Latina in her mid-twenties who immigrated with her family when she was three and was raised in Phoenix) told me of an occasion when she refused sex with her husband, Juan (who was also raised in Phoenix). In response, he chased her with a knife and threatened to kill her. Someone called the police, and based on Lupe's story, they arrested her husband. However he was out of jail in a day. According to Lupe, "They didn't do anything." Lupe, like several other women interviewed in Phoenix, was unclear about whether or not charges were filed or her abuser was found guilty or acquitted. It is possible that Lupe's husband had made a deal with the prosecutor for deferred prosecution, as she said he was supposed to go to counseling. However, to Lupe, this was not a meaningful consequence commensurate with the fear and violation she felt. Knowing he would pursue her and harass her for leaving him and calling the police, she sought shelter and protection with his older brother. She lived apart from her abuser for six months, but returned to him after he was "supposedly rehabilitated" by the counseling. However, she never dared to refuse him sexual access again. The legal response had not left her assured that she could assert her rights in this arena. On the contrary, her self-determination was undermined because she did not feel assured her rights would be protected.

A couple of years later, Lupe suspected Juan of having an affair. She was

six months pregnant. She accused him in the car, and "just because he thought I stood up to him, he just hit me...right in the face." She had previously decided that if he hit her again, she was going to hit back, which she did. He ended up hitting her fewer times than she hit him, but with greater consequences. She told me, "I didn't have the force to do any damage to him." With about eight blows, he broke her nose, caused substantial bleeding in her sinuses, bruised her whole face and sprained her neck. He bit her on the face hard enough to draw blood and leave a scar, and fractured her wrist. She had such bad blood clots from the bruising that they traveled into her chest, and she was required to take some sort of drug to break them up. Finally (and most devastating to Lupe), he hit her hard enough to cause a rupture in her amniotic sac. She began losing fluid, having contractions, and her pregnancy was threatened. She was in the hospital for five days as a result of the assault and the pre-term labor it brought on. Her family called the police after this assault, and Juan was arrested. However, it became clear to her later that the police had told her husband, "We could get her on assault, too....and you could be out [of jail] by tomorrow morning." Apparently her husband said he did not want to "press charges" and they did not pursue arresting Lupe. The law enforcement officers' apparent interpretation of the assault as mutual combat, and their refusal to consider issues of self-defense or assess for the primary aggressor gave Juan additional

power, because he was able to then portray himself as having done Lupe a "favor" as well as remind her that it may be dangerous to her to call the police in the future, especially if she had dared to defend herself.

An "investigator" and hospital personnel took lots of pictures of Lupe, making her think that charges would be filed. However, in the end it was Lupe's understanding that all the charges were dropped. Her explanation about this was unclear. It is possible that Juan was given deferred prosecution and probation, but even though Lupe had been in touch with the prosecutor's office, this was not her impression. In her mind, the charges were dropped, and her abuser faced no consequences for beating her and risking the life of her unborn baby. Her abuser spent only a day in jail. Talking about the fact that (in her mind) no charges were filed, she said, "I hated it, I lost my mind. I never thought someone's going to take my life, you know and [so little would happen]." Lupe fled to the shelter, where I met her. She had kept her job and her husband was harassing her at work, calling repeatedly on the phone. She feared he would attempt to take the children from their schools. In spite of the seriousness of the assault, her desire to work with the police and prosecutor, and the wealth of medical records to support her allegations, no significant action was taken against Juan as far as Lupe could tell. Instead, he was free to continue terrorizing her, and she continued to fear him and feel that she had to

hide from him and watch out for him.

It is likely that Juan took a plea bargain, and so in the eyes of legal actors, action was taken in this case. However, what was significant to Lupe about this event was that Juan only spent "one day in jail" (which was probably between his arrest and his arraignment, not as a result of sentencing) and it seemed to her that the judge "let him off" because she could not see that any meaningful consequences were imposed. Lupe's perception reflects a common experience for battered women in Phoenix, in that even when women did succeed in getting legal officials involved, the workings of the legal system were unintelligible to them. The legal interpretations of the judge and prosecutor resulted in inaction, a refusal to protect Lupe. In Cover's terms, the violence that this inaction seemed to trivialize and allow (Juan's violence towards Lupe) put significant pressure on the word: it didn't make sense to Lupe, and no one ever explained to her in a way which could make it make sense. Thus her faith in the practical benefits of invoking law eroded, in spite of the fact that it had been fairly strong before that point.

Constance told me a striking story which exemplified police inaction and made the connection between inaction and the abuser's power. She had decided she had to leave her husband, and had literally run out of the house with her baby and the clothes on her back. Her sister arrived in town to support her and

she wanted to go back to her house to get a few things. She requested the police provide a civil standby. (In high conflict situations, the police are empowered to "stand by" for fifteen minutes or longer, while one person gathers belongings). First, the police attempted to refuse to do the standby, keeping Constance and her sister waiting outside the police station for two hours in the blistering 100°+ Arizona heat until "someone had time" to help them. They also told her, "This is domestic violence and we don't get involved." Ignoring this "go away" message, Constance persevered. Finally, an officer accompanied them to her home. In front of the police, Constance's husband pushed her up against the wall and put his hands around her neck to strangle her. The police officer intervened, saying, "You know, buddy, we were just going to leave and let the two of you work it out, but now we are going to stay." Constance said to me in a small voice which reflected her fear at this memory, "They were going to leave me there with him, alone." In spite of having witnessed this assault, and feeling the need to call for back-up, the officer made no report of this violent incident. As a result, Constance had no "proof" she'd been abused during her subsequent custody fight with her husband; this lack of "proof" had serious consequences for her own and her child's safety. When Constance tried to assert her husband's history of abuse, the court was critical of the fact that she lacked "proof" in the form of a police report. Her abuser and at least one judge implied she was lying

about the abuse. Thus he was allowed overnight visits with their toddler, "supervised" only by his mother, in spite of a history of drug use, violence and volatile behavior.

The Problem of "Proof"

Most women interviewed were quite clear that any force or violence was a violation of their rights; even in the face of inaction and a lack of knowledge regarding substantive law, the women I interviewed described an abiding conviction that the physical abuse they suffered was wrong and (therefore) must be illegal. However, issues related to proof run through many of their stories. Women's decisions to either pursue or "lump" their assaults with legal actors often rested on their own sense of whether or not they had adequate proof. Bumiller's argument that "the perception that there are narrowly defined guidelines for a legally recognizable claim encourages individuals to accept their fate rather than take legal recourse" is well demonstrated here (Bumiller 1988, p115). The perception of narrowly defined guidelines was reinforced by contact with legal actors. Law enforcement in particular, but also judges and prosecutors, often explained their refusal to act in legalistic terms, telling women that they did not have adequate proof of the abuse to merit action. Thus most of the women had contacts with legal officials in which they were asked if they

had any "proof" that an assault had taken place. Several took this demand (unsupported in written law or policy) at face value.¹⁷ On a pragmatic level, battered women accepted that a disjunction existed between their experience of abuse and criminally actionable abuse. Accepting the importance of "evidence" and "proof," women often did not even consider calling the police for behavior they experienced as abusive but which did not result in "evidence." This acceptance of the need for proof (even when it was patently unreasonable, as in Rebecca's case) served to keep law legitimate in women's minds: it helped them hold on to the idea the legal system *would* do something, if only the conditions were right. Apparently this belief was preferable to thinking that the police or courts would refuse to help, regardless of the severity of the assault and the evidence available.

Ewick and Silbey's insight regarding the necessity of both the stance they refer to as "before the law" (perceiving law as a reified transcendent realm with rational rules) as well as "with the law" (perceiving law as a game one must play

¹⁷ In fact, "proof" is not required by the law. Arrest requires only "probable cause" which can be based on the officer believing the woman's statements.

in order to protect one's self-interest) in maintaining the hegemony of legality helps explain how this might have functioned. As Ewick and Silbey explain:

the ideological effect achieved through the images of "before/with the law" is a typical one: a general, ahistorical truth is constructed alongside, but as essentially incomparable to, particular and local practices and experiences. In this way, firsthand evidence and experience that might potentially contradict that general truth is excluded as largely irrelevant. By effacing the connections between the concrete particular and the transcendent general, hegemonic ideologies conceal social organization (Ewick and Silbey 1998, p231).

This preserves the power of law and legality in everyday life; law in practice does not have to adhere to transcendent notions of law in order to maintain its legitimacy in people's minds.

In this case, although women's "first-hand experience" was that the police refused to arrest their batterers, women continued to think that a "general truth" existed that the violence was wrong, and even illegal, and that they had a right not to be abused. The focus on "proof" functioned to obscure the connections and disjunctions between their particular experience and their transcendent notions of the law: they could hold onto the idea that domestic violence was

against the law while focusing on the fact that nothing happened in their particular case because the evidence was inadequate. This focus on proof in essence concealed the de facto policy of avoiding domestic violence arrests and prosecutions, which in itself is grounded in gender relations and the institutional culture of the criminal justice system.

Their prior contacts with the legal officials which focused on inadequate proof led women to reassess their tactics, but not to give up the idea that they had a right not to be hit or that the violence was or should be illegal. But on a practical level, they did not want to risk calling the police if no result would be forthcoming, as they felt this placed them in even greater danger—their abuser would be angry that they called the police and broke a cardinal rule (don't defy my authority, don't tell) and perhaps would seek to punish them. Additionally, their abuser would have proof that the state would place no restraints on his violence towards them, and this would undermine whatever bargaining power the threat of calling the police might give them.

Women told me about their efforts to show legal officials proof of their assaults and the abuse, and how these had been ridiculed or erased. When women felt that they had offered good proof, and it had been rejected, this catalyzed a break in faith with the system. It solidified their sense that law was "more for men" as one woman explained it to me. Legal officials' demand for

proof made sense to women to some degree. If legal actors did not help them because they did not have adequate proof, women could continue to believe that perhaps under the right circumstances, the state would come to their assistance and would recognize the wrongness of the violence they suffered. But when women obtained or tried to show legal officials proof and found their efforts rebuffed, this brought about a deeper sense of alienation and betrayal by the law. Many women found that in their demands for proof, legal actors, like their batterers, constantly changed the rules in ways which put them at a disadvantage and betrayed trust. Several women gave me copies of documents they had gathered or typed up in efforts to gather "proof": letters from friends or relatives describing assaults they had witnessed against the women or her children, or chronological lists of assaults and other events and their efforts to obtain help. Gloria described her efforts to produce proof questioned in ways which pathologized her and were consistent with the "hysterical woman" image police employed to avoid action: "Why did you bang your head against the wall? How do we know you didn't break your glasses?" Like most women, Rebecca accepted the need for proof as a requirement for legal action. When her husband strangled her, the only proof she had when police responded was her son's witnessing the event. This was unacceptable to her, and so she did not insist on arrest. Like Gloria and others, she found that even when she attempted

to offer a form of proof which *was* acceptable to her, this too was also rejected, minimized and marginalized. After the choking incident, when she awoke to find her arms and legs covered with bruises from the attack, she was "elated," thinking that she had the evidence which was demanded the night before. Even when she had proof, it wasn't enough. Instead of becoming more credible, as was her expectation, she was constructed as a devious, lying and vindictive woman.

Esperanza's story provides another example of how law's inaction led to more violence, and the frustration of trying to satisfy legal actors' demands for "proof." Esperanza (an immigrant from Mexico who spoke English as a second language) reported her husband (a white American man) for sexually abusing her son when he was about two and a half. According to her understanding of what happened, CPS took the report but "they didn't do anything...and what is happening is my husband is getting away with it. And I'm trying, I don't think it's fair, you know. I put my life on the line because my husband being violent, he hold a gun to my head, you know, and very violent because he uses drugs...I have to do this to protect my child and put my life on the line. And then for Child Protective Service not to do their part and the police not to do their part is really really sad." Esperanza had limited options for escaping her husband. She worked, but did not make much money. An immigrant, she had no family living

in Arizona. Obtaining no assistance from legal officials to control her husband's behavior, it took Esperanza another year or so to garner the resources to leave with her youngest child (the other children were teenagers and young adults).

After she got her own place, one of her teen sons gave their father a key to her apartment. Esperanza could not afford to move repeatedly, and did not have the full support of her older sons to stay hidden. It was after her husband had access to her apartment that Esperanza came to believe her husband was drugging her and her five-year-old son and sexually abusing them at night. She knew something was wrong because she was awakening feeling numb and weak, and then later experiencing pain and finding abrasions in her vagina. She verified that she'd been drugged by going to the doctor for a urinalysis test and confirming her blood contained codeine, valium, cocaine and percoset: she had never taken any of these drugs. She had cuts and abrasions in her vagina, and her child had abrasions in and around his rectum but the doctor would not say that they believed it occurred as a result of sexual abuse. Feeling the authorities weren't believing her, Esperanza told me "So [I began] doing my own investigations" as she continued to feel strange in the morning more often and finally to have severe back pain, all of which she attributed to the nighttime druggings and assaults. To obtain more "proof," she set a tape recorder to tape what went on while she was asleep, and heard her husband speaking to another

man in her room, and possibly moving equipment into her room. She began to fear that her husband's abuse of her was being videotaped. Her son had mysterious rashes and abrasions around his anus, as well as being numb and then later having unexplained pain. She reported these signs to the police, CPS and medical professionals. Her husband was never arrested or prosecuted for any abuse, and Esperanza's perception was that no one investigated it.

Esperanza started reporting the suspected sexual abuse of her son when he was two and a half years old. Because of her inability to enlist the help of police and CPS, the abuse continued until her was five or six, when she went into shelter. More recently Esperanza had gone to request an order of protection for herself and her child, but "[the judge] said 'you do not have proof that the abuse happened. Until you bring me some proof I cannot give you the order of protection for your son.'" Commenting on this, Esperanza continued, "...where am I going to get proof? You know, when I see there is proof, I take him to the hospital to have it checked and told the police to make a report, you know. I put my life on the line to protect him but they [police, CPS, doctors] didn't do anything." At the time we talked, Pedro's father was still allowed unsupervised overnight visitation with him. Here law's seemingly impossible demands for proof and refusal to act facilitated more violence.

Finally, when women did have "proof" as Lupe did, going to court with "[my]

face still swollen, my face, my cut, the cut was still open, everything, everything was fresh" and their abuser got off easily, it was very difficult for women to accept. As Lupe said, "I hated it, I lost my mind. I never thought someone's going to take my life, you know and [so little would happen]."

Even when one is hit quite hard, the demand for proof in the form of immediately visible bruises which police seemed to be looking for is impossible to meet in most cases. The body simply does not show bruises immediately, and yet the police frequently told women they could not arrest unless bruises were visible at the time of their response. Like batterers, the police posed an irrational rule as rational, and set impossible conditions for the provision of good treatment. Trivializations of assaults and a refusal to act have embodied consequences. In Rebecca's case, the consequences are written on her son's body in the form of a crooked bone. Her husband yanked on his broken arm while it was in a cast. When the cast was removed weeks later, the doctor said something had gone wrong, the bone had come out of alignment and healed crooked. Rebecca asked if this could have happened "naturally" or if it would only happen as the result of a trauma. The doctor said it could be either, and because Rebecca immediately realized that although her husband was responsible, the "proof" would not be definitive, she did not tell the doctor what happened or make any effort to make a report of this abusive behavior. She

made a pragmatic decision not to invoke law, because based on her past experience, she thought it would be ineffective. However, she continued to believe that her husband's abuse of her and her children should have been acted upon by the police and courts.

Withholding Information and Facilitating Violence

When Kathleen Ferraro and her team of researchers observed police interactions with battered women in 1989, they noted that officers provided victims with the victim information pamphlet mandated by state law in only two of the 69 domestic violence cases they observed (Ferraro 1989). These pamphlets can provide valuable information regarding one's rights, including the right to a Protection Order and the fact that domestic violence is a crime. They also list resources for victims, such as shelters and hotlines. They can be an important link between isolated battered women and the community resources they need. None of the battered women I interviewed in Phoenix recalled ever getting one of these pamphlets. Thus, women like Gloria and Lupe were as isolated after invoking their rights as they were before, even though the intent of written law is to ensure that minimally, police intervention will result in less isolation and more information. This inaction on the part of police reinforced the status quo in which the battered women were vulnerable to abuse, saw their

rights claims as questionable in the eyes of the state, and isolated.

Burden of Responsibility to Act Placed on Women

The Phoenix police officers who responded to Rebecca's assaults put the burden for action squarely on her shoulders. Their approach to the situation was to continually ask Rebecca if "she wanted to prosecute" or pursue it, to the point that Rebecca herself picked up this language. About the rape, she told me, "I did not prosecute him on that." This was a common construction in Phoenix; most of the battered women spoke to me about prosecution in these terms. It appeared that the police sometimes acted as if it were entirely up to the battered woman whether or not they made an arrest, making this clear to both the woman and the batterer. They sometimes spoke of prosecution as if it were up to her as well. This puts women in a very difficult position with regard to their abuser. In calculating the cost/benefits of "prosecuting" him, the battered woman must factor in what the risks are if the prosecution goes sour and he is not jailed. At that point, he may come back to "punish" her. The message in this language is also very privatizing. In terms of constructing identity and naming experiences, it implies that she is a troubled person on her own (versus part of a community), that the assaults against her are not a problem for anyone but her, and that no wider justice or moral claim attaches to the violence. This

reinforces the isolation she may have experienced from society at the hands of the batterer, and often echoes a common put-down batterers make: "Nobody cares about you." To the degree the batterer is able to coerce or intimidate their partner to keep them from "pressing charges," it also has the effect of keeping the batterer's law-like hold on the woman intact, and avoiding any substantive challenge to it.

How the Violence Became Less "Visible and Vivid" in Phoenix

Dismissing women's stories by constructing devalued identities: As I argued in Chapter Two, the meaning of violence is not transparent or self-evident. It is interpreted through filters, cultural constructs and through the lenses of race and gender. As Patricia Hill Collins demonstrates so clearly, controlling images are symbol systems which provide ideological justification for injustice, subordination and exploitation (Collins 1991). As women told me their stories, it became clear that controlling images of battered women, frequently shaded by race, certainly determined by gender, were often employed by legal actors as interpretive frames by legal officials when women attempted to describe the violence done to them. Sally Merry found in her study of courts in New England that for "judges, prosecutors, and clerks—interpersonal cases are unwelcome." She found that these legal officials felt that "interpersonal cases"

(often involving domestic violence) were "not really 'crimes,' not 'real legal problems.' [Rather] they call[ed] them 'garbage cases,' 'junk cases,' 'shit cases,' and so forth. These cases were seen as difficult, troublesome and often frivolous." The people who brought the cases were seen in the same way: as troublesome people bringing problems that law couldn't solve to court (Merry 1990).

A similar perception operates at the level of policing. Speaking specifically about police officers in Phoenix, Kathleen Ferraro observed in her research that:

Police tend to dichotomize the community into normal and deviant citizens. Normal citizens abide by society's rules through maintaining employment, sobriety, a family and a modestly clean home. They are heterosexual, white and speak English. Deviants serve as the "other" for police officers; they are publicly intoxicated or high, homeless, involved in crime, live in run-down houses, have atypical family structures, and/or speak foreign languages...Officers on patrol often referred to Mexicans, Indians, gay men and people in housing projects as "low lifes," "scum," or "these kind of people." Officers believed arrests were a waste of time and meaningless for these people because violence is a way of life for them" (Ferraro 1989).

Thus, when women who do not qualify as "normal" brought domestic violence cases, officers found reasons to deal with them in non-legal terms, just as the court workers Merry observed did. When battered women called the police in Phoenix, they frequently found that these legal officials constructed an identity for them (often in collusion with their abusers) which was quite different than the one they held of themselves.

The devalued identities attributed to battered women could usually be broken down into three broad categories, one which implied that nothing happened, the other which implied that if something happened, she had consented to it or deserved it, the third which constructed the victim as violent or hopelessly part of a violent culture. All of these were shaded by race. These controlling images had the effect of making the violence less visible, less vivid.

Nothing Happened: The images which supported this conclusion were those of the crazy, hysterical woman, or the lying, vindictive woman. Battered women found legal actors imposing these devalued identities on them as they attempted to enlist them into action. Both Gloria and Rebecca faced the image of the crazy woman. Rebecca's husband directly invoked this image by telling the police (after he had choked her), "My wife is neurotic. My wife just got out of the hospital for a drug overdose. She's not well. Very prone to making things up and exaggerating..." Concluding this litany, Rebecca (who saw herself as so

careful not to exaggerate and tell the exact truth) says about the police: "And so they went away." By calling on the familiar images of both the crazy and lying woman, her abuser attempted to erase the credibility of her story, make the violence unreal. Because the police were willing (and perhaps predisposed) to frame the situation in the same way, her husband's strategy worked. Gloria also related being characterized as a crazy or deceitful woman.

If the woman is crazy and lying, then it neatly follows that nothing happened. Far from being an abuser, someone arrestable under the law, the husband is transformed into a long-suffering spouse who must endure the humiliation of his wife's false accusations. If she's lying, no violence was done, or whatever happened was minor. Any proof she has was probably manufactured, as Rebecca discovered when she called the police the day after her husband strangled and then raped her. The police pointed out that she may have hit herself with a bat and purposefully covered her own body in bruises, so her proof was not valid.¹⁸

¹⁸ Repeated experiences of being treated as if they were lying and exaggerating may have accounted for a way of storytelling I encountered with women that I came to think of as the "just the facts, ma'am" style. Women were very careful to give me descriptions of what happened, but were reluctant to make moral observations about them, or use value-laden words (which easily occurred to me) like brutal, cruel, hideous, awful or mean. I asked one woman in the middle of her story if she thought what had happened was fair, and she said "Let me just tell you what happened and then *you* tell *me* if it was fair."

She consented to it/she deserved it/ she provoked it: Another way to obscure the violence is to construct an interpretation of events and identities in which the battered woman essentially consented to the acts perpetrated against her. The notion of assault is premised on a lack of consent; if she consents, then no assault exists.

One way of "consenting" is provoking the attack and thus, deserving it or asking for it. If one provoked it, then one essentially consented. Women who did not conform to traditional notions of femininity, who raised their voices, who perhaps did not keep a clean house, all faced the disapproval of responding legal authorities; their batterers seemed to enjoy a "cushion" of understanding: What else can he do? If he has to hit her to shut her up, shape her up, or because she's annoyed him so much, then that is not exactly an assault.¹⁹ Typifying this experience, Julie Johnson, a thirty-nine-year-old white woman with some college education whose husband battered her "black and blue," told me that "the police said almost every time that I just better stop agitating him."

¹⁹ The Sheriff's deputy's argument that "you had to hit some women to shut them up," mentioned previously reflects perfectly the "if it happened, it didn't matter" construction many law enforcement officers brought (and in some places, continue to bring) to domestic violence calls.

A second "consent" theme had to do with the myth that battered women could simply leave if they didn't like the abuse. Legal officials, ignoring the barriers battered women face to safely leaving their abusers (including police and prosecutor inaction, economic barriers, and the fear women felt for their lives) often believe that battered women "consent" to being battered because they are "free" to leave. Ferraro notes, "The police believe battered women choose to remain in abusive situations. Most officers believed adult women could leave violent situations if they wanted to. If they stayed with a violent man, it was not the responsibility of the police to control the violence" (Ferraro 1989, p68). When battered women are constructed as people who won't leave (versus people whom the batterer won't leave alone) and won't try to end the violence (versus people who are the unwilling victims of violence they can't control and the state refuses to control), consent is essentially imputed. Rebecca encountered this when the police first made their arrest of her husband contingent on her commitment to put her young son on the witness stand—forcing her to "prove" her lack of complicity in the violence by demonstrating she was willing to sacrifice her son's best interests. She next encountered it when the police, responding to her husband's rape, emphasized that he'd get "five years hard time" if they arrested him (a ludicrous misrepresentation of what was likely to happen). The implication here is that if "something" really happened,

then she'd find this acceptable. If she didn't find it acceptable, then she wasn't trying hard enough to end the violence, or nothing must have happened, so the police were excused from taking any action. Lupe felt that the nurses at the hospital thought that she would not do anything to get away from her abuser or hold him accountable for the violence, and so had "written her off."

She's violent/too enmeshed in violence to help: A third common interpretive theme for dismissing women's stories involved constructing her as violent or too enmeshed in violence to help. In her study of Phoenix policing, Ferraro found that "Women from low income neighborhoods, especially those who did not speak English or were members of racial minorities were likely to be viewed as enmeshed in a culture of violence. In this context, a specific violent event was understood to be part of a larger pattern of degradation beyond the scope of police intervention" (Ferraro and Pope 1993, p112).

When police interpret the combat as mutual and construct the woman as violent, then she and the batterer are "even" and, thus, nothing happened. The experiences of women in my study were consistent with the cases Ferraro and her colleagues observed in Phoenix. She noted that according to police officers, "A man physically assaulting a woman who was screaming and yelling at him could be construed by officers as 'mutual combat,' particularly in cases where the woman was intoxicated. Officers said they would not arrest in these cases

because it was not possible to determine who was at fault"²⁰ (Ferraro 1989, p70). Lupe encountered this bias. Although the police arrested her husband (an arrest was almost unavoidable, regardless of their feelings about domestic violence, because Lupe ended up in the hospital as result of the attack), the police had encouraged her husband to "press charges" against her as well. The judge brought up the fact that she had hit her husband in the court hearing, legitimizing his sense of grievance and trivializing the seriousness of the assault she had suffered by equating it to her hitting him. The fact that she had done no damage to him whereas his violence resulted in her near loss of a pregnancy, broken nose, serious medical problems and five days in the hospital did not seem to compromise the image of her as a violent person as well in legal officials' eyes. Being a violent person precludes being a victim of crime in need of justice and protection; thus the consequences Lupe's husband faced were minor, and amounted to nothing in Lupe's eyes.

The willingness to perceive Lupe as violent, and to weaken the case against her husband by arguing the fighting was mutual was likely influenced by legal

²⁰ In fact, the question of "fault" in a case of a yelling woman and a violent man should be totally moot. Assault is a crime, being drunk and loud is not. Or, as I heard one advocate say, "It's not illegal to *be* a bitch, but it is illegal to *hit* one."

officials' constructions of race. Ferraro observed that police officers often felt that people of color, "these kind of people," were hopelessly violent, and that nothing they or the courts did would change that; they felt that "arrests were a waste of time and meaningless for" these groups (Ferraro 1989, p67). Lupe was not sure if race was a factor in her experiences. On the other hand, Esperanza did feel sure. As an immigrant woman who spoke limited English with a substantial accent, she felt at a disadvantage attempting to enlist the help of authorities in investigating her husband's abuse of her and her son. She told me, "I really do believe because my husband is white and I am Hispanic that maybe that is why they [the police] didn't do nothing. I don't know. I could be wrong. It makes me think and it makes me feel depressed, too. Because it should be, what they say, equal justice. Justice for all. It should be."

The women I spoke with were frequently aware of these constructions and saw their power. They resisted them by trying to appear very rational and careful to tell exactly the truth (as Rebecca did) or trying to bring forward "proof" which would bolster their story and challenge the idea that they were lying, crazy, exaggerating or asking for it. Even in talking to me, women were often careful to be very matter-of-fact, describing the outrageous without any sign of outrage. I think this as the "just the facts, ma'am" style of storytelling has something to do with women repeatedly encountering authority figures who

discounted their stories, implied they were not credible, or blamed them for the abuse they had experienced.

Summing up Women's Legal Consciousness in the Context of the Legal Protection Model

In her work on battered women and rights claiming, Sally Merry points clearly to the dialectical relationship between mobilization and consciousness, arguing that "an individual's willingness to take on rights [consciousness] depends on her experience trying to assert [mobilize] them" (Merry 2001a, p5). It was virtually impossible to discuss with women what they thought about law without talking about their experiences with legal officials. In Phoenix, women encountered a Legal Protection model: they were expected to make law work for them, with very little support or facilitation from within the legal system. Written law and even local police department policy prohibited abuse and encouraged arrest, but in fact, legal officials frequently did not hold abusers accountable in any way, or in any way which was meaningful for the woman. This particular local context led to particular patterns in women's legal consciousness with regard to naming their experience, constructing their identities, choosing their tactics, and evaluating their experience of the practices of law against their ideas

of what law should be.

Naming their experience: Sally Merry argues that women may abandon thinking of their experiences in terms of rights based on their experiences with mobilizing, saying, "If these rights are treated as insignificant, she may choose to give up and no longer think about her grievances in terms of rights" (Merry 2001a). I found that women sometimes didn't initially think of their experience of abuse as illegal or a violation of their rights, and some struggled to find other explanations for their partner's violence (e.g., Gloria and Rebecca's search for a medical explanation). However, it seemed to me that once women had the realization that the battering was a violation of their rights, they held onto that interpretation. They frequently gave up attempting to mobilize law on their own behalf, but they did not necessarily give up thinking that they had a right to be free from abuse. They just didn't expect the state to protect that right, even though they thought that it should. This may be a function of where I contacted women: at an advocacy-oriented battered women's shelter which encouraged women to think of their experiences in terms of rights.

Tactics: The lack of strong enforcement of domestic violence laws in Arizona profoundly influenced the tactics women felt they could use in coping with and resisting their batterer's abuse. Generally, women in Phoenix felt that the law's refusal to act to interrupt their abuser's violence expanded their power

over them, and made invoking rights as a bargaining tool (or "club" as McCann puts it) meaningless. Refusals to act on the part of legal actors, especially police, meant that informal invocation of law meant very little in women's everyday interactions and negotiations with their abusers. Women realized that inaction on the part of legal authorities affected their abuser's consciousness and pragmatic assessment of their partner's legal mobilization, by essentially providing proof that the state would not challenge their private tyrannies. Conscious of this, battered women often tried to enlist the help of legal authorities outside of their partner's presence in order to minimize the chances that their abuser would feel further empowered in the event that their claims were trivialized or ignored.

Women's stories in Phoenix often followed a similar trajectory. They got to a point where they assumed that the violence they were experiencing was against the law, and expected action on the part of the police to stop it. When the police refused to act, they assumed that they had misunderstood the conditions under which action would be taken, and sought to conform to the requirements for "proof." When they called the police with "proof" and found a continued refusal to act, they faced the realization that it was very unlikely that the police would help them. As a result, they began to see law (in the form of these legal actors) as capricious, unpredictable, impervious to their claims and dangerous to

the extent that their abuser felt empowered to continue his claim to bodily punishments and control as a result of police inaction. Pragmatically, they came to feel that making rights claims to legal officials was not particularly useful. Inaction on the part of legal authorities discouraged women from mobilization and undermined faith in the legal system (more on this below). While the state's legal officials were inconsistent, disinterested and very "hands off" when they were called, their abusers were extremely focused, interested and very "hands on" (in the worst possible sense) when enforcing their own private dictatorial regimes; thus, for most women, their abuser's rules and "enforcement" were much more salient than the state's.

Indicating the importance of social support, some women related a willingness to take a stronger stand in their relationships after coming in contact with the shelter. The support they found there inspired some women to invoke their rights (name and claim) to their abuser and call the police more freely. This was a little puzzling because of the poor police response, but had primarily to do with the conviction that they had a right to police response, even if in fact, the response was disappointing. The knowledge that they had someplace safe to go if the criminal justice system intervention went badly also may have changed the stakes for women regarding calling the police. In a sense, some women had a "split consciousness": they knew the police probably weren't going

to be that helpful, but they felt more entitled to their help after getting support. Lupe's story illustrates this. As related earlier in the chapter, Lupe's husband was arrested after threatening to kill her with a knife when she refused him sex. In her mind, "nothing happened" beyond the arrest. However, the fact that he was arrested at all was validating to her. Even so, she tried to avoid conflict and didn't refuse him sex anymore after that experience. Sometime after that, she spent some time in shelter, then went back to him. In shelter, she realized that "there's support out there and before I didn't know there was support out there, and once I came here [the shelter] and even after I left here, I took what I learned from here and it helped me more toward the relationship. Because abuse is wrong." After she returned to her husband, Lupe was more likely to threaten to call the police. She commented, "He knew I would...he knew I would not hesitate to call the police on him...that made a difference, a lot of difference, it did make a difference. Because he knew that I wasn't going to play games anymore. He knew I would not hesitate calling the police or pressing charges or anything."

The support she found at the shelter led to an increase in Lupe's conviction that "abuse is wrong" and that she had a right to call the police. It also made her less concerned about holding her marriage together no matter what. This shift made invoking rights easier and more attractive. Her husband had

threatened her that if he went to jail again because she called, he wasn't going to come back. Instead of being cowed by this, Lupe told him, "You don't have to come back...he thought I was going to sit there and go 'oh please,' or whatever...but I was totally different after I left the shelter. I didn't care if he left, because I wasn't going to sit there and beg him." For Lupe, the combination of the social support and even a meager criminal justice response resulted in a shift in the balance of power in her relationship. But it is important to note that her threats to call the police would have been empty had the police failed to arrest her husband the first time she called. Lupe didn't think he would have taken any of this seriously if he had not been arrested.

Identity: Women often found themselves facing legal officials who approached them with set ideas in mind as to who they were: crazy, lying, hysterical, vengeful, bothersome, deserving of the violence, and so on. In response, women often felt shocked. Some could not offer any explanation to me as to why the legal officials perceived them in these ways. Over time, many women came to think of themselves as someone doubly wronged, first by their husband or partner via the abuse, then by the state, via its refusal to intervene effectively (or at all). Once women came into contact with the battered women's shelter, they received support to build and maintain an identity as a battered woman/survivor, and as someone who had rights, even if they weren't respected

by legal officials. Women resisted the devalued and insulting identities imposed on them by legal officials and their abusers by holding fast to their sense of themselves as (variously):

- protectors of their children (for example, when she was asked by the judge about assaulting her abuser, Lupe asserted "I fought for my life...I fought for myself and my baby that I was carrying")
- honest and honorable (recall Rebecca's decision not to "prosecute" her husband on the rape charges because the possibility of "five years hard time" seemed out of proportion to her for the rape, but she would have liked it for his attempt to kill her earlier that same evening)
- optimistic and hopeful (Gloria's explanation of why she stayed and sought medical explanations for her abuser's violence)
- a victim of injustice (as Esperanza said, she did "her part" but the state failed to do "its part" and she thought that was really sad)

Aspiration: None of the women felt that the response they had received was correct or how it should be. Women repeatedly referenced their sense of what law should do when discussing what legal actors did do. Rather than questioning their initial belief that the violence was wrong, women instead came

to see the legal system as wrong, and continued to hold out a vision as to "how it should be." Their aspirational legal consciousness provided them with a point of resistance to the way they found their identities characterized and the violence trivialized. Contact with feminist-inspired advocacy institutions such as Sojourner supported this resistant consciousness. The gap between actual and ideal was also a source of pain and confusion, and ultimately resulted in a loss of faith in the legal system for some women.

Women engaged in custody battles expressed the most extreme sense of disappointment in and violation at the hands of the legal system. At least two women told me rather fantastical stories about judges being involved in cults and corruption as an explanation for judicial decisions regarding custody which seemed completely irrational to them (more on this in Chapter Six). As Ewick and Silbey suggest, these kinds of explanations regarding disjunction between the particular and the transcendent function to preserve the legitimacy of the idea of law, if not its execution. Ultimately, for most of the women I spoke with, the legal system became delegitimized in their minds. At the same time, it remained a powerful and dangerous presence, one which they needed to negotiate carefully along with their abuser's powerful and dangerous regime.

CHAPTER FIVE: LEGAL CONSCIOUSNESS AND LEGAL MOBILIZATION IN SEATTLE

Ivy Gilbert's Story

Ivy Gilbert, a white woman, lives in Seattle. She was thirty-six at the time of our interview and had a young daughter. Her story illustrates the powerful relationship between support, implementation infrastructure and legal consciousness. Ivy had been abused by her parents while growing up, then in several abusive relationships in her adult life. She had a couple of negative experiences with police responding to domestic violence while living in rural areas in the 1970s; she recalled the police as "really cool and condescending, like 'What the fuck did you do to deserve this?'" and they did not arrest the abuser, so "that's what [she] expected [in Seattle]." Ivy had been with Brandon for several years, but had never allowed him to move in with her. He was controlling and manipulative. He would trap her in small spaces, physically intimidate her, pin her down. He broke a window next to her head, he would throw things, yell and scream. He punished her if she went against his wishes by "having a fit" which could include any of these behaviors. Ivy was trying to break up with Brandon when he finally escalated to the point that she called the police. Brandon had shown up uninvited and had been at her house all evening,

being extremely nice to her daughter and very rude and intimidating to Ivy. Finally she went to her bedroom and he came in and demanded she talk to him. She did not want to. He pinned her on the bed and put his hand over her mouth and nose, smothering her. Ivy said, "It went on and on and on...It went on and on and on. I couldn't breathe for a long time...and he was really, really pissed off and he was drunk. And I didn't know if this was going to be 'it' [he would kill me] or not, so I just bit, bit [so hard that] I thought maybe my teeth would fall out, and when he finally let go, I started to scream." When she screamed, her daughter screamed, and Brandon went to the daughter. Ivy took this opportunity to call 911.

Like most women who called the police after not having done so for years, she called only because she was afraid for her life. When he realized she was calling 911, Brandon threatened her, saying "You go ahead, you'll pay." At this, Ivy hung up, but 911 called back. Consistent with training and policy regarding domestic violence, they asked her a series of yes/no questions to assess the situation, so she would not have to increase her danger any further by having Brandon witness her describing the violence. (911 operators have received yearly training from the same two advocates since 1992. The trainers were originally court-based Protection Order advocates, but one had gone onto work at the Washington State Coalition Against Domestic Violence and the other as

the domestic violence coordinator for the King County Department of Judicial Administration). Ivy says, "They knew what they were doing. They did a good job of it." In the meantime, Brandon went around the house and started "smashing things." The police response was rather slow for Seattle—ten to twenty minutes. Ivy felt "terrorized" during this time, but kept reminding Brandon that the police were coming and that he should leave. Her validating contact with the 911 operator led to a sense of assurance that she had something to negotiate with: the police would actually show up, and may even do something. Brandon finally called a cab and left shortly before the police arrived.

Reflecting on the decision to call the police, it seems clear that Ivy had no expectations beyond the fact that calling the police might help her get him out of the house. "I thought they would get him out of my house. I don't know that I thought any further...I hadn't thought about jail or any of that. I just wanted him out and that's all I could think of, really." Ivy's words echoed those of Judith Shoshana, who heads the domestic violence unit in the city prosecutor's office. She told me that women use the police as an intervention to stop the violence in

the immediate moment, and often don't consider what they'd like to have happen after that.²¹

The police responded and treated Ivy politely and with respect. Two cars had responded to her call. The officers called the cab company which had picked up Brandon and figured out where he went, and an officer in the second car went to arrest him. The others stayed for perhaps an hour and a half. They asked her if she'd like to "file a report" and took Ivy's statement, and she also recalls that they were really "cool to [her daughter]. They gave her a pin...they were really cool." The officers took pictures of Ivy's face. They told her it was likely the city would pursue prosecution against Brandon. This surprised Ivy. The police also asked Ivy if she would like a No Contact Order, and she said yes. Again, she was shocked that it was so easy. Talking about the police, she said, "They were really super nice. I thought they were going to be assholes." She expected to be blamed, "I guess because of that old saying, first time shame on him, second time, shame on you...you just feel it's your fault...I expected it [the police intervention] to be a horribly degrading experience." Instead, "They seemed like they really cared. They didn't seem to look down at me at all. They

²¹ Interview, 1998

didn't seem condescending."

Brandon was prosecuted on the strength of the police investigation and Ivy's written statement. She did not have to go to court and testify against him.²² An advocate called her several times to update her on the progress of the prosecution. The advocacy from the prosecutor's office was another surprise for Ivy. "I was just like, 'Wow!' I was totally surprised! I just asked for a little help one night and you people are coming out of the woodwork going 'we're here.'" Reflecting on the fact that the city has a policy of evidence-based prosecution, she said, "They never asked anything of me. It made it a lot easier. It would have been really hard to [be the one driving the process]...I would have just made excuses for him and let him off the hook. Maybe, maybe not...That could have easily happened. And it would have happened previously. It would have definitely happened." Asked if victimless prosecution were preferable, Ivy responded, "There's no question about it."

²² Seattle had instituted a standard of "evidence-based prosecution" for domestic violence cases. Rather than relying on victim testimony (which is often dismissed by juries anyway), the prosecution relies instead on detailed police reports, 911 tapes, statements made at the scene, photographs, medical records and officer testimony.

A couple of months after the assault, someone called from what Ivy referred to as "the charm school"—the batterer's treatment program (a step which is specified in the state's Administrative Code regarding batterer's treatment providers) to check in with her, inform her of Brandon's treatment, ensure that she was connected to resources and make sure she knew how to contact them.²³ Brandon probably plead guilty to 4th degree domestic violence assault, or he made an agreement with the prosecutor for a "stipulated order of continuance" (SOC). With an SOC, the defendant agrees to abide by certain conditions for a year (usually substance abuse and batterer's treatment and no further assaults), and if these conditions are met, the case is dropped a year later. In any case, he was required to attend batterer's treatment, attend AA meetings twice a week and abide by the criminal No Contact Order (prohibiting contact with Ivy).

²³ The Washington Administrative Code 388.60.0065 specifies:

- (2) The treatment program must take the following steps to protect victims:
 - (a) Notify the victim of each program participant within fourteen days of the participant being accepted or denied entrance to the program that the participant has enrolled in or has been rejected for treatment services;
 - (b) Inform victims of specific outreach, advocacy, emergency and safety planning services offered by a domestic violence victim program in the victim's community;
 - (c) Encourage victims to make plans to protect themselves and their children;
 - (d) Give victims a brief description of the domestic violence perpetrator treatment program, including the fact that the victim is not expected to do anything to help the perpetrator complete any treatment program requirements; and
 - (e) Inform victims of the limitations of perpetrator treatment.

Thinking about the night of the assault and the response from the prosecutor's office, courts and treatment programs afterward, Ivy said "I was like, 'Shit, if I'd known this, I would have called years ago!'"

After leaving Brandon, Ivy eventually went to a technical school while on welfare, improved her job skills and got a job working with computers. Her welfare worker was perhaps the third (in addition to the police and prosecutor's advocate) helping/authority figure who assessed for domestic violence and suggested that she contact a community-based domestic violence program. (Again, this assessment and referral are a reflection of the level of awareness of domestic violence and networking with local agencies by legal and government officials in Seattle.) Ivy became connected with New Beginnings Community Advocacy Program, which became an important source of support and information for her. "I went in and started talking and it's been a whole new life ever since. Everything, absolutely everything has changed [since going there]. The only thing the same is that my roof still leaks!" With this support, she got organized to divorce her husband, from whom she had been separated for eight years. Looking back on what had allowed her to make so many positive changes in her life, she said, "It was just realizing that people are there. You don't have to do everything by yourself." As proof of her new way of dealing with the world, she told me about a conflict she had with her ex-husband's meddling

mother. She said "I'm not afraid to call the police [if she trespasses]. I have rights and god damn it...you're not harassing me ever again."

Ivy's call for help resulted in a series of contacts which reinforced her identity as a battered woman who had a right not to be hit. She was treated respectfully by each legal actor along the way, and the legal interpretations were made intelligible to her. In fact, Brandon's punishment probably did not differ radically from the punishment Lupe's husband in Phoenix received for his assault of her: short or no jail time, and required counseling. But even though the outcome was (at least superficially) similar, the process felt very different to Ivy, in large part because of the efforts made to address her concerns and her safety, her contact with advocates, and the degree to which each step in the process was clearly explained to her. Calling the police resulted in an effective interruption to Brandon's abuse, a lessening of Ivy's isolation, connection to resources, and perhaps most importantly, connection to support systems. As a result, Ivy felt very positively about having invoked her rights, and felt that the legal system's response exceeded her expectations. Summing up, Ivy said, "I felt like, 'Wow, maybe I was right. Maybe I do have rights!' I had pretty much grown up to believe I had none." Note in this sentence the almost paradoxical affirmation that on one hand she was right, that she had thought she had rights, while on the other hand acknowledging that she was brought up to think she

had none. Which one is it? Did she think she had no rights or did she feel entitled to rights which were not previously realized? It seems Ivy held these thoughts simultaneously, because these convictions existed on different levels—she thought that in an ideal world, she did have rights, but knew/thought that in fact, those rights would not be respected by legal officials. It was a pleasant surprise for her when legal intervention was consistent with her sense of how law should be.

Sarah Jenson's Story

Sarah Jenson, a college-educated white woman, was forty-three at the time of our conversation. She told me that people often perceive her as white, but she identifies as mixed race, white and Native American. She had been married to Vincent (who was also white but did not have a college education), her abuser, for a few years before the final incident of violence which precipitated their break-up about six months prior to our conversation. Sarah had grown up with alcohol and sexual abuse, but had escaped these. She attended some college, but did not have a degree. She had always supported herself and worked full-time. Vincent had only recently gotten out of prison for armed robbery (and perhaps other crimes, Sarah could not be certain he was honest

with her) when Sarah met him. Vincent had rushed the relationship with Sarah, pressuring her to get involved very quickly, have sex before marriage (although waiting until after marriage was one of her values) and to move in together early in the relationship.

He was abusive in a number of intimidating but non-physical ways before the final physical assault. As she said, "He only hit me once, and that's when he went to jail." However, he would scare Sarah by driving recklessly, tailgating and being extremely aggressive, abusing her animals (kicking the cat, tossing her birds around), isolating her from her friends and family, and being verbally abusive. In "play" he would goad her, asking "do you want to fight?" and then twist her arm until it hurt. She had started feeling so anxious early in the relationship, she went to a counselor. That counselor told her "You are in an abusive relationship. If you can't leave, you need to get help." But Sarah didn't leave at that point. Vincent also ran up huge debts in her name, threatening her good credit. He was very focused on acquiring the trappings of successful masculinity (cars, boats, electronics). Having spent several years in prison, he had trained there to be an electronics technician, but was not very good at holding a job, and didn't have good credit. Thus, most purchases were made on Sarah's credit, and based on her secure salary. Sarah told me, "He would basically intimidate me or coerce me until we'd have these things, and then he

won't pay it off." When we met, Sarah was working ten to twenty hours of overtime a week, trying to catch up on bills.

The relationship got increasingly tense. Sarah eventually discovered that Vincent was having an affair. She laid down an ultimatum, saying he had to choose. Vincent, however, wanted to "let [the new woman] go gently," meaning keep seeing her and keep living with Sarah. (A typical example of abusers' repressive law in which the rules for the abuser and for the battered woman often are quite different. While Vincent thought he was entitled to end his affair at his own pace, Sarah was not "allowed" to socialize.) The violence occurred during a conversation about the possibility of divorce. Vincent was setting forth what he wanted the terms to be. They were unreasonable and advantaged him. Sarah said "Vincent, do I have to get a lawyer?" His anger escalated at this question. Sarah commented, "I think he saw that [mentioning the lawyer] as a threat... And then he went off and he said, 'We were talking like adults, until now'—meaning he was getting his way...I knew I had to give in because in the back of my mind, any time he didn't get his way that was when he'd get in my face and call me a bitch. And you know, [start in with] 'do you want to fight' and just be intimidating." But Sarah had made a decision to stand up to him, even though "I knew he'd hit me, I just knew it."

He slugged her on the left side of her face with a closed fist. "He knocked

my glasses completely off...luckily they could repair them. The police couldn't get over how bad they were, mangled, literally mangled. He ruptured my eardrum. I had to get x-rays because he damaged my left eye...I still have chunks [floaters] that are floating around in there that may or may not go away. Luckily, he didn't break my bone...I was black and blue. My arm had a black, we're talking coal black, bruise six inches by eight inches on my upper arm. I had that for about six weeks...I didn't stick around to see if he was going to beat the crap out of me. I mean he hit me once, and I ran screaming out the door, because I knew he was going to use me as a punching bag."²⁴

Sarah ran to a neighbor's house. He called the police and Sarah spoke with them. They arrived within five or ten minutes. They took a quick look at Sarah, who was clearly and visibly injured. She also told them Vincent had been in prison. The officers went directly to Sarah's apartment and arrested him. As the officers left with Vincent in tow, they handed Sarah some keys, explaining that Vincent had changed the locks on her apartment that day while Sarah was in the shower. Apparently Vincent had planned to lock Sarah out of the apartment

²⁴ Note here how much damage Vincent did to Sarah with just one blow. It is instructive to think about this when considering the flaws of the Conflict Tactics Scale. Had Sarah slapped Vincent, or punched him in the arm, she and Vincent would "score" as equally violent on the CTS.

(which she had rented for years before she even met him). When Sarah left, he had called her mother and said they weren't getting along too well, and asked if Sarah could spend the night at her house. When the police showed up, he claimed nothing had happened. Sarah interpreted these actions to mean that Vincent had underestimated Sarah's willingness to use the police, as well as the steps the police would take. His plan seemed to rest on the assumption that Sarah would take off to her mother's and not cooperate with the police even if they did show up in response to a neighbor. As it turned out, Vincent overestimated his ability to control Sarah with his rules, threats and violence free of external limits on his behavior.

Sarah recalled feeling confident that calling the police would turn out well for her if she were reporting physical violence. In the past, she had told him, "The first time you hit me will be the last time" and that she'd take legal action if he hit her. "I knew he would go to jail...I knew if he hit me, there would be proof of abuse. I wondered what I would do if he didn't hit me, you know. [Then the issue of abuse] would be his word against mine, and that kind of concerned me, [in that] perhaps I would not be taken seriously." Here Sarah reflects her accurate understanding that not everything she experienced as abuse was legally actionable as domestic violence.

Vincent ended up spending thirty days in jail, with a \$100,000 cash-only bail.

It was so high, according to Sarah, "probably because he threatened to kill me, or have me killed just before he hit me. He threatened to kill me or have me killed at work." Legal officials (starting with the police) documented these threats, took them seriously and factored them into the arrest, bail and prosecution decisions as the case was processed. An advocate from the prosecutor's office contacted Sarah, but Sarah found her less helpful than the Protection Order (PO) advocate she contacted when she filed for a PO. That advocate "took me under her wing. She got me some water, helped me fill out the paperwork, and that day we filed." That advocate also referred her to New Beginnings, where she came into contact with a community-based advocate. Both the New Beginnings advocate and the PO advocate attended the hearing with her. Reflecting on this, Sarah said, "I felt pretty good." With the PO advocate's help, Sarah had gotten all her medical records and the police report faxed to the court for Vincent's sentencing hearing and her PO hearing. Thinking about her experience in court, Sarah credited her good memory and ability to recall events in detail with how well the PO hearing went. New Beginnings also helped Sarah obtain free legal advice through a neighborhood legal clinic with whom they have an ongoing relationship, so she could get some basic information about property, debts and divorce.

Sarah's primary frustration with the system was that it was very difficult for

her to find out when Vincent would be getting out of jail. She "literally...feared this man would come out and kill me because he blamed me for putting him in jail." It seemed logical to her that she should be able to obtain this information. As she pointed out, "They thought he was a dangerous man obviously because his bail was so high." But it was very hard to find this out. She left messages and notes for the prosecutor's advocate. "It took a day for my criminal advocate, not my Protection Order advocate, to let me know [that he had been released]." Vincent had not tried to contact Sarah by the time we spoke. I asked her if she was worried about Vincent showing up to bother her. She said, "Well, no, because it will be a felony if he does," reflecting her sure sense that he will be held legally accountable.

Thinking about everything she had learned, Sarah told me, "Before everything happened, I didn't know a lot about Protection Orders or No Contact Orders, but now I do. I didn't know anything about the legal system...I've never personally been involved in the legal process." Asked about the significance of the arrest, Sarah emphatically told me, "[without the arrest] I probably wouldn't have survived. I mean... if he wouldn't have hit me and he wouldn't have gotten thrown in jail, then I don't know what I would have done. It had a big impact because if I would have said yes [to Vincent's demands that day] and walked out the door, I wouldn't have been able to get [back] into my apartment, I wouldn't

have known how to get him out...How [would I] explain to the police his behavior [and make them realize it was abusive]?"

What Happened When Women Mobilized Law in Seattle: The Context of Consciousness

Generally, when women in Seattle used law, they saw their abuser's power minimized, as police interrupted the violence, gave them useful information, and validated that abuse was against the law.

Violence Was Interrupted

When women in Seattle called the police for help with an assault, the violence they were experiencing was effectively interrupted. In contrast to the experiences of women in Phoenix, the abusers in these situations were physically removed from the scene and held in jail, often overnight.

Ivy may have had some redness, but her injuries were not huge or florid. Even so, the police took her story of being smothered seriously. Based on the extensive training Seattle police have received regarding domestic violence, the responding officers probably also took note of the state of the apartment and Ivy's emotional state. Even though Ivy did not have devastating injuries, the police acted as if the violence were "visible and vivid" and took it seriously. They pursued her abuser even though he had left the scene. By arresting him, they

assured that he could not immediately come back and threaten Ivy again. By conducting an adequate investigation, and taking the time to get Ivy to write a statement that night, the officers ensured that the prosecutor could go forward even if Ivy did not want to testify against Brandon. It is possible that officers inwardly did not think that what happened to Ivy was that big a deal. However, behaviorally, they acted as if the violence were visible and vivid, and they followed their department's policy, which was to arrest when they had probable cause to believe an assault had occurred.

Sarah did have clear and visible injuries, but they may not have been that different from the injuries Gloria and Rebecca had called the Phoenix police with in the past. As Sarah described it, the arrest happened very quickly. Unlike the death threats Rebecca's husband had made against her, Vincent's death threats against Sarah were taken seriously and factored into setting his bail, resulting in his being held in jail for almost a month, significantly interrupting his ability to assault Sarah and leaving her time to garner support and plan for her safety.

Burden of Responsibility

In Phoenix, it seemed that officers typically spoke to women in terms which placed the burden of responsibility to prosecute on them. In contrast, in Seattle it was clear to the women I spoke with that the police and prosecutor would be

making the decisions about arrest and prosecution independently of them.

Sarah, Ivy and several other women I interviewed in Seattle were pleasantly surprised by how swiftly and decisively the police and prosecutor acted once they invoked law.

The police told Ivy that "they would prosecute him, and more than likely, I would not have to be involved. At the time, I was kind of half angry enough to want to be there [in court] and half frightened enough to want to hide. It was really good I had that choice [to be involved in the prosecution or not]." The news that the city would prosecute Brandon without her help was new to Ivy. She had imagined that the burden would be on her and that this would entail considerable danger for her. "I thought for sure it would have to be myself to put his ass in jail. And sit there and endure his looks...until I get a look that says I'm going to kill your daughter." Instead, "I didn't have to lift a finger anywhere [to get the NCO or to prosecute Brandon]." Reflecting on the fact that Brandon was prosecuted without her ever having to go to court, Ivy said, "They never asked anything of me. It made it a lot easier." And it also validated that she had rights which would be enforced by the state, whether or not she was too scared of her abuser to make sure they were enforced herself. The message Ivy and Brandon received was that the state's law would intervene in and supercede Brandon's private tyranny. Unlike Ivy, who had low expectations of the police

when she called, Sarah started out feeling that the system would make sure Vincent would go to jail if he hit her. Her experience coincided with this belief. She did not have to "press charges" or be present to ensure his prosecution.

Proof

With the exception of women engaged in custody battles (see the note: re custody battles in the next chapter), women in Seattle did not discuss the issue of "proof" with the same level of urgency and consistency as did women in Phoenix. Because in most cases when the police were called, they came out and arrested the abuser, the women I spoke with were not as focused on having the right kind of proof to enlist the assistance of the criminal justice system. The idea still had power, however, particularly for women marginalized by race. In the Cycles of Violence study,²⁵ Native American and African American women touched on the issue of proof during discussions of police reluctance to act in the case of threats, intimidation and emotional abuse (Wolf et al. 2003). Women often mentioned their perception that police would only act on physical abuse.

²⁵ I had the privilege of facilitating two focus groups for this study, which was conducted along with several others to augment a study undertaken jointly by the Seattle Police Department and Marsha Wolf at the Harborview Injury Prevention Center, and funded by National Institute of Justice Grant 95JJCX0097. The quotes and information here are from an unpublished manuscript; however, some findings from the study have been published in the *Journal of Family Violence*, April 2003, Vol 18, No. 2.

In fact, the state law includes "infliction of fear of imminent physical harm, bodily injury or assault" in its definition of domestic violence (RCW 26.50.010), so in theory, police can act on threats. Discussing when to call or not call the police, Native American women commented: "They [the police] do look for marks. Like evidence." Another woman said, "...the physical is really obvious to them [the police]."

How Violence Became Visible and Vivid in Seattle

Something significant happened; You didn't deserve it: The implementation infrastructure for responding to domestic violence in Seattle increases the likelihood that violence will be treated as if it is visible and vivid by legal actors in the criminal justice system. The combination of training, policy, accountability for following policy in the field, and the presence of advocates results in different behavior on the part of law enforcement officers and prosecutors and different outcomes than would be otherwise. Generally, the battered women I spoke to in Seattle who had called upon the police got a message that "Something significant happened" and that "You didn't deserve it or ask for it."

This message was communicated in the actions taken to interrupt the violence. It was also communicated through the ways in which women's and

their abuser's identities were constructed by legal actors.

Identity: The fact that their abusers were arrested and the police treated them with respect validated for Sarah and Ivy that they were, in fact, victims of a crime, and that their partners were criminals. As Sarah said while reflecting on Vincent's bail, "they thought he was a dangerous man," otherwise they would not have set it so high. That the prosecutor pressed charges and asked for a high cash-only bail (unusual with domestic violence crimes, even in Seattle) validated her sense of danger and lessened her isolation, in that she felt that others realized he was a dangerous man and were taking steps to protect her from him. For Ivy, as for other battered women I spoke with, having a statement taken and an arrest made was extremely validating of her identity as someone who has been violated and deserves help, and the abuser's identity as a wrong-doer subject to the state's limiting power.

Trina's experience and perceptions highlight the issues of identity which can be at stake when women invoke their rights, and how these in turn influence women's pragmatic sense of what is likely to happen when they invoke law, and thus the tactics they use to respond to abuse. Trina is a petite, energetic forty-eight-year-old African American woman. Her ex-boyfriend Darryl had been coming around her house repeatedly over a period of time. Friendly at first, she had finally told him to stay away after he attempted to touch her breasts and

kiss her. He continued coming around. She called the police when she found him masturbating outside one of her windows.

As an African American woman, she did not have high expectations for police response when she called for help, but was surprised by their vigorous enforcement. Like many women, she only expected the police to interrupt the behavior and thus stop it. To her surprise, the police arrested him, and told her that his behavior was called stalking and that it was a domestic violence situation. "Because I just figured, call the police and get them after him, that it's harassment or something. They said 'No, if it's a boyfriend or married couple [it's domestic violence].' They explained that. So they're the ones that hit me to that." Trina was given a No Contact Order, and the prosecutor filed charges against Darryl.

Talking about the prosecutor, she told me "I talked to that lady, the lady that was supposed to be my attorney. She was so gung ho. She was out to get any man that was swinging dick. She was out to get them, ok? She was good. I said [to myself] I am going to win this." Trina felt like law, in the form of the prosecutor, was on her side. Encouraged by her conversations with the prosecutor, she envisioned herself in court in positive ways, and was sure Darryl would be found guilty, or as she put it, she would "win." Unlike many women, she anticipated testifying against Darryl with relish, aware that her testimony

would solidify his identity as a transgressor of social norms, and hers as the righteous victim he wronged. "I was thinking about being in court against him and telling the story. And if he brought his lady how embarrassed he'd be if he brought his family, because he did these things." Unfortunately, Trina's sisters (who had witnessed Darryl masturbating) refused to testify and the prosecutor did not think they could win on the strength of Trina's testimony alone. Knowing the prosecution had no evidence beyond Trina's testimony, Darryl denied everything, and so the case fizzled. Even so, Trina felt good about her experience and was sure she'd call the police again for domestic violence, because they and the prosecutor had been so responsive.

However, she told me that she had been raped twice before and would never call the police about rape. "When it comes to rape, I'm a black woman. If I'm not a celebrity, they're not going to do a damn thing. They're not going to do nothing, so why go? You'd be surprised how many of us say that. It's just the way it is. Half of them are out there raping women anyway. Ok? So that's a joke, a real joke. And when you have a man judge—please! How much time is he going to get? Zero. It's a joke. You have to do your own thing. Blow it away, do a Bobby thing [a reference to Lorena Bobbit]. The system is not going to do nothing for you in rape, period. All you have to do is not be a virgin and your shit is fucked up."

Trina was acutely aware of the ways in which her identity as a Black woman was easily tied to controlling images of African American women as whores. Patricia Hill Collins elaborates on this image and traces its origins to slave-owning times. She points out how characterizing Black women as possessing an animalistic, out of control sexuality, makes them virtually un-rapable, as the assumption is that they would consent to anything. This image helps uphold existing power relations by not challenging white (and black) men's access to black women's bodies. Trina's stories of being raped and refusing to invoke law ("lumping it") testifies to the way in which these images continue to permeate the culture and affect women's consciousness of their ability to have their rights upheld by the state. To the extent that Trina's assessment of the situation is true, the systemic racism which leads her to feel calling the police for rape would be futile actually benefits the African American men who have victimized her. It discourages her from seeking help from the state in response to violence, leaving her more vulnerable.

Even though she felt so strongly about not reporting rape, Trina had a different idea about domestic violence, which was supported when she did actually call. In spite of the fact that Darryl did not face consequences for his behavior, Trina still felt that the legal actors involved cared about the violation she had suffered through Darryl's stalking and were ready to do something about

it. She blamed the lack of prosecution on her sisters' refusal to testify, not on the indifference of the state. Thus, she saw herself as a rights holder, at least in this distinct area.

Most of the women in Seattle had received written pamphlets regarding domestic violence and referrals to domestic violence programs. This significantly affected their sense of identity and their knowledge of their rights as defined in written law. First, it reinforced their identities as victims of a crime and their partners as criminals. The existence of community resources ready to help them constructed them as deserving people embedded in a community which would disapprove of how they had been treated. Second, it opened an avenue for them to expand their substantive knowledge of the law. These effects on identity and substantive knowledge decreased the abusers' ability to continue to exercise their private tyranny over them. The legitimacy of their law-like hold diminished, as it became clear that other forms of law were available to the women.

The Difference Advocacy Makes

Advocates figured largely in Seattle women's stories. Women were at pains to distinguish the many different advocates they spoke with as they told me their experiences (e.g., "That was my New Beginnings advocate, not the Protection

Order advocate"). Some women, like Ivy, came in contact with advocates in three different parts of the system: criminal (prosecutor's office), civil (Protection Order) and community-based organization (New Beginnings). As Ivy put it, it was like they were "coming out of the woodwork" once she asked for help. Advocates played an important role in terms of reinforcing for women that something happened and that it wasn't their fault. The very fact that a person existed whose job it was to support people "like me" validated for women that their problems were real and they were worthy of assistance.

Advocates made the workings of the system visible to the women, calling them to update them on the status of prosecution, for example. Women in Seattle seemed to feel better about their case outcomes, even when they did not differ much from the deferred prosecutions some women in Arizona encountered. It seemed that this was in part because of the efforts advocates made to explain to the women how the system worked and emphasize that their case was being taken seriously. In Cover's terms, advocates made the Word (legal interpretations) intelligible to women. Even when the law did not exercise its coercive power as fully as it might have, advocates were able to place this outcome of legal interpretation in a context which allowed women to maintain their sense of the law as a good resource, and a viable alternative to the abuser's law.

Advocates provided support in intimidating environments like court. They also helped women anticipate what would happen next in the legal system, making disappointing or humiliating surprises less likely. Not all advocates were perceived as equally helpful. Women were most likely to be critical of their criminal advocates. This is not surprising, as these advocates work closely with other repeat player court personnel like prosecutors and judges. As Blumberg points out, players who repeatedly see each other in court may find that their most important relationships are with one another, not the people they represent (Blumberg 1967). A pull to maintain relationships with judges and prosecutors could exist for the advocates in the prosecutor's office. Indeed, one woman told me that her criminal advocate reprimanded her for crying and told her that she "would not allow her" to cry in court. While the Protection Order advocates were also based in the court system, that group had maintained closer ties to community organizations; they were more likely to attend trainings and events held by community-based and more overtly feminist organizations than the prosecutor's advocates. It is possible that the relationships formed in these contexts formed a countervailing influence, lessening the pull of the relationships among the repeat players in court. Even still, Protection Order and prosecutor's advocates provided women with information, support and assistance far beyond anything any woman in Phoenix experienced.

Legal Consciousness in Seattle: Law as a Viable Alternative

Identity as a Rights Holder Expanded

Generally, women who called the police for help with domestic violence found themselves identified as battered women, or victims of domestic violence. For some, like Trina, this was a surprise, but one which helped them sort out their experience, validated their sense that something was wrong, and led them to connect to resources. For others, it coincided with what they already felt to be true, and reinforced their feeling that their rights had been violated. When police treated assaults as serious crimes, took reports and arrested abusers, women's sense of themselves as holders of rights which would be protected by the state was expanded.

When the system responded to women's claims of abuse in a way which was consistent with their aspirational ideals for how it should work, women generally felt that they were perceived as reasonable and competent people. Telling me about her Protection Order hearing, Sarah noted that her advocates had ensured that her medical records and a copy of the police report were available to the judge. But she didn't credit the presence of these records with making the hearing go well. In her mind, it went well because "I was fortunate [in that]... I have a good memory, and so was able to detail exactly what transpired between

me and Vincent before he hit me. And I was distinct enough in why I wanted a PO. I said he threatened to kill me or have me killed." Sarah saw herself and her competence as instrumental to achieving a good outcome, in part because her concept of what should happen coincided with what did happen. The legal proceedings validated her sense of reality and her identity as a reasonable person who had been victimized. They also strengthened her faith in the state's law as an alternative to the private tyranny she had suffered. Had the hearing not gone well, in spite of Sarah's clarity and the availability of "proof" of the abuse, Sarah might have felt as women in Arizona tended to feel: that their experience was discounted, that they were perceived as liars or hysterical, and that the system of law was unhinged from reason, and thus illegitimate.

In addition to expanding women's sense of self as rights holders, legal actors in Seattle seemed to refrain from constructing battered women in negative ways, for the most part. While women in Phoenix had experiences with police, prosecutors and judges in which legal actors implied that they were lying or unreasonable, only one woman in Seattle related a similar experience to me. Most felt respected by the people with whom they interacted. When asked what she surmised the police and prosecutors thought of her situation, Ivy responded, "I don't know, because they were so damn professional. I did not get the feeling they made judgments, and that was a good feeling. I actually felt like pretty

much everyone I talked to was on my side, was actually hoping the best for me, rather than 'you stupid bitch, if you wouldn't have been there it wouldn't have happened.'"

How the Experience of Mobilization Affected Tactics the Next Time

As in Phoenix, legal consciousness was closely tied to the experience of mobilizing law. But in Seattle, the experience of mobilizing led to a very different kind of consciousness. Rather than discouraging conceiving oneself as a rights holder entitled to the state's protection, most women who called the police for help found this identity reinforced. Rather than making them feel that it might be dangerous to call the police, most of the women in Seattle felt in retrospect it was a very good idea. Having a positive experience with the police and prosecutor after mobilizing law shaped women's pragmatic sense of what was likely to happen if they called the police in the future, which in turn affected their assessment of options and their evaluation of the tactics available to them if they were assaulted in the future. Trina was sure she'd call the police again if she were being stalked by a former partner (but not for rape). Ivy's sense of her rights was expanded considerably and she was ready to call the police for help if she felt her rights were being trod upon. As she told me, "I am not afraid of calling the police...I have rights."

Positive experiences with the police also changed the balance of power between the abuser and the woman, interrupting the abuser's tyranny. This may explain in part why it seemed that the women I met in Seattle were able to free themselves of their abusers more quickly (on average) than the women in Phoenix. (64% of the women in Phoenix were seeking help to end the abuse a year or more after their break-up with the abuser. In contrast, only one woman in Seattle had been broken up with her boyfriend for more than a year. The average number of months since break-up in Phoenix was nineteen and the median was twelve. In Seattle the average number of months since break-up was ten, and the median was six months.) Some women were able to bargain differently with their abusers after a positive criminal justice system response. After Sidney filed a Protection Order and the police made him leave her apartment, she began seeing him a few months later after he found his own place. When he would refuse to leave her apartment during or after an argument, she threatened him with calling the police. She told me about one time in particular when "he wouldn't leave and he wouldn't leave and he wouldn't leave. So there was a couple of times when I was like 'Look, either leave or I'm calling the cops. It's that simple.' And as soon as he realized there was a connection [on the phone to the police] and I started speaking, he was out the door." Because both of them knew that the police would actually show

up and do something, Sidney's power in the relationship was increased because threatening to call the police was a viable tactic. Women in Phoenix could not rely on a similar threat. There, calling the police as a means to controlling behavior became less and less a viable tactic as women's pragmatic consciousness about police response increased.

State's Law Differed from the Abuser's Tyranny

Law in Seattle, for most women, seemed to be attached to a set of rational rules: violence was wrong and resulted in consequences of some sort (at minimum, arrest). Police and prosecutor response to the abuse was comprehensible to women. Even Trina, whose case was dropped for lack of witnesses/evidence, understood why the prosecutor had to make that decision. In contrast, women in Arizona encountered a system which seemed to echo their abuser in terms of capriciousness, changing and incomprehensible rules. Women in Seattle encountered a system which made sense to them. The system itself did not seem abusive to them, even when the outcomes were not exactly as they might have wished.

Notably, this was less true for urban Native American women, who received much less strong responses from Seattle police and prosecutors overall. For them, law was clearly part of a raced power structure, and another venue where

they experienced institutionalized bias.

Support and Facilitating Resistance

Another key part of the experience of law for women in Seattle was that it often led to an expansion of their support networks and a decrease in their isolation. Because women were referred to community- and system-based advocates, they had obtained support they had lacked prior to invoking law. Most women were surprised by how much support they obtained, as summed up by Ivy's exclamation about people coming out of the woodwork to help her. Contacts with advocates increased women's abilities to resist their abusers.

The plethora of advocates a woman might encounter in Seattle also meant that it was relatively easy for women to find someone who would help her think through avenues for getting away from the abuser or trying to stay safer while with him. Advocates were sometimes an important alternative to family as confidants. Unlike family or friends, advocates were consistent with a message that the violence was wrong and that the women were not to blame for it. And importantly, advocates helped women identify the resources they needed to get away.

Invoking Law Becomes a Viable Threat to Abuser

One of the most important outcomes of Seattle's criminal justice system

response was that it expanded women's power in their intimate relationships to the extent that threatening to call the police actually meant something. Once an arrest had occurred, the abuser's and the woman's pragmatic assessment of what was likely to happen when the police arrived included the likelihood of arrest: women's experience with the legal system decisively shaped their consciousness about naming their experience and the tactics they could take to respond to abuse. The strong response most women received from police meant that when women threatened to call the police, it was a meaningful threat, whereas in Phoenix, threatening to call the police clearly had little meaning, as both parties knew it was extremely unlikely for any consequences to follow. This increased leverage, combined with the support the women I spoke with had found, seemed to result in abusive relationships ending more quickly in most cases. While my sample is too small to state it decisively, it generally seemed that women were able to resolve their abusive relationships more quickly in Seattle.

Race and Seattle's Response

Not everyone shared the same positive experiences in Seattle, and while the study sample size does not lend itself to statistical analysis, the difference seemed to rest on race. In particular, Native American women reported having

difficulty with the police. Maureen Umtuch's experience illustrates this.

Maureen, an Alaskan native, was twenty-six at the time of our interview. She had come to Seattle with her abuser, Andy, but wanted to get back home. Andy (who was half Native and half African American) had foiled her previous attempt to fly home with a ticket paid for by Maureen's brother by stealing her ID card and her Social Security card, thereby preventing her from being able to get on the plane.

Like the other women, Maureen had endured very serious abuse. Andy controlled any money she obtained, had cut her with a knife, made death threats, and had punched and kicked her (with steel-toe boots) so badly that she needed to go to the hospital for stitches and other medical care. When they were in Alaska, he had locked her outside "in the snow with no shoes on." He had stalked her every time she left him. In Maureen's words, he "hounded her" and would not let her break up with him. Maureen's family was unsupportive of her, blaming her for the violence and facilitating Andy's finding her when she tried to leave him. Thinking about Andy's death threats and the difficulty of getting away from him, Maureen said "I just know I am going to die a violent death."

It seemed that police were less likely to perceive Native American women as "real" battered women, and instead saw their problems through the raced lens of

"urban Indian trouble." Maureen thought that she had talked to the police about Andy's violence at least three times in the year previous to our interview.

However, Maureen's housing was unstable, she had had a drinking problem, and many of her conflicts with Andy took place on the street instead of in a private residence. The police had been involved multiple times, but for Maureen, the outcomes of these involvements were unclear or meant nothing. (The prosecutor had apparently filed charges on at least one incident because a No Contact Order was in place.) At one point, Andy had assaulted her (in public) so badly that she passed out, and came to in the ambulance on the way to the hospital. She was unclear if a police report was filed for that incident, and does not remember seeing any police at the hospital. Another time, he had assaulted her on the street almost immediately after getting out of jail. Maureen flagged down a passing officer. She had an injury to her eye as the result of this assault, and told the officer that a No Contact Order was in place from the prior assault. She said to the officers, "He's got a No Contact Order, what are you guys going to do about it?" but "they did not do nothing, they told him to walk the other direction."

Maureen had felt the force of the law herself. She went to jail for an incident in which she pushed a man. She had been in a store buying take-out food when a man shoved her and caused her to drop her food. Maureen

explained, "My mood fell down. I got so angry I went over and I pushed him and spat in his face. The police came, I went to jail. I was so surprised, you know. All the beatings I would get and Andy would not go to jail. I was standing there like...this is ridiculous, you know. I am going to jail over this little petty stuff and the more abuse Andy has gave me and he did not even go to jail." Unable to bail out, Maureen spent fifteen days in King County jail. This experience contributed to her feeling that official law was capricious and unreliable.

Reflecting on why the officers didn't do anything about the domestic violence, Maureen immediately pointed to race and constructions of identity as the cause: "I'm a different color from what they are. I'm Alaskan native." And further, "they don't like colored people. I'm a person of color. They don't like that. I know it was because of race. The police are very racist...[They think] I'm just a bum. I'm just a Native drunk, that's all. I deserve what I get. They're sarcastic...they talk down to me like I'm a child or something, like I can't understand their language."

The data from the Cycles of Violence project confirms that Maureen's perception was shared by other Native American women. In a focus group

conducted at the Seattle Indian Health Board's Native American women's domestic violence group, similar issues were raised.²⁶ About seven women participated in this group. Like Maureen, the Native American women in this group, while discussing good and bad experiences with the police, repeatedly mentioned their perception that officers took them less seriously because of their race. One woman recalled a time when she called the police for domestic violence and she felt that the male officer had "immediately taken [the batterer's] side, being as he's white [and]...I'm a drunk Indian." Another said she didn't like to call because of her fear of the attitude of "oh well, she was drunk, she's Native or whatever" coming up in court. A third said, "The trust for the cops doing anything with Natives...I feel they're not going to do anything good or right for us, even if we do call. Just from the treatment they've shown in the past." Batterers were apparently also aware of the power of calling on a devalued racialized identity. Even Native American abusers actively mobilized the stereotypes in order to protect themselves: in one case, an abuser poured beer on his partner before the police arrived to make it appear that she had been drinking to excess, illustrating how abusers are willing to make use of any tool

²⁶Cycles of Violence Focus Group

the environment may offer them, including racism.

Native women in Seattle struggled with non-responsiveness from the police, similar to that experienced by both white women and women of color in Phoenix. One told how when she called the police in response to an assault, her batterer left, but she "knew exactly where he was, and they didn't even pursue, didn't go and check and arrest him. And then he came back and beat me up. Because they [the police] go 'Well, call us if he comes here again.' I go, 'Why should I call you guys, why can't you go get him now?' [They said] 'no, if he comes back here, then call us'...and he did come back again, but I was beaten to a pulp." During the focus group, when the facilitator asked about protective orders, all the women burst out laughing: a unique response among the five groups conducted. While most of the women had obtained Protection Orders, they had come to feel that they were a joke; none of the women had any success getting their orders enforced.

On the flip side of unresponsiveness, it appeared that more Native American women had been arrested for domestic violence as a result of attempting to defend themselves. Several told stories of being assaulted and trying to fight back. As one explained, her abuser had beaten and strangled her; she broke free and grabbed a chair to hit him. As a result, he had a small cut on his head and was bleeding when police arrived. She said, "The police seemed more

concerned, 'Why is he bleeding?'...I was defending myself. But even with witnesses testifying that he was attacking me, they were more concerned why was he bleeding." Another chimed in at this point: "I had the same incident basically. I was a victim and I was defending myself...he was choking me...I got up and hit his face, so his nose was bleeding and when the cops showed up he was bleeding and I had no marks so I went to jail...he didn't go [to jail] at all."

At the same time, some of the women in the Native American group had positive experiences with the police. Two mentioned times when police acted strongly and decisively to stop abuse, but these seemed to take place when the violence was at a very high level. One woman described how the "[officers took] all the evidence, taking pictures, gathering up evidence, I'm talking about the bed, the linen, the clothes that he ripped off, the fingerprinting—everything was taken. Everything was right in line" after her abuser broke into her house and beat her in the middle of the night. Another told about a time when she had serious and visible injuries (and was sober). That time, "They [the police] came out, they made a report and proceeded to take me to the hospital to be thoroughly examined...we took pictures and they proceeded to put me in a cab to take me to the DV shelter...so everything was a competent job, all the way." After telling this story, the woman made a joke about having "one good experience," the humor of which relied on the clear overload of bad experiences

women in the room had recounted.

My interviews and the focus groups conducted by the Cycles of Violence project in Seattle begin to reveal a complex picture regarding relationship between race, legal mobilizing and legal consciousness. Because of the limited number of women of color in my Seattle sample (two), and the Cycle of Violence primary investigator's decision to transcribe the focus groups without tracking the race of individual speakers (so one can know that a group was 30% African American, but not which speakers were African American), it is difficult to make definitive statements about race. However, it appears that white women's experiences with the police were consistently more positive than women of color's, and that white women in Seattle felt more sure that they would get a good response from the police and courts and so felt more free using the threat of involving formal legal officials with their abusers as a way to change the balance of power and challenge their abusers' tyranny.

It seemed that, particularly with Native American women, and perhaps with African American women, police may have been less inclined to see the women as legitimate or deserving domestic violence victims, and more likely to classify their cases as "garbage" or trouble cases. Thus the "model" domestic violence response was not activated for these women because they did not fit the officer's idea of the deserving "battered woman." As Patricia Hill Collins makes clear in

her work, women of color are saddled with controlling images which preclude "innocence" or desert. This seemed to play out to some degree in Seattle, but not to as great a degree as it did in Phoenix.

CHAPTER SIX: A NOTE ABOUT CIVIL LAW, PARTICULARLY CUSTODY

For the women in Seattle and Phoenix who were enmeshed in custody disputes, their past victories and disappointments with the police and courts seemed trivial in comparison to the pain and frustration they felt trying to enlist legal actors' help in protecting their children from men they considered dangerous. The issues around custody and visitation for battered women are too complex to explore adequately here and merit further study. However, because it was such a large concern for a few of the women I interviewed, and because women demonstrated such similar consciousness about their custody battles regardless of whether they were in Phoenix or Seattle, it merits some attention.

For these women in both cities, the civil legal system loomed as monstrous, capricious, whimsical, and at times, cruel and incomprehensible. At the same time, they held on to their idea of what *should* guide legal decisions regarding custody, or their ideal vision of justice. In Seattle, women who had positive experiences with the police often came out of the other side of their abuser's arrest and prosecution feeling clear about their rights, what they could expect from legal actors, and their own boundaries for the future. In contrast, in both

Seattle and Phoenix, women involved in custody disputes seemed wary and unsure about what they could expect in the future, what rights would be accorded them, or even what basis legal actors would use for decision making.

In overseeing and ordering custody and visitation arrangements, legal actors (judges, guardians ad litem and court-appointed specialists) literally define family life. Custody conflicts bring how ordinary people think about parenting, family and children's well-being into direct confrontation with law's power to define these intimate aspects of their lives. In the course of custody battles, guardians ad litem and court-appointed experts receive permission to examine a family's life and make judgments about both parents. In announcing their decisions, judges may make comments about a parent's ability to properly nurture and protect their children—judgments which may feel intensely personal. In many respects, this area of civil law is intensely personal, not just because it touches on the litigants' intimate lives, but also because, in the absence of clear written law and closely monitored practice, the personal opinions and biases of judges have so much free reign.

Neither Seattle nor Phoenix possesses an advocacy program specifically for battered women engaged in custody and visitation conflicts. Very little free legal assistance exists for people engaged in family court in either city. In Seattle and Phoenix, as in most cities, efforts at reform and efforts to build a coordinated

response to domestic violence have focused on the responses of the criminal, not civil, justice system. Thus, in both places, women either had to retain an attorney or attempt to represent themselves. Arizona and Washington statutes provided minimal direction to judges regarding custody and visitation when one partner is abusive. Washington law simply states that a parent's residential time with a child shall be limited if it is found that the parent has a history of domestic violence, and that when domestic violence is present, decision making regarding parenting plans does not need to be mutual (RCW 26.09.191 2(a)). The Arizona statute provides judges somewhat more guidance. It states, "The court shall consider evidence of domestic violence as being contrary to the best interests of the child. If the court finds that domestic violence has occurred, the court shall make arrangements for visitation that best protect the child and the abused spouse from further harm. The person who has committed an act of domestic violence has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development" (ARS 24-403 B).²⁷ Both of these laws leave a great deal of room for discretion, especially in terms of

²⁷ As of 2000, this section of the statute has been significantly strengthened, clarifying that a rebuttable presumption exists against giving custody to a parent who the court believes has engaged in domestic violence; it does not require a police report to "prove" domestic violence and gives judges options for increasing women and children's safety.

arriving at a determination that domestic violence is present.

The women I spoke with felt themselves at a severe disadvantage in court as they attempted to have their experience of domestic violence recognized and taken into account in custody determinations. Martha Mahoney explains, "The standards for deciding custody disputes make it difficult to raise questions of violence. On one hand, the woman's failure to exit earlier may be seen as personal weakness and discredit her mothering; on the other hand, if judges or social workers feel she overemphasizes violence in the attempt to gain sole custody, she may be seen as manipulative and lose custody of her children completely" (Mahoney 1992, p1304). Mahoney's point was echoed in a roundtable discussion with civil attorneys in Washington regarding custody convened by the Washington State Domestic Violence Fatality Review:

Civil attorneys on review panels and in advisory groups felt that biases against women, especially women who are immigrants and/or women of color, negatively affected their clients' chances of obtaining justice in custody and dissolution matters. Attorneys spoke with frustration of the degree to which judges seemed to routinely discount battered women's credibility. The assumption that women lie, and that many of the claims of domestic violence raised in divorce and custody

proceedings are false, negatively affect women's chances to obtain thoughtful court orders which address safety. This is particularly true when women must represent themselves because they cannot access an attorney.

A judge on one review panel mentioned that colleagues in the family court did not see domestic violence claims as credible because so many women made them. Judges may not realize that intimate violence is more common than many people think: research indicates that nearly one in four women in the U.S. experience some sort of physical or sexual violence in their intimate relationships during their lifetime.²⁸ Violence and abuse are excellent reasons to seek a divorce—it should not be surprising to find higher than average claims of abuse amongst divorcing women (Hobart 2002).

Research indicates that men who abuse their spouses are quite likely to abuse their children as well, and that seeing one's father abuse one's mother is

²⁸ National Violence Against Women Survey, conducted from November 1995 to May 1996. Reported in *Extent, Nature, and Consequences of Intimate Partner Violence*, The Centers for Disease Control and Prevention and the National Institute of Justice, July 2000.

traumatic and difficult for a child (Straus 1983). However, in both Phoenix and Seattle, women thought judges saw little connection between abusing a child's mother and being an appropriate parent to that child. Judges often gave abusive fathers the benefit of the doubt, and allowed them unsupervised overnight visitation with their young children, or gave them primary custody. In theory, both states' laws offer some ground to challenge judge's determinations of custody in domestic violence cases. However, in practice, it is very difficult to hold judges accountable to the minimal guidance written law provides.

Petitioners engaged in family law conflicts have few resources beyond trying to get assigned to a different judge if the judge handling their case ignores or misinterprets the guiding statutes. For many battered women, simply retaining a lawyer poses substantial financial burdens; taking on a judge's performance is beyond most women's ability. Additionally, with the stakes being so high (access to their children), most women do not wish to risk making anything worse by appearing overly antagonistic.

For women who found themselves caught up in conflicts regarding custody, the legal system dominated the most important aspects of their lives—where they lived and how they cared for their children. It impacted them in the most painful of ways when they felt that their children's well-being was disregarded. They saw law and the legal system as a tool for their abusers to continue

controlling their lives, even after they had left. They perceived legal actors as willing assistants to their abusers who consistently ignored their claims of danger to themselves and their children. Julie, a mother in Phoenix, described the legal system this way: "There is no moral...it is almost like it rules over, it violates; it's almost like a monster. It is almost like a dictatorship."

Common themes emerged in women's stories about their custody disputes in Phoenix and Seattle. Like the police and prosecutors in Phoenix, judges and abusers' attorneys often relied on controlling images of the battered women to make the violence against them and their children less visible and vivid, or to deny the existence of domestic violence altogether. Women were characterized as kidnappers, vengeful, manipulative, and of course, bad mothers. It seemed that judges frequently refused to acknowledge the abuse, and thereby freed themselves from any obligation to adhere to the directives in the written law regarding custody and domestic violence. Finally, women often dwelled on questions of proof: of abuse towards them, of their partner's manipulation or inappropriate parenting of the children, or of the abuse of their children. These themes are illustrated in the following stories.

Julie's Story

Julie Johnson, like several other women I interviewed, had become the

target of the state's punitive legal action as she sought to escape violence and protect her young vulnerable children from abuse. She did exactly what battered women are often told to do by friends, family and other interveners: she fled her abuser and her home with her children. Upon doing so, she found that her batterer was able to control her life through encouraging the prosecutor to file criminal kidnapping charges, engaging in custody battles, making threats to take the children, and ultimately, having sole custody.

Julie was involved with Mark from the time she was fourteen, in 1975. In a sense, law was literally Mark's friend: one of his best friends was a police officer who, when he heard a call to respond to Julie's address for domestic violence, would show up and talk/pressure her into going back to Mark. Mark abused Julie severely. She describes having marks and bruises from the violence. Friends, neighbors and family all called the police on her behalf over the years they were together, but no arrests were ever made. Finally, in October 1993, Mark beat her so badly he was arrested and convicted of assault. Julie saw this as a important victory, and indisputable proof that he was violent. However, Mark did not serve any time in jail for his conviction, leaving him free to continue abusing his family. Two months after his conviction, he tried to run down their eighteen-year-old son with a car, and threatened the lives of Julie and her children. (At this time, Julie had four children, two high school aged and two under the age of

ten.) After this event, Julie went to court to request a Protection Order, but the judge denied her request, for reasons that did not make sense to Julie. Feeling that police and courts were unlikely to protect her, she decided to go, as she called it, "underground" and moved to Washington State where she stayed in a shelter, changed her name and received support and advocacy in Seattle domestic violence programs. While she was away, her batterer filed for and was awarded (in Julie's absence) custody of the two youngest children. At that time, he had five felony convictions on his record, including the one for the assault against her. Because she had fled with the children and her husband now had a court order affirming his right to physical custody, the prosecutor filed charges against Julie for kidnapping.

Feeling she could not avoid the criminal charges filed against her forever and needing the support of her family, Julie returned to Arizona after a year in Washington. She did not anticipate the degree to which the criminal and civil justice system would punish her for fleeing the state. After she returned to Phoenix, her children were immediately removed from her and handed over to her abuser, and she did not see them for two years. The judge completely prohibited her visitation while the kidnapping charges moved (slowly) against her, but deemed it appropriate to place them with her husband, who had burglary and assault convictions against him. Julie was astonished and

devastated that she would be kept from her children when her primary concern had been to protect them from her husband's violence. She was not able to get her children back until a series of events set off by her ex-husband breaking his step-daughter's arm. At that point, she filed for a change in custody. Even then, the judge was not convinced that this incident of violence, the drug convictions, the prior assault and another conviction for armed robbery made him an inappropriate father. Julie finally got her children back when her husband went to jail for violation of probation on one of his felony charges, not because any judge ever acknowledged that she was the more appropriate parent. The judicial decisions were incomprehensible to Julie, who, unlike her batterer, had no criminal record and a steady work history. She could not understand how such terrible things could happen as a result of her effort to keep her children safe after the state refused to issue a Protection Order against a man "proven" to be violent by the assault conviction. The consequences of legal actors' decisions in this case were profound. Julie described the pain she felt at the long separation from her children, the damage done to their relationships, and the abuse they suffered while in her abuser's custody.

Looking back at her decision to leave Washington and face the criminal charges and her husband's custody award in Arizona, Julie said, "Well, you know, I was hoping that it would be a justice system. I saw the reality that it isn't. It's

the legal system. I was questioning if it was the legal system because...there are two statutes that the judges should have to consider that there is domestic violence involved before they give custody to the parent. It [these laws] are totally avoided. They [judges] do not abide by that rule and regulation." For Julie, the system did not seem bound to the written law regarding custody or to a more abstract notion of justice which would have taken in her particular situation and her children's well-being. On the other hand, the harsh treatment she received for fleeing with her children to Washington (in the form of being denied contact with her children while charges were pending) was justified by the prosecutor in terms of written law, but Julie felt that the system came down hard on her for resisting male power. As she said (after telling me that law was monstrous and like a dictatorship), "If you break the rules, man made those rules, so in essence you are fucking the law...and regardless of whose lives are at stake, you abide by the rule. There is no pardoning of that [breaking a rule]." Julie's experiences with the legal system left her feeling that law (in practice) was unpredictable and irrational, unhinged from written rules, judgment as to what was best for kids, or any kind of justice.

Constance's Story

Constance Smith's husband of one year, Bill, had become increasingly erratic

and violent in his behavior toward her and her infant. He would insist on holding their baby when he was angry or arguing with her. During these times, she felt he was so volatile that he might drop her. She eventually learned (from her husband's psychologist, who was probably acting on a duty to warn of homicidal/suicidal intent) that he was using cocaine and selling it out of their home and his place of work. After making a rather dramatic escape from their Phoenix home, and fleeing to South Dakota, where she had supportive family, Constance found herself embroiled in a prolonged divorce/custody battle. Underlining the way in which abusers can use the civil court system to control their partners, at one point Bill verbally clarified in court that he didn't really want custody of the child (which he had petitioned for), he just wanted Constance to come back to Arizona. Constance's attorney summarized in writing that Bill "responded [to a question] that he did not want custody of [the child] and that [the child] should stay with [Constance]. [Bill] stated that if [the child] was ordered back to Arizona, the mother would follow." Constance was ordered to fly herself and her child monthly from South Dakota so that her husband could have his visitation. Over the course of multiple court hearings in both South Dakota and Arizona, Constance experienced what she saw as an incomprehensible vilification of herself and bias towards her husband in spite of his arrogance and lack of compliance with court orders. One judge berated her

for being a "despicable" mother, and essentially told her that it was "mothers like her" who were responsible for society's ills. Bill and his attorneys were successful in constructing Constance as a "kidnapper," delegitimizing her claims of abuse. (His task was eased by the Phoenix Police Department's prior poor response and refusal to document Bill's abuse.) His history of abuse, volatile behavior, drug use and the recommendations of the court-ordered psychologist made no difference to the judges involved in this case.

Tearfully, Constance described for me the moment when a judge ordered her to bring her child into court and turn her over to her abuser for four days of unsupervised visitation. Her abuser literally had to tear the screaming toddler out of Constance's arms. Constance felt her child's pain and fear. That evening, a neighbor allowed her to sit in his garage, which was next door to the house where her abuser had her child. She sat in the darkened garage, alone, listening to her child cry for hours. She said to me, "We don't know what happened to her that night, Margaret." She felt helpless, as for reasons incomprehensible to her, the judge had made this decision, without regard to her child's well-being. Constance told me "my heart was in my throat" throughout her abuser's visitations, as she feared for her daughter's safety. Worried that her daughter was being neglected or abused, she felt trapped. She knew if she went over to her husband's home and demanded to check on her daughter, she would be

subject to further punitive legal action, and/or physical violence at the hands of her batterer. But not checking, she felt physically sick, and questioned her value as a mother. Similar to how many women feel with their batterers, in the face of this legal decision she found herself in a no-win situation, where any action had negative consequences and no course of action would positively expand her choices.

After a protracted battle which took place in courtrooms in both South Dakota and Arizona, and included Constance spending ten days in jail for refusing to turn over her child to the abuser, Constance's husband succeeded in obtaining a court order forcing her to leave her supportive family in South Dakota and move back to Phoenix so he could have the child half the time (this while the court-ordered psychologist continued to advise that he should not be alone with the child). She commented that she felt mentally and physically raped by her husband and the legal system. At one point she told me, "I'm a prisoner of the state of Arizona," and that she felt like her ex-husband "owned" her, because the legal system had supported him in forcing her to return to Arizona. Weeping, she questioned if she should have ever left in the first place. As she explained to me, at least if she had never left, she would be around all the time to make sure her child was safe.

Rain's Story

Even more than women concerned with criminal cases, women engaged in custody disputes were focused on questions of proof: proof of the abuse, proof the abuser was an inappropriate parent, or proof that he hurt their children. Some of the women were incredulous that the proof they had was ignored or misinterpreted. They could not reconcile this with an idea of a legitimate or reasonable legal system. As Julie said, "They are favoring the abuser when we have substantial evidence to give the evaluator and the judges. Like I *had* the records that my husband was a...felon. I *had* the records that they convicted him of assault [against me]. My judge *knew* that Mark was convicted of assault. The lawyer that convicted him told my judge...The judge still did not mention my order of protection [in rendering his decision about the custody arrangements]." Custody cases often seemed to rest on having adequate "proof" of the abuse and convincing the judge and other court actors (like guardians ad litem or family court evaluators) that abusers were inappropriate fathers. In both Seattle and Phoenix, women embroiled in custody disputes often showed up at their interviews with me carrying notebooks and files filled with court papers, written chronologies of events, and letters from friends and family testifying to their adequacy as parents and to specific incidents of abuse perpetrated against either the child or the woman by the abuser.

Rain, a young mother in Seattle, came to her interview with a file of court papers she had copied for me. Rain had suffered significant sexual abuse at the hands of her abuser, Lester, as well as emotional abuse. Lester manipulated her by blowing up at the children when he did not get his way. To protect her children, she often gave into his unreasonable demands. Rain had two children. The oldest child, four-year-old Josiah, was not Lester's child. Her younger child, Hannah, was sixteen months old and was Lester's child. Lester had repeatedly hit Josiah. As Rain put it in her request for a protective order, "I am afraid for my safety and the safety of my children. [My youngest child and I] witnessed Lester beating and leaving marks on Josiah...[I experience] daily fear for Josiah, Hannah and I the past year whenever Lester raised his voice, daily fear for Josiah, Hannah and I whenever Lester walked in the door after work. Three to four times a week, Lester hit Josiah on the head and back with books and toys and every time I tell him to stop and he would continue...Dozens of times in the past few years my friends and family members have voiced their concerns for Josiah, Hannah and my safety."

When Rain filed for a Protection Order, the judge initially ordered supervised visitation at Common Ground, a supervised visitation center, for Lester with his sixteen-month-old daughter, Hannah. The judge did not order batterer's treatment or parenting classes for Lester, however. Lester was in the process of

seeking unsupervised, overnight visitation with his daughter at the time I met with Rain. Rain was very concerned that the court would allow this, and that Lester would eventually end up abusing Hannah as he had Josiah. At the same time, she was willing to continue working with Common Ground to ensure his supervised visitation with the child. However, it seemed to her that the judge was reluctant to consider that Lester's abuse towards Josiah might reflect on his ability to parent Hannah, and was considering allowing unsupervised visitation.

Rain had a letter from a batterer's treatment program, which had evaluated Lester. In that letter, the practitioner reported that Lester admitted that he "grabbed his child roughly, ordered him not to cry and attempted to control him. He also spanked and hit the child with objects, such as toys." The practitioner concluded that Lester "has a long history of emotionally and physically abusing his stepchild. It was clear that he lacked the necessary parental skills to be an effective parent." In addition, she had numerous letters from friends testifying to Lester's abuse of Josiah. Still, she was filled with fear that the judge would not believe her or would not see the incidents described as serious, and would order her to allow unsupervised overnight visitation with her small daughter. She saw the court as capricious, unreliable and insensitive to her children's needs.

Around the time I was conducting interviews for this study, a Seattle woman

and her child were killed in a highly publicized domestic violence murder case. In the course of her divorce from Carlton Edwards, Melanie Edwards had told the court about her husband's death threats, stalking and efforts to strangle her, as well as his history of abuse and his lack of reliability regarding appropriate parenting of their two-year-old daughter. However, she had no "proof" of his abuse in the form of a domestic violence conviction. Melanie, like Rain, relied on affidavits from friends and family (including Carlton Edwards' sister) who attested to his violence and the danger he posed to Melanie and Carli. In response, the judge gave Carlton unsupervised overnight visitation, with exchanges of the child taking place at Common Ground (ensuring that Carlton would know exactly where Melanie was at least a couple times a week, as she picked up Carli). After dropping off Carli after one of his visits, Carlton waited around outside until Melanie came to pick up her child, and shot them both at close range in the car. Melanie Edwards' case received a lot of media attention because a woman and child were murdered, but her case typified the challenges the women I talked to spoke of:

- The difficulty of convincing the court that danger existed when they had no "proof" in the form of a domestic violence conviction.
- The judicial disconnect between domestic violence and danger to children.

- The judicial commitment to ensuring fathers' access to children, even when those men were dangerous and actively making death threats against their ex-partners.
- The inability of the civil or criminal justice system to ensure women's safety during visitation exchanges.

Law as Monstrous

In each of these cases, the refusal of the court to consider that their ex-husband's abuse of them might bear on these men's ability to parent appropriately resulted in a magnified potential for their abuser to continue to exercise control and domination over them, even after they had left. Each of these women perceived law as a dangerous force to be reckoned with, one they needed to learn about and try to master since they could not opt out of engagement and had to figure out how to protect their children. Law came to define the most important aspects of their lives in oppressive ways which enlarged their batterer's power over them.

For Julie and Constance, their experiences in custody battles indicated that judges were unhinged from logic or rationality. Asked why they thought the judges had ruled as they did, Constance and Julie both offered a variety of explanations, a mix indicating both a deep lack of trust in the people who

manifested law, but also an enduring faith in the ideals of law. Julie at first said judges needed training and referred to the National Council of Juvenile and Family Court Judges in Reno, Nevada as a source of training and hope. From there, however, she told me how judges in Arizona were involved with organized crime, perverse cults and the like. Along those lines, Constance came to believe that the many judges she had been before were bribed. In fact, her abuser encouraged her to think this, telling her after hearings, "I've got to go pay some people off now." Finally, Julie ventured that she thought there was "evil and there was good. It is almost like evil is taking over. They [judges] are targeting the innocent [children]." In essence, they could not tolerate the innocence and vulnerability they saw in children and so wanted to destroy it by ignoring it, denying its need for protection, and putting children in situations where their innocence would be compromised.

Another set of explanations tended to focus on the bias towards men within the legal system. Rain talked about how because her husband worked at a preschool, people seemed to give him the benefit of the doubt, assuming any man who worked with children was special. Indeed, it does seem that when men zealously seek to obtain custody of their children they are seen as especially admirable, as opposed to women who do the same, who risk being seen as vengeful, manipulative or hysterical, according to Washington attorneys

(Hobart 2002). Julie felt that the standard for acceptable fatherhood was much lower than that for acceptable motherhood, since Mark's drug use and long history of crimes against other people did not seem to bear on judges' perceptions of him as an adequate father. In contrast, she was immediately judged as so dangerous she could not see her children after she left the state with them in response to abuse. Discussing how Arizona divorce law would benefit her husband more than herself and result in her inability to support her children, another woman told me that "he had the best support system in the world."

Conclusion

Neither Seattle nor Phoenix has a "Mobilization Facilitation" model when it comes to divorce and custody issues. Like almost every other place in the United States, when it comes to divorce and negotiating custody, for the most part, battered women must fend for themselves. While some legal services offices do provide supports for family law, many don't. Very little free legal assistance exists, and attorneys are generally ill-prepared for effectively responding to the challenges a history of abuse brings to the divorce process (Hobart 2002). In contrast, in the Seattle criminal justice system, police and prosecutors work side by side with advocates who educate them, argue for battered women's interests,

hold them accountable to model policies, and identify and work to change systemic problems. No parallel exists in the civil system. Attorneys, guardians ad litem, judges and various other "experts" who may be called into the process, rarely, if ever, come not contact with an advocate; they are not required to obtain education about how domestic violence may affect their work. In fact, many judges actually avoid such training, out of fear that they will be accused of being biased.

While legal consciousness differed in significant ways between women in Phoenix and in Seattle whose primary experiences and concerns related to criminal assaults, something very different emerged among the subgroup who were focused on custody battles in the wake of domestic violence. Among that group, legal consciousness did not differ substantially between women in Phoenix and women in Seattle. Facing similar implementation structures, a similar lack of support and advocacy in the civil arena, and similar experiences of being discounted, having their children placed in risky situations and having the domestic violence ignored, they described laws in similar ways: as monstrous, dictatorial and incomprehensible.

Women in both cities had acquiesced to what they saw as unfair and dangerous court orders, for fear of angering the judges any further and losing contact with their children. Thus they found that law, in the form of judges, had

considerably expanded their abuser's power over them. Mothers engaged in the civil system found it virtually inescapable, particularly when abusers had resources to harass and pursue them legally. Unlike the police, whom women could choose not to call, battered women enmeshed in court decisions and processes could not escape them or opt out without risking losing their children to the abuser altogether. Throughout their struggles, several women did lose contact with their children, some for years, as courts punished them for taking them from their fathers.

For women engaged in custody disputes in both cities and for almost all of the women in Phoenix, the reality of their experiences with police, prosecutors and judges stood in stark contrast to their consciousness of how law "should" be, and their sense of "fairness." Their interpretations of their legal experiences were extremely critical. Rather than accepting that they did not have a right to be free from violence or to protect their children from dangerous fathers, they continued to hold fast to their sense that they did possess those rights. Instead, they began to see the machinations of the legal systems and legal actors they encountered as illegitimate. Law as they experienced it was not law as it should be.

The critical consciousness I observed in women regarding law's role in custody disputes seems different from the consciousness that Ewick and Silbey

labeled "with the law/law as a game" or "against the law." Some of Ewick and Silbey's subjects described law as a game that could be played, one in which the rules which separated law from everyday life were "porous," and the object is to "successfully deploy and engage with law" (Ewick and Silbey 1998, p48). For some, this was a source of disillusionment, because it meant that law was not about justice. The women I spoke with expressed a great deal of resistance and critique of legal actors' actions and decisions when it deviated from what they thought of as "fair" or "just" or "right" and especially when those actions and decisions placed their children in danger. However, their discussions often made a clear distinction between legal actors' actions and decisions versus the transcendent notion of "law." Thus, while the people and the concrete institutions they interacted with (this or that judge, King County Superior Court or Phoenix Municipal Court) became delegitimized, women seemed to hold onto a notion of *law* as it *should* be. This split between the local manifestation of law and women's vision of law meant that for some women, at least, the concept of law or justice was not completely empty or meaningless. Rather, they saw local legal institutions and actors as delegitimized and dangerous. Their resistant vision was a source of strength and even solidarity among the women with whom I spoke. Interactions with advocates and battered women's support groups supported and reinforced this vision. For some women, their vision of

how law should be had formed the seeds of political action.

CHAPTER SEVEN: CONCLUSION

Overview

- Legal consciousness varies significantly from locality to locality, even as the problems people face and the written law they appeal to may be the same. Policy infrastructures make a great deal of difference in people's legal consciousness and legal mobilization.
- Legal consciousness is complex and multidimensional. People may hold several competing ideas about the legal system or their rights at the same time. Legal consciousness and legal mobilization are complexly intertwined.
- Law, legality and the actions of legal actors play important roles in constructing intimate relationships, especially when the power differentials brought on by the use of violence in intimate relationships is at stake. Their effects differ with local context and policy infrastructure.
- "Legal interpretation takes place in a field of pain and death" not just in capital cases, but also in cases often dismissed as "garbage": misdemeanor domestic violence cases and custody disputes. How legal actors interpret and respond to (or fail to respond to) domestic violence

significantly affects victims' perceptions of the legitimacy of the state's legal system.

- Reforms enacted over the last twenty-five years regarding domestic violence have had uneven impact on battered women, but there is reason to be encouraged. When localities adopt a Mobilization Facilitation model in implementing policies, and in particular provide legal advocates for battered women, then reforms can improve the quality of life for many battered women.

In the following discussion I will elaborate on each of these key findings.

The discussion is organized around the five goals I initially posed for the study:

- To examine legal consciousness and legal mobilization in two distinct environments.
- To explore the relationship between legal consciousness and legal mobilization.
- To explore how law affects power between disputants, and pursue how people think and operate in the shadow of the law.
- To gain a deeper understanding of the relationship between violence and the law.

- To understand more fully the ways in which legal reforms in the past twenty-five years have affected battered women's quality of life.

Legal Consciousness in Two Distinct Environments

Whether they choose to stay or leave, battered women universally desire for the violence and abuse to stop and for a greater measure of freedom and autonomy in their lives. Women also want their children to be able to thrive. In the wake of twenty years of domestic violence reforms, women are often convinced that they possess the right to be free from violence, and that legal actors should recognize abuse, especially physical abuse, as a violation of their rights. They may look to the civil and criminal legal systems for assistance in achieving these goals, either through arrests and vigorous prosecutions, or Protection Orders, dissolution and custody processes. However, women in different localities encounter very different systems as they attempt to mobilize law, in spite of the fact that written laws are relatively consistent in many states. Differences in local implementation of laws result in very different experiences once one has mobilized law, and thus different consciousness in response. In this study, Seattle typified the Mobilization Facilitation model, in which the city has made efforts to make mobilizing law easier for battered women by providing legal advocates both within and outside the legal system and setting high

standards for training and performance by police and prosecutors. Phoenix, on the other hand, embodied the model of Legal Protection, described by Bumiller. In the model of Legal Protection, written legal protections may exist, but the burden of mobilizing the law rests almost wholly on the victim, and the city or state takes relatively much less responsibility for easing access to those protections, or encouraging victims to act upon them.

Consciousness Regarding Assaults and Criminal Law

In my conversations with battered women, I found that women in both Phoenix and Seattle were clear that they had a right to be free from violence. Further, they thought that physical violence was wrong and "against the law." However, most called on the force of law (police or courts) cautiously, unsure whether or not legal officials would validate their claims and use the state's force to limit their abusers' ability to hurt them and their children. Encountering very different implementation infrastructures regarding criminal law, women in Phoenix (Legal Protection) and Seattle (Mobilization Facilitation) had very different legal consciousnesses, overall. White women and some women of color in Seattle who called the police for help were pleasantly surprised when the police were respectful, affirmed their legal right not to be hit, assisted them in getting connected with advocates, and arrested their abusers. Women who filed

for Protection Orders were similarly surprised and pleased at the assistance they received from court-based advocates. The glaring exception to this was Native American women, who found the idea that legal officials would protect them laughable after their multiple unsuccessful attempts to enlist their help.

On the other hand, while women in Phoenix were similarly clear that they had a right to assistance, and that it was against the law for their abuser to physically abuse them, they found that when they called the police for assistance, they did not receive meaningful help. On the contrary, police frequently took no action, or worse, seemed to validate the abuser's perceived right to use violence to control their partners. Through police inaction, and through court orders, legal actors in Phoenix actually facilitated abusers' violence, sometimes expanding abusers' power over their families. As a result, women perceived the legal system as illegitimate. Their legal consciousness reflected both aspirational and pragmatic evaluations of the legal system and their rights: first, what it should be, how it should work, what their rights "really" were, and second, how it worked in the specifics and particularities of their case, and with their local institutions. On a pragmatic level, they felt that the state's law and legal system served as a tool for the abuser, rather than as one for themselves. In the latter, women were often clear that legal officials would not act to protect their rights or interrupt the crime of domestic violence, but they

did not accept that domestic violence was not a legal problem, or violation of their rights.

Consciousness Regarding Custody and Civil Law

In contrast to the implementation infrastructure surrounding criminal law in Phoenix and Seattle (which are quite different), the civil family law systems are quite similar and consistent with the Legal Protection model. Judicial training regarding domestic violence has not been required in either city; very little free or low-cost legal aid exists for complex custody and parenting disputes; and neither city has advocacy resources focused in the family law arena. When women in both Phoenix and Seattle sought to legally resolve issues of custody/visitation and to limit their abuser's ability to hurt their children, they found legal actors' (judges') apparent disregard for histories of violence and risk of future violence bewildering. Judges responded punitively to their claims of abuse, did not take steps to protect their children, and sometimes issued orders that placed their children in harm's way. Women in Seattle were less fully disillusioned by their experiences in the civil legal system, perhaps because of their ability to find good support elsewhere and the fact that their encounters with the criminal system made sense to them. Court decisions expanded abusers' power and judges repeatedly refused to hold abusers accountable for

violence to the women and children and for adhering to court orders (to get batterer's treatment, or refrain from drinking alcohol, for example). Encounters with the legal system focused on custody often left women feeling disadvantaged and as if the legal officials were evil, corrupted, on the abuser's side or simply beyond logical explanation. The apparent refusal to act to protect them from violence and their children from abuse, the way in which officials seemed to overlook, minimize or even validate their abuser's actions undermined the meaning and legitimacy of local legal institutions and actors for them, but not the "transcendent" (in Ewick and Silbey's terms) or "aspirational" concept of law.

The Relationship Between Legal Consciousness and Legal Mobilization

Deciding Whether or Not to Mobilize Law in Two Policy Environments

People both within and outside the legal system are often puzzled about why women who experience abuse do not call on the police or courts more often. Rejecting the hypothesis that battered women are irrational, I surmised that choices that appear puzzling to others are in fact decisions grounded in a calculus of information and analysis regarding the likely utility of mobilizing rights. As Bumiller points out, "The rationality of a response to a [potential] legal problem is defined by the situation. To otherwise imply that [victims']

standpoint reflects an invalid interpretation of reality denies the fears and hardships in these people's lives" (Bumiller 1988, p112). The model of Legal Protection assumes that claiming rights will always be in one's self-interest, and that self-interested people will always claim their rights. In her study, Bumiller showed how victims of discrimination did not perceive mobilizing to be in their self-interest. This study, by comparing a Legal Protection context with a Mobilization Facilitation context, provides some insight into how the local implementation infrastructure shapes women's consciousness in terms of their strategic decisions regarding calling on legal actors for help (tactics).

The most significant factor in mobilizing law for battered women was their consciousness of how involving legal actors may increase or decrease the violence or danger they were experiencing. While women consistently held to the notion that they had a right not to be hit, this opinion was not correlated in any simple way to invoking that right to their abusers or seeking to involve legal actors. Regardless of what they thought their rights were, women asserted those rights and mobilized law cautiously, based primarily on their pragmatic assessment of what was likely to happen once they did so. Battered women face complex and difficult choices when considering whether or not to attempt to enlist the assistance of legal actors; they must weigh the violence and damage which may follow once they involve legal actors versus the violence which may

ensue if they do not. Both the abuser and the law (via police) promise use of force: abusers promise/threaten force as retribution for violations of the many rules they impose upon their partners; the law threatens/promises its (legitimate) use of force to stop illegitimate uses of force by one person against another.

In Phoenix's Legal Protection environment, the state's law did not appear to be a relevant resource to battered women. They learned, usually through experience, that it was unlikely that police, prosecutors or judges would stop their abuser from harming them and hold them accountable. At the same time, the relevance of the abuser's law-like system of rules and threats of force remains very salient. Unlike the state's law, abusers are present, concrete and tangible. Abusers often follow through on their threats regarding use of force much more quickly, consistently and predictably than the state's legal actors. In such a context, "To act in a passive manner appears irrational, yet assures the victim's survival" (Bumiller 1988, p112). Battered women in Phoenix avoided calling the police because they were acutely aware that poor police response would disadvantage them vis-à-vis their abuser, and called only when they thought their lives were in danger, so they had nothing to lose by calling. On the other hand, women in the Mobilization Facilitation environment who received a strong response from police and prosecutors and had contact with system- and

community-based advocates shifted their consciousness regarding mobilizing law and legalized tactics. They were much more likely to consider invoking their rights and calling on legal actors as viable strategies for resisting their partner's abuse.

Comparing the official law in two implementation infrastructures versus abusers' law-like systems along the dimensions of nature of threats regarding use of force, reliability for following through on those threats and time frames involved illustrates how official law in a Legal Protection environment like that in Phoenix may become much less important in women's minds than their abuser's rules. (See Table 7.1)

Table 7.1 Abuser's Tyranny vs. State's Law in Battered Women's Consciousness

	Abuser's Tyranny	State's law in Model of Legal Protection	State's law in Mobilization Facilitation Model
Threats	Use of violence when "rules" are broken	Use of force when laws are broken	Use of force when laws are broken
Reliability for acting on threats of use of force	Very reliable	Very unreliable	Fairly reliable
Length of time between threat of force and use of force	Very short	Threat to use force may never be acted upon, or prosecutions may occur months from time of assault	Prosecutions may occur months from time of assault, but prosecutor's office contacts victim in the interim

Table 7.1 Continued

	Abuser's Tyranny	State's law in Model of Legal Protection	State's law in Mobilization Facilitation Model
What is required to trigger use of force?	Unpredictable; "violations" of rules may be minor; violence may be inflicted whether or not rules are violated	Extreme, undeniable violence such as broken bones and bloody wounds; high threshold for taking action	Police believe a threat or assault took place; much lower threshold for action than Model of Legal Protection
How are decisions regarding use of force made intelligible?	Abusers may or may not explain their violence; explanation is usually in terms of their rule system	They aren't; or legal actors may offer explanations but they may not make sense to women	Advocates play a large role in demystifying and explaining the decisions of legal actors to victim
Legitimacy in victim's eyes	Illegitimate	Illegitimate	Legitimate
How salient/meaningful in battered women's minds?	Very salient; women fear for their lives	Not especially salient	Salient or very salient

Further, when one considers the relative threats that abusers and victims face in the two different contexts, it becomes more clear that battered women almost always face significant risks whether or not they call the police, but that abusers generally do not face any meaningful risks when police are called in a Legal Protection environment. Battered women weigh the possibilities inherent in law's violence against the abuser's violence. Illustrating this, Table 7.2

compares the risk evaluations battered women may make in Legal Protection and Mobilization Facilitation environments. In choosing between varied forms of violence, battered women must make complex decisions about where the greatest risk is to themselves and kids. Calling the police does not necessarily make one safer, as women in Phoenix found.

Table 7.2 Battered Women's Evaluation of Risks

	Model of Legal Protection	Mobilization Facilitation
What risks does victim face if she does not call on police?	Physical violence, violence towards children, death	Physical violence, violence towards children, death
What risks does abuser face from criminal system for "breaking the rules" and engaging in violence?	Abuser faces few risks; probability of arrest or any interruption in life routine is low	Abuser faces risk of arrest, being held in jail at least overnight, court time, a sentence which includes time-consuming treatment; probability of interruptions in life routine are much higher than in MLP
What risks does victim face by breaking the abuser's rules and calling on police for protection?	Abuser may be further infuriated but more sure that no one will intervene in violence More physical violence, violence towards children, death	Abuser may be further infuriated, but may be aware that legal actors will intervene in further violence; this may mitigate but not eliminate risks of: More physical violence, violence towards children, death

Looking at the very different environments and the responses and consciousness they fostered, this study illustrates the degree to which "law" is local and the value of comparative studies which attend to local policies,

professional norms and implementation infrastructures when considering legal consciousness.

This study illustrates that legal mobilization and legal consciousness are mutually intertwined. People form ideas about rights and law not just from cultural schemas but also from specific experiences. Each instance of legal mobilization results in an experience which is then registered and evaluated, and becomes part of the individual's consciousness, affecting decisions about whether or not to mobilize in the future. While one may mobilize law outside formal legal institutions, and even without the presence of legal actors, mobilization occurs within the shadow of those institutions and the likely actions of legal actors. Instances of mobilization which involved legal actors stood out as more salient in shaping consciousness than those which did not, probably because those experiences directly shape the individual's idea about the "shape" of the shadow of the law.

Interviews also made clear that legal consciousness varies with respect to different aspects of their lives. Battered women did not necessarily generalize their good or bad experiences with legal actors and the legal system to the entire system. This was most clearly illustrated by Trina, who, as an African American woman, insisted that while she expected to receive good treatment around domestic violence, she would never call the police regarding a sexual assault. A

history of law enforcement indifference to rapes of African American women informed this feeling, along with the respectful treatment accorded her when she called about a domestic violence-related incident. Thus, mobilization is not easily predictable; it is influenced by local context, history, "common knowledge" about likely responses, and particular individual experiences.

Dimensions of Legal Consciousness

In the beginning of this study, I argued that there were four dimensions to legal consciousness:

Table 7.3 Dimensions of Legal Consciousness

Interpretation	Interpretation of the material world and events which take place in it
Tactics	Pragmatic assessment of options and choices of tactics, based on expectations of legal actors' responses
Aspiration	Aspirations, expectations and normative ideals, sense of what is fair, what is just, what law "should do"
Identity	Sense of who one is in relationship to law, others, and to one's experience

Tactics

In my interviews, all of these dimensions emerged as battered women described their experiences and decisions about when and whether to mobilize their rights over time. Across the study sites, women differed most markedly with regard to their consciousness around legality and tactics. Based on their

own experiences and what they had heard from others, women expected different responses to domestic violence from legal actors in Phoenix and Seattle. Accordingly, women's calculations regarding tactics differed considerably, with Seattle women much more likely to consider calling the police regarding assaults, and Phoenix women much less likely to do so. Women in Seattle were also more likely to tell their partners they were going to call the police as a way to get them to leave or back off.

Interpretation and Aspirational Consciousness

Women in both cities had similar aspirational consciousness, which was also tied to their interpretation of their experiences: they thought that physical violence was wrong and illegal, and that police and prosecutors should take action to hold their abusers accountable. Once they left their abusers, they thought that action they had taken to protect themselves and their children should be understood as necessary, and recognized as a form of self-defense. They felt that court decisions should have resulted in greater safety for themselves and their children.

Depending on the response they received from legal actors, women's aspirational consciousness served either to validate their own identity as an abused woman and the role of institutions like the police and courts as legitimate

or provide women with an image they could hold onto as they encountered insensitivity and disappointments. Women's idea of how law should be, how legal actors should act, what judges should have done to protect themselves and their children had an important function for women, especially those in Phoenix who did not encounter anything resembling their aspirational vision of law in their actual contacts with legal actors and institutions. Being sure that the violence they and their children were experiencing should be illegal helped women maintain courage and continue to seek help from non-legal institutions, even in the face of legal actors' trivializing and invalidating comments and actions. Women's aspirational view of law prevented the abuser's law-like hold over them to become total in their lives. It offered an alternative vision to the abuser's law, even when legal actors failed to act. Finally, it prevented women from changing their interpretation of the abuser's violence as wrong and illegal.

Battered women's advocates in both cities nurtured and encouraged women's aspirational ideas about law even as they helped women understand the pragmatics of what was likely to occur when they called police or went to court in their locality. In Phoenix, it was clear that women's ideals regarding the legal response to domestic violence played a role in nurturing resistance and solidarity amongst women in support groups. Anger over the betrayal of those ideals had moved some women to action and community organizing in

collaboration with the Arizona Coalition Against Domestic Violence. Some women talked to me largely because they felt that the legal system had so betrayed not just them personally but its own ideals as well, and they hoped that by telling their story they would contribute to fixing the system's flaws.

Identity

When legal actors made decisions which made sense to women, or coincided with their aspirational view of law, it validated their identities as victims of unlawful violence, and as reasonable, responsible people with a legitimate claim on the state's time and energy. This was clearly illustrated by Seattle resident Sarah who attributed her smooth Protection Order hearings to her own good memory and ability to clearly articulate the danger her abuser posed and her fears. Respectful treatment by police and prosecutors impacted women's sense of identity, reinforcing their sense of themselves as rights holders.

On the other hand, women pursuing custody conflicts in both cities, and almost all the women in Phoenix, had found themselves attempting to resist characterizations of themselves as lying, hysterical, mentally ill and/or manipulative women, who either weren't abused at all, or who, if they were abused, probably deserved it. Women recounted various strategies for resisting these constructions, including efforts to be hyper-rational, acute attention to

accuracy and detail so as not to appear to exaggerate, and simply withdrawing from contact with legal authorities in favor of seeking help elsewhere.

Issues of identity stood out particularly for women of color, who were well aware that legal actors may approach them even more negatively as a result of their race, or the perception of their race. For example, one woman in Phoenix was in the midst of a custody battle in which the court had been incomprehensibly unconcerned about the degree of danger her husband had posed to her and her child. Her first attorney, a Latino man, had finally resigned from the case, telling her he thought she would be better off with a white attorney, as he felt the judge was racist. Although she identified as white, she said that because of her dark hair and eyes, people in Phoenix frequently mistook her for a Latina as well, and that she wondered if this had some negative influence on her court battles. Native American women in Seattle spoke directly and freely about legal actors' perception of themselves as "drunk Indians" undeserving of legal intervention. Their consciousness reflected the fact that, in most legal systems, "good" victims must have something to lose that society recognizes as valuable. Historically, women of color's physical safety and autonomy have not been valued by mainstream culture (Collins 1991; Crenshaw 1991; Hall 1992).

How Law Affects Power Imbalances Between Individuals

Law constitutes everyday life. In order to see this, one must examine individuals outside their relationships with formal institutions. Ideas about law and rights get constructed within relationships, and in turn, relationships are constructed by both people's consciousness about what their rights are and what they can expect of legal actors. In this study, I wanted to know what happened at home after legal actors trivialized claims of abuse (as Sally Merry observed in her study of local courts) (Merry 1990). Talking with women about their legal consciousness and legal mobilization over the course of abusive relationships brings the role of legality in constructing intimate power relations into relief.

When legal actors intervened in ways that validated women's fear of harm and held the abuser accountable, women were more likely to call on them in the future, feeling that they had a useful tool in countering their partner's abuse. Strong response from legal actors had the potential of shifting power imbalances in abusive relationships by changing the assumptions of both the victim and abuser about what was likely to happen once police were involved. For example, one woman described how her abuser would leave as soon as he knew she had a connection with a 911 dispatcher, and another how she could simply threaten her abuser with calling in order to motivate him to leave her apartment when he

was otherwise being obstinate. On the other hand, when police and courts ignored claims of abuse and did not act strongly, women felt their own power diminished in the relationship, as one of their rights claims regarding abuse was eroded by the proof that legal actors would not intervene. They described their abusers becoming further emboldened, knowing that the state's law would not be used to stop them.

Understanding of the Relationship Between Law and Violence

As Cover says, "Legal interpretation takes place in a field of pain and death...Legal interpretive acts signal and occasion the imposition of violence upon others...Interpretations in law also constitute justifications for violence which has already occurred or which is about to occur. When interpreters finish their work, they frequently leave behind victims whose lives have been torn apart by these organized, social practices of violence" (Cover 1986, p203). While Cover was focused on capital trials, his words ring as true when considering domestic violence disputes. Going beyond the role of law Cover was considering, this study shows the way in which legal interpretations which result in the state *refusing* to use its force (i.e., not arresting an abuser) can *also* result in pain and death. Cover focuses on the experience of people to whom the death penalty or threat of jail is applied. However, the experiences of battered women extend his

point. In some cases, ignoring or trivializing domestic violence is part of the "organized social practice of violence" and results in battered women and their children having their lives torn apart by privatized (but in the victim's eyes, state-authorized) violence. Inaction on the part of legal actors in the face of violence makes "law" (here understood as legal actors' words and actions) unintelligible and illegitimate for battered women.

Although the state has a long history of ignoring or authorizing masculine violence against women and children in the household, this study also shows that such neglect is not necessarily inevitable. The comparison between Phoenix and Seattle demonstrates how local structures set up to facilitate the implementation of law and mobilization of it by abused women can shift this dynamic, resulting in actions on the part of legal officials which effectively interrupt violence, make law intelligible and meaningful to abused women and conform more closely to their conceptualizations of how law "should be." A Mobilization Facilitation infrastructure like that implemented in Seattle can also shift the balance of power between an abuser and their partner, in essence, allowing the abused woman to use the power of the state as a "club" (in the sense McCann uses it) when she invokes her rights or takes action to involve legal officials in response to abuse.

On the other hand, when no supports exist for battered women within the

legal system, and the model of Legal Protection prevails, legal actors' actions, interpretations and decisions may make battered women and their children more vulnerable to abusers, and increase abusers' power over them. The experiences and consciousness of women involved in custody and parenting disputes made this clear. For them, law, in the form of legal decisions and court orders, became a facilitator of violence.

Legal Reforms and Battered Women's Quality of Life

This study bears out Ellen Pence's assertion that "the private lives of women are shaped not by the men they marry or live with as much as by the institutions in our society that define and shape intimate relationships" (Pence 1999, p 32). My findings suggest that legal reforms have affected battered women's lives in positive ways unevenly and only under when accompanied by change in the policy infrastructure. Changing laws may be foundational in the sense that it creates the basis for further change by committing the state to the rights articulated in the particular law. However, with regard to changes in the criminal laws applying to domestic violence, this study demonstrates how simply changing written law is not enough to change the material lives of women. Women's experiences in Phoenix illustrate the futility of legislative change without concomitant efforts to change the institutions that shape intimate

relationships. Legal reform must be accompanied by strong leadership directives, training and the provision of supportive services, particularly advocacy. Discussing the pitfalls of rights, Elizabeth Schneider warns of the risk of focusing exclusively on court battles, versus organizing and education.

Similarly, it is possible to focus too much on lobbying for legislative change to criminalize domestic violence but to neglect organizing to transform the system which will process those crimes, or to transform the many other social institutions which play a role in defining and determining intimate relations, gender and the possibilities for women's autonomy (Schneider 2000). At the same time, Schneider encourages us to hold a complex perspective, noting:

A dialectical perspective sees lawmaking, rights, and politics as part of a dynamic, complex and multifaceted process in which lawmaking and rights discourse can simultaneously advance and obscure political vision. Lawmaking can be at once expressive, transformative, and problematic...(Schneider 2000).

The Seattle site indicates the potential good which can come of concerted long-term efforts focused on the transformative potential of rights and politics. Activists and policy makers in Seattle have worked collaboratively over the years to ensure an implementation structure which will facilitate women's legal mobilization and assist them in providing for basic needs. In Seattle, women

(especially white women, but even African American women) experienced responses from police and prosecutors which were unheard of twenty years ago. However, enthusiasm about this must be tempered by the reports from Native American women regarding the difficulties they had encountered with dual arrests, lack of arrest and refusals to enforce Protection Orders. It would seem that leadership, training, advocates within and outside legal spaces can shift institutional norms for legal actors. However, those shifts may be limited. My findings indicate that the effects of gender and race constructions are not wholly counteracted.

The Difference Advocacy Makes

For battered women: In particular, this study points to the importance of advocates as quasi-official insider/outsider legal actors. As Elizabeth Schneider says, "Battered women's advocates [where they exist and make legal advocacy a priority]...are now the link between battered women and the legal system...For battered women, access to advocates shapes their satisfaction with the legal process" (Schneider 2000). Advocates can shape access to legal institutions, conceptions of rights, the meaning assigned to the actions of official legal actors like police, judges and prosecutors, as well as nurture resistance to legalized responses to oppression. Advocates make the realization of rights promised in

written law more attainable by providing access to the system and holding the system somewhat accountable. Knowledgeable about how the legal system works, charged with an aspirational vision of rights, and (under the best circumstances) working from professional norms which center battered women's safety and well-being, advocates make the system intelligible and more accessible to victims. Women in Seattle consistently referred to their various advocates (prosecutor-based, Protection Order, and community organization-based) as critical sources of support, information and inspiration. Advocates validated battered women's realities; helped them understand the civil and criminal processes; shared their outrage at injustices they had suffered both at the hands of their abusers and (sometimes) legal actors; and affirmed for battered women that they had the right to live free of violence, to protect their children, and to expect the government to support them in doing so. Regardless of whether or not the state acted strongly upon those rights, women drew strength from feeling that they held them. Advocates nurtured a resistant consciousness in women which helped them keep going even when everything seemed hopeless, assured them of their sanity, and supported them in continuing to ask or demand protection from police and prosecutors.

My findings are consistent with others regarding the relationship between advocacy and satisfaction with the legal system. James Ptacek, in his study of

battered women's experiences in courts, found that, "Fully 70% of the women in Quincy [a study site that had court PO advocates] mentioned advocates or staff in the restraining order office as the most helpful aspects of the restraining order process" (Ptacek 1999, p177). He characterizes the advocates' role this way: "Advocates humanized the bureaucracy, providing compassion and support. They gave information about criminal justice processes and community resources. They helped women develop strategies to keep themselves and their children safe" (Ptacek 1999, p178).

For professionals within the legal system: Professionals within the legal system in Seattle also spoke frequently about the important role advocates played in their work. Prosecutors in particular were very accepting of the advocates' role, seeking it as central in their decision making about charging and in following through with prosecutions. Others within the system also consistently referred to advocates and/or took their role for granted. In her discussion of the role of advocates in domestic violence community intervention efforts and institutional reforms, Melanie Shepard has written, "Creating and maintaining a supportive infrastructure [of social services and legal advocacy] requires collaborative efforts among many community agencies...Advocates for battered women are the stewards of this infrastructure as they direct, guide, and support battered women, while confronting obstacles to their safety" (Shepard

and Pence 1999, p115). In Seattle, advocates seemed to function in the role of stewards and educators. While making the legal system intelligible to battered women, they also helped make battered women intelligible to police, prosecutors and judges, who often feel impatient and judgmental about battered women's hesitancy to testify against their abusers or keep protective orders in place.

When the advocacy network is strong, leadership is invested in the issue and the infrastructure exists for communication between advocates and leadership in the police, prosecutor's office and the city administration; then if an advocate is present or involved, system players must entertain the possibility that someone higher up may hear of their missteps or carelessness. Under these circumstances, advocates may function as watchdogs as well.

An in-depth analysis of why Seattle had created a response to domestic violence which in general was more forceful, more consistent and more respectful of victims is beyond the scope of this study. However, the decision to establish advocates within the legal system and fund legal advocates outside formal legal institutions may be an important factor. Doing so has resulted in a situation similar to that of the Affirmative Action officers Lauren Edelman describes. Edelman found that even if institutions established an Affirmative Action officer position as a "symbolic structure" to "serve as a visible effort to comply with law," that "once in place, structures within organizations tend to

develop a life of their own" (Edelman et al. 1991, p75). Under some circumstances, affirmative action officers have the capacity to effect change within institutions, even when the intent of institutional leaders was only to engage in a little symbolic ceremony in order to maintain legitimacy. Edelman describes the ways in which Affirmative Action officers deal with multiple influences upon their actions and decisions, including professional norms, the preferences of those who have appointed them and the communities who stand to benefit from affirmative action. In her study, she found that guiding professional norms for Affirmative Action officers articulated on a national level did, in fact, bring about some of the best results (in terms of changes in hiring practices and a sense of fairness on the part of involved parties).

Similarly, advocates both within and outside the system become integral parts of these institutions and as a result, the notion of advocacy "takes on a life of its own." Advocates become legitimated experts regarding the proper response to particular cases involving domestic violence. Like affirmative action officers, advocates are subject to multiple pressures: to get along with the people with whom they work most consistently (e.g., prosecutors, police, judges), please those responsible for their position (e.g., funders, the prosecutor's office), and local and national professional norms for domestic violence advocates articulated through the institutions of the battered women's

movement (e.g., the Washington State Coalition Against Domestic Violence, the King County Coalition Against Domestic Violence, the National Coalition Against Domestic Violence, all of which offer trainings, newsletters and other materials which establish norms for advocates). In Seattle, along with making the system more accessible and intelligible to battered women, advocates also influenced and guided change within institutions, moving along the "social and political process" of institutional change (Edelman et al. 1991, p74).

Phoenix, on the other hand, has laws but much fewer advocates, and far fewer situated within legal systems. Police officers and prosecutors, for the most part, do their work without the scrutiny of legal advocates who might question them or rally pressure to insist that department policy or law demands a different action. Perhaps as a result, institutional change in Phoenix has been much spottier and less consistent than that in Seattle. Old institutional norms, including racist and classist characterizations of people in need of assistance, and different "rules" for responding to them, determined the actions (and inactions) of police officers, more powerfully than written law or stated policy, for example (Ferraro 1989).

Reform, Rights Talk and Resistance

Ewick and Silbey argue that legal consciousness is "a process.

Consciousness is participation—through words and deeds—in the construction of legal meanings, actions, practices, and institutions. As individuals express or enact their consciousness, they draw from and contribute to legality” (Ewick and Silbey 1998, p247). In places like Seattle, and in Phoenix (but to a lesser degree), feminist community advocates and activists have followed a strategy of gaining written guarantees of rights and funding to provide women with non-legal interventions and supports like emergency housing, advocacy and support groups. Simultaneously, they have supported women as they mobilized law and insisted that legal institutions change. This can be a very effective strategy with the potential of building political support for further reform and change. In Ewick and Silbey’s terms, it has moved the process, and encouraged battered women to “contribute to legality” while providing them some supports for when law, legal actors and legality failed them.

I would argue that the efforts made over the past twenty years by battered women’s advocates within and outside the legal system to affirm the right of women to be free from abuse in written law and (less successfully) in the practice of legal actors has made a positive difference in women’s lives.

Conversations with women in Phoenix indicated repeatedly that women felt they had rights, even when those rights were not being respected by legal actors.

Women in Seattle felt similarly, and were happy when they found those rights

acted upon by legal officials. The abiding commitment on the part of battered women to the notion of their rights can foster useful resistance to the indifference sometimes demonstrated by legal officials. This "myth of rights" can become the basis for resistance, activism and organizing. Over time, this organizing has the potential to create a context in which rights are no longer mythical, but actually become realized by individuals, as has happened in Seattle to a limited degree.

On a more individual level, the conviction that they possessed rights which were unrecognized by police and courts helped battered women to hold onto some portion of their dignity in the face of insulting and trivializing messages from legal officials. They developed resistant, self-affirming identities rather than swallowing legal actors' characterizations of them as hysterical, crazy, bad mothers, manipulative women or wasters of valuable time. The most clear example of this was Julie Johnson, who told the prosecutor who was bringing kidnapping charges against her (for fleeing her abuser with her children) that the jury would hear her speak from a "mother's heart" and she would challenge them to decide if it were a "legal system or a justice system." She was certain that she was right in leaving the abuser with her children, and that she needed to hide, and she was sure that a jury would agree with her about her rights, regardless of what the legal officials were saying and doing. And she asserted

the superiority of her understanding of what the legal system should do by pushing the prosecutor to consider whether he was acting in the interest of a "legal" system (focused on rules only) or a "justice system" (informed by higher morals and attentive to the "lives that are at stake").

Sure that they possessed rights, even if they weren't recognized by legal officials, battered women found support and solidarity in domestic violence programs. Many women mentioned to me their desire to "help other women" either by talking to me (in the hopes that this work would influence policy) or through other means, such as the Arizona Coalition's Battered Women's caucus, which worked to educate the community and influence policy.

Finally, the idea of rights and their aspirational consciousness about what the legal system should do helped women resist their abuser's tyrannical law-like systems. As Frances Olsen has said, rights talk can convey "the kind of society we want to live in, the kind of relations among people we wish to foster and the kind of behavior that is to be praised or blamed. It is a moral claim about how a human being should act toward one another" [Olsen 1984, quoted in (Schneider 2000)]. Battered women held fast to the condemnation of abuse they read into the law against it. Women's belief that abuse was against the law and that they had a right to be free of physical violence in their homes functioned to keep their abuser's rule systems illegitimate. Even when their abusers' law systems were

very powerful in women's minds, their conviction that it was also wrong helped them resist and even escape their abuser.

Conclusion

Bumiller concludes in *The Civil Rights Society*: "The gap between the symbolic life of the law and the ineffectiveness of the law in action imposes a cost borne by the intended beneficiaries of civil rights policies. The inability of civil rights strategies to fulfill their promise appears to have left many who experience discrimination on uncertain ground between public and private action where they are without faith in themselves or the law" (Bumiller 1988, p117). Similarly, the gap between the promise of law to protect one from violence and its practice, especially in the Legal Protection environment of Phoenix, leaves women bearing the sometimes deadly burden of violence in the home, and without faith in the law.

BIBLIOGRAPHY

Bennett, Neil G. 2000. *Child Poverty in the States: Levels and Trends from 1979 to 1998*. New York: National Center for Children in Poverty, Mailman School of Public Health, Columbia University.

Blumberg, Abraham. 1967. The Practice of Law as a Confidence Game. *Law and Society Review* 1.

Bumiller, Kristin. 1988. *The Civil Rights Society: The Social Construction of Victims*. Baltimore: Johns Hopkins University Press.

Census, U.S. Bureau of the. Census 2000: U. S. Bureau of the Census.

Collins, Patricia Hill. 1991. *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*. New York: Routledge.

Cover, Robert. 1986. Violence and the Word. *The Yale Law Journal* 95.

Crenshaw, Kimberle. 1991. Demarginalizing the Intersections of Race and Sex: A Black Feminist Critique of Anti-Discrimination Doctrine, Feminist Theory and Anti-Racist Politics. In *Feminist Legal Theory: Readings in Law and Gender*, edited by K. T. Bartlett and R. Kennedy. Boulder: Westview Press.

Edelman, Lauren B., Stephen Patterson, Elizabeth Chambliss, and Howard Erlanger. 1991. Legal Ambiguity and the Politics of Compliance: Affirmative action Officers' Dilemma. *Law & Policy* 13 (1):73-97.

Elman, R. Amy. 1996. *Sexual Subordination and State Intervention: Comparing Sweden and the United States*. Oxford: Berghahn Books.

Engel, David M. 1984. The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community. *Law and Society Review* 18 (4):551-582.

Ewick, Patricia, and Susan Silbey. 1998. *The common place of law: stories from*

everyday life. Chicago: University of Chicago Press.

- Ferraro, Kathleen J. 1989. Policing Woman Battering. *Social Problems* 36 (1).
- Ferraro, Kathleen J., and Lucille Pope. 1993. Irreconcilable Differences: Battered Women, Police and the Law. In *Legal Responses to Wife Assault: Current Trends and Evaluation*, edited by N. Z. Hilton. Newbury Park: Sage.
- Fineman, Martha Albertson. 1995. *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies*. New York: Routledge.
- Fischer, Karla, Neil Vidmar, and Rene Ellis. 1993. The Culture of Battering and the Role of Mediation in Domestic Violence Cases. *SMU Law Review* 46 (5).
- Foucault, Michel. 1977. *Discipline and Punish: The Birth of the Prison*. New York: Pantheon Books.
- Frazier, Cmdr. Michael. 1996. 1996 Annual Summary. Phoenix: Phoenix Police Department.
- Galanter, Marc. 1983. The Radiating Effects of Courts. In *Empirical Theories of Courts*, edited by K. D. B. a. L. Mather. New York: Longman.
- Gordon, Linda. 1988. *Heroes of Their Own Lives: the Politics and History of Family Violence*. New York: Penguin Books.
- Greene, Katherine Barrett and Richard. 2000. Best Run City. *Governing: the Magazine of States and Localities* February.
- Greenhouse, Carole. 1982. Nature is to Culture as Praying is to Suing: Legal Pluralism in an American Suburb. *Journal of Legal Pluralism* 20 (17).
- Greenhouse, Carole J., Barbara Yngvesson, and David Engel. 1994. *Law and Community in Three American Towns*. Ithaca: Cornell University Press.

- Hall, Jacquelyn Dowd. 1992. *The Mind that Burns in Each Body: Women, Rape and Racial Violence*. In *Race Class and Gender*, edited by M. L. Anderson and P. H. Collins. Belmont CA: Wadsworth Publishing.
- Hobart, Margaret. 2000. *Honoring Their Lives, Learning from Their Deaths: Findings and Recommendations from the Washington State Domestic Violence Fatality Review*. Seattle: Washington State Coalition Against Domestic Violence.
- Hobart, Margaret. 2002. *Tell the World What Happened to Me: Findings and Recommendations from the Washington State Domestic Violence Fatality Review*. Seattle: Washington State Coalition Against Domestic Violence.
- Hunt, Alan. *Law as a Constitutive Form of Regulation*
- Lather, Patti. 1991. *Getting Smart: Feminist Research and Pedagogy with/in the Postmodern*. New York: Routledge.
- Levinson, Anne, Kay Sohl, and Anne Nicoll of O'Neill and Company. 1989. *Seattle City Council Family Violence Project Workload Analysis: Final Report*. Seattle: Seattle City Council.
- Mahoney, Martha. 1992. Exit: Power and the Idea of Leaving. *Southern California Law Review* 65:1283:1319.
- Mann, Coramae Richey. 1993. *Unequal Justice*. Bloomington: Indiana University Press.
- McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.
- Merry, Sally. 2001a. *Rights Talk and the Experience of Law*. unpublished paper.
- Merry, Sally Engel. 1990. *Getting Justice and Getting Even: Legal Consciousness Among Working Class Americans*. Chicago: University of Chicago Press.
- Merry, Sally Engle. 2001b. *Rights, Religion, and Community: Approaches to*

- Violence Against Women in the Context of Globalization. *Law & Society Review* 35 (1):39 -88.
- Mies, Maria. 1991. Women's Research or Feminist Research? In *Beyond Methodology*, edited by M. M. a. C. Fonow, Judith A. Bloomington: Indiana University Press.
- Miller, Richard, and Austin Sarat. 1981. Grievances, Claims and Disputes: Assessing the Adversary Culture. *Law and Society Review* 15 (3-4).
- Nonet, Philippe, and Philip Selznick. 1978. *Law and Society in Transition: Toward a Responsive Law*. New York: Harper & Row.
- Olsen, Frances. 1985. The Myth of State Intervention in the Family. *University of Michigan Journal of Law Reform* 18.
- Ortega, Ruben B. 1984. Operations Digest 84-85:1-2. Phoenix: Phoenix Police Department.
- Pateman, Carole. 1988. *The Sexual Contract*. Stanford: Stanford University Press.
- Pence, Ellen. 1999. Some Thoughts on Philosophy. In *Coordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond*, edited by M. F. Shephard and E. Pence. Thousand Oaks: Sage Publications.
- Peterson del Mar, David. 1998. *What Trouble I Have Seen: A History of Violence Against Wives*. Cambridge: Harvard University Press.
- Pleck, Elizabeth. 1987. *Domestic Tyranny: The Making of American Social Policy Against Family Violence from Colonial Times to the Present*. New York: Oxford.
- Powers, Laurie. 1988. King County Domestic Violence Comprehensive Plan: A Final Report to King County Executive, Council and Citizens. King County: King County Department of Judicial Administration.
- Ptacek, James. 1999. *Battered Women in the Courtroom: the Power of Judicial*

Response. Boston: Northeastern University Press.

Rimsza, Mary E., Robert A. Schackner, Kathryn A. Bowen, and William Marshall. 2002. Can Child Deaths Be Prevented? The Arizona Child Fatality Review Program Experience. *PEDIATRICS* 110 (No. 1).

Rosaldo, Renato. 1993. *Culture & Truth*. Boston: Beacon Press.

Sabatier, Paul, and Daniel Mazmanian. 1979. The Conditions of Effective Implementation. *Policy Analysis* 5 (Fall):481-504.

Sabatier, Paul A. 1986. Top-Down and Bottom-Up approaches to Implementation Research: a Critical Analysis and Suggested Synthesis. *Journal of Public Policy* 6 (I):21-48.

Sarat, Austin. 1990. "...The Law is All Over": Power, Resistance and the Legal Consciousness of the Welfare Poor. *Yale Journal of Law and Humanities* 2.

Sarat, Austin. 1993. Speaking of Death: Narratives of Violence in Capital Trials. *Law and Society Review* 27 (1).

Schechter, Susan. 1982. *Women and Male Violence: The Visions and Struggles of the Battered Women's Movement*. Boston: South End Press.

Schneider, Anne, and Helen Ingram. 1990. Behavioral Assumptions of Policy Tools. *Journal of Politics* 52 (May 1990):510-529.

Schneider, Elizabeth. 2000. *Battered Women and Feminist Lawmaking*. New Haven: Yale University Press.

Shepard, Melanie F, and Ellen Pence, eds. 1999. *Coordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond*. Edited by C. M. R. a. J. Edelson, *Sage Series on Violence Against Women*. Thousand Oaks: Sage Publications.

Sherman, Lawrence. 1992. *Policing Domestic Violence: Experiments and Dilemmas*. New York: New York Free Press.

- Smith, Rogers M. 1997. *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*. New Haven: Yale University Press.
- Steckner, Susie, and Julie Amparano. 1998. Crisis in the Shelters. *Arizona Republic*, 4/26/98, A-1.
- Stone, Deborah. 1988. *Policy Paradox and Political Reason*. Glenview, IL: Scott, Foresman and Company.
- Straus, M. A. 1983. Ordinary violence, child abuse, and wife beating: What do they have in common? In *The dark side of families: Current family violence research*, edited by D. Finkelhor, R. J. Gelles, G. T. Hotaling and M. A. Straus. Newbury Park, CA: Sage.
- Websdale, Neil. 1998. *Rural Woman Battering and the Justice System: An Ethnography*. Thousand Oaks: Sage Publications.
- Williams, Patricia. 1991. *The Alchemy of Race and Rights: Diary of a Law Professor*. Cambridge: Harvard University Press.
- Wolf, Marsha E., Uyen Ly, Margaret Hobart, and Mary Kernick. 2003. Barriers to Seeking Help for Intimate Partner Violence. *Journal of Family Violence* 18 (2):121-129.
- Yanow, Dvora. 1996. *How Does a Policy Mean? Interpreting Policy in Organizational Actions*. Washington, DC: Georgetown University Press.
- Yngvesson, Barbara. 1993. *Virtuous Citizens, Disruptive Subjects: Order and Complaint in a New England Court*. Edited by J. B. and C. Harrington, *After the Law*. New York: Routledge.
- Zemans, Frances. 1983. Legal Mobilization: The Neglected Role of Law in the Political System. *American Political Science Review* 77.

APPENDIX A: CASES AND METHODS

As explained in Chapter One, in order to identify the impact of local policies on legal consciousness and legal mobilization, I wanted to find two cities with similar written law but significantly differing policy implementation contexts. Seattle, Washington and Phoenix, Arizona were selected because of their similar laws, size and income distributions. Seattle and Phoenix both form the hubs of the largest metropolitan areas in their states. Each resides in the most populous county in their respective states, and each of their metropolitan areas includes a variety of suburbs and neighboring towns with various income distributions.

Table A.1 Population Comparison

	Population in 1999
Phoenix metropolitan area	3,013,696
Seattle metropolitan area	3,465,760

Source: U.S. Census 2000

Overview of Phoenix and Seattle

Phoenix

Phoenix, Arizona's capital city, is situated within the state's largest county, Maricopa County. The population of the City of Phoenix in 1999 was 1,321,045. Maricopa County's population was 3,072,149.

A wide range of income distribution exists in Phoenix. Included in the metropolitan area are several suburbs which range from the upscale to grim communities which house many of the region's poor and working-class families. Within the city itself are very desirable neighborhoods as well as neighborhoods dominated by crime and despair.

According to the 2000 Census, 11.5% of families in Phoenix lived below the poverty level, a total of 205,320 individuals, more than half under the age of 18. At the same time an almost equal number of households reported incomes over \$100,000 per year. The median household income in Phoenix was \$41,207 in 2000 (Census 2000).

Phoenix and Maricopa County reflect the racial diversity of the Southwest. Almost 66% of the residents of the city described themselves to the Census as white, non-Hispanic. However, a sizeable Latino population exists (28% of the population described themselves as Hispanic/Mexican, and an additional 5% were Hispanic of other origins).

Table A.2 Phoenix Race Distribution

<i>Race</i>	<i>%</i>
White	71.1
African American	5.1
American Indian/ Alaska Native	2.0
Asian	2.0
Native Hawaiian, API	0.1
Other race	16.4
Biracial	3.3
<i>Total</i>	<i>100.0</i>

Source: US Census 2000

Phoenix is a mostly Republican/conservative city, with little history of political power by the communities of color. Feminist grassroots organizing has a weak history in Phoenix, and solutions to problems which involve government money and increased government intervention tend to be unpopular.

Phoenix city government personnel frequently point out that the city is a "model city." The city's web page promotes the fact that Phoenix was named the best-run city in the nation in 1999 (Greene 2000). This is not to be confused with the Most Livable City honors in which the Seattle Chamber of Commerce takes pride. The criteria for Best Run City focuses on the areas of financial management, human resources, information technology, capital management and the integration of a management philosophy called "managing for results." City, county and state officials in Arizona, driven by the fiscally conservative, pro-

business climate, seek to convince their populations that they are running government as efficiently as businesses are assumed to run. In interviews, articles and promotional material for the city, officials point to the privatization of functions usually fulfilled by the government to indicate that the government is innovative and up to date. The investment and pride in being the Best Run City is consistent with this ethic of measuring up against businesses.

On the other hand, Phoenix and the state of Arizona do not measure up so impressively when it comes to arenas such as poverty, education and child welfare. Arizona has a child mortality rate above the national average (Rimsza et al. 2002). The child poverty rate in Arizona is also above the national average, and rose at a faster rate than the national rate between 1979 and 1998. Between 1979 and 1993, the change in the child poverty rate in Arizona was a 97.8% increase, compared to the nation's overall increase of 38.8%. Between 1993 and 1998, when the nation's child poverty rate decreased by 17.1%, Arizona's increased by 4.9%. In contrast, Washington's child poverty rate has consistently stood below the national average since 1979, and between 1993 and 1998, the state's child poverty rate decreased by 26.4%. (Bennett 2000).

Seattle

The population of the City of Seattle in 1999 was 563,374 and the population

of King County was 1,737,034. Like Phoenix, Seattle is a predominantly white city with significant populations of people of color. Table A.3 provides Seattle's racial breakdown according to the Census.

Table A.3 Seattle Race Distribution

<i>Race</i>	<i>%</i>
White	70.1
African American	8.4
American Indian/ Alaska Native	1.0
Asian	13.1
Native Hawaiian, API	.5
Other race	2.4
Biracial	4.5
<i>Total</i>	<i>100</i>

Source: US Census

Seattle has a larger Asian population than Phoenix, and a smaller Hispanic population. Almost 68% of the population identified as white/Non-Hispanic, and only 5.3% of the population identified as Hispanic (versus 29% identified as Hispanic in Phoenix.)

Like Phoenix, neighborhoods in Seattle range from the very expensive and beautiful to the depressed and grim. In contrast to Phoenix's 11.5% of families living under the poverty line, in Seattle, 6.9% of families live under the poverty line. Seattle's income tips a bit more heavily towards wealth than Phoenix's, with 15.8% of the households reporting incomes over \$100,000 in 2000. The median

household income was somewhat higher than in Phoenix: \$45,736.

The prevailing political affiliations of their populations constitutes a significant difference between the two metropolitan areas. Simply put, Seattle's population tends to be democratic and liberal, while Phoenix's tends to be Republican and conservative.

The population of Seattle does not tend to be as hostile to funding government initiatives as the population of Phoenix. The Seattle city government has been recognized nationally for supporting local organizing on the neighborhood level, and for empowering local neighborhood groups with control over a portion of the city's budget (in the form of neighborhood grants). While Washington has faced anti-tax, anti-government initiatives in the last ten years, these have generally not found support in Seattle and King County, where people tend to view government as a potential source of social goods and an important player in the creation of community.

Comparing income distribution between Seattle and Phoenix (Figure A.1), one can see that a larger percentage of Seattle's population fits into the higher income brackets than Phoenix's. 46% of Seattle's households reported incomes over \$50,000 compared to Phoenix's 40%. Generally, however, the income distribution city to city is similar.

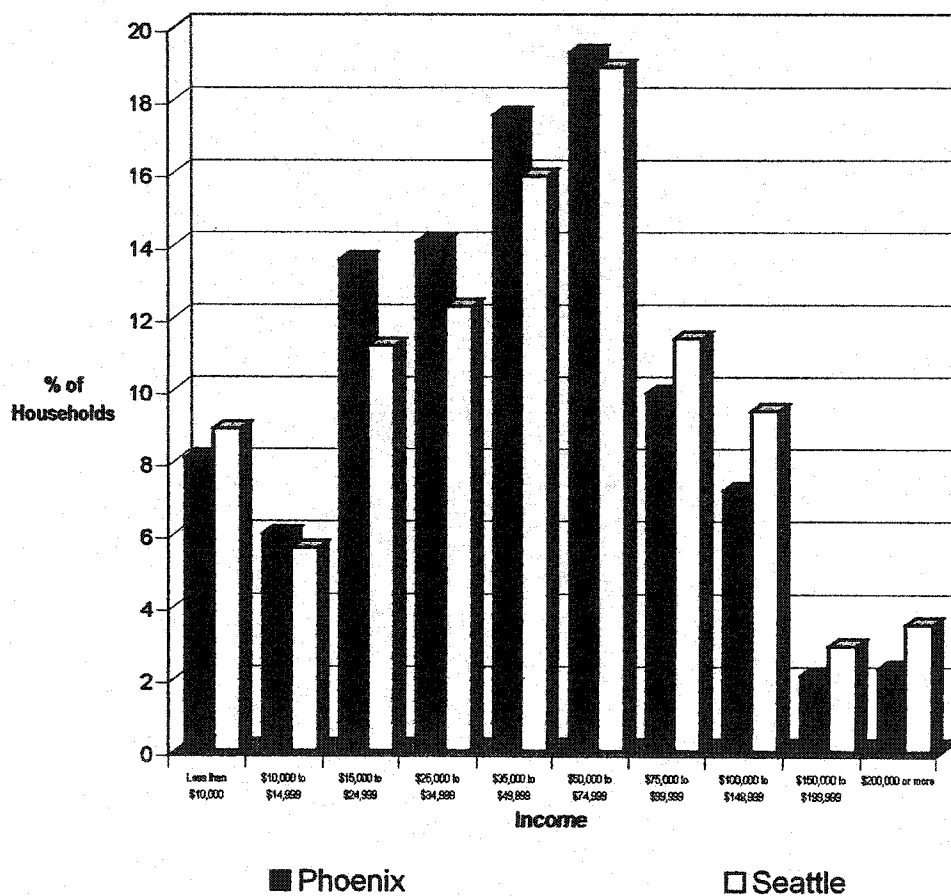


Figure A.1 Income Distribution Comparison (Source: US Census 2000)

Seattle and Phoenix Response to Domestic Violence: Mobilization Facilitation vs. Model of Legal Protection

Domestic violence advocates across the nation have emphasized the importance of a "community response" to domestic violence. The concept of "community response" refers to all aspects of the community, including the civil and criminal justice systems, social service providers, medical providers and others (Shepard and Pence 1999). At the time of this research and writing, Phoenix and Seattle had significantly different community responses to domestic violence, while at the same time having substantially similar written law in this arena. The genesis of these differences has to do with multiple factors, including the prevailing politics and histories of community organizing, as well as accidents of personality. The purpose of this study is not to trace how Seattle and Phoenix became so different in their response to domestic violence, but instead to describe those differences and their effect on battered women's legal consciousness. The following section seeks to highlight some of the important areas of difference and similarity between the two sites in the areas of written law, advocacy, and police, prosecutor and court responses to domestic violence. Each section begins with a table providing a quick comparison between Seattle and Phoenix's institutional responses to domestic violence in relation to commonly acknowledged best practices.

*Written Law***Table A.4 Written Law in Seattle and Phoenix**

Best Practice	Arizona	Washington
"Domestic Violence" refers to the following relationships: cohabiting persons, spouses, and those with former dating relationships	X	X
Same-sex intimate relationships included in "domestic violence"		X
Allows law enforcement officer to arrest on misdemeanor assault with "probable cause" to believe it occurred	X	X
Directs arrest of primary aggressor		X
Requires provision of written information to victims by law enforcement	X	X
Provides for no-cost Orders of Protection	X	X

Washington and Arizona have similar written laws regarding domestic violence. Thus, when police chiefs and courts set policy regarding response to domestic violence, they start with similar written law. For the purposes of this study, two areas of law are most relevant: criminal code regarding assault and civil codes regarding the establishment of Orders of Protection.

Consistent with national trends, in 1980, the Arizona state legislature passed domestic violence legislation that "1) prohibits officers from citing and releasing domestic violence offenders; 2) expands police power to arrest on the basis of

probable cause and requires officers to provide information to victims about procedures and available services; and 3) provides for orders of protection that can be obtained through any court, without having to file for divorce" (Ferraro 1989). Washington passed similar written law around the same time. Specifying that law enforcement officers could make a misdemeanor arrest without witnessing the crime was a significant change brought about by battered women's advocates. Most domestic violence assaults are classified as misdemeanors by police and prosecutors (even when they are quite serious). The usual requirement that the officer witness the misdemeanor in order to make an arrest resulted in a very low arrest rate for domestic violence cases. Allowing officers to arrest based on probable cause to believe that the assault was committed essentially allows misdemeanor domestic violence assaults to be processed more like felonies.

Both states also provide for free civil Protection Orders. An order of protection allows a victim to request that the court order her abuser to stay away from her home, work or school. Victims can request that their abusers be ordered to move out of their homes. Finally, temporary custody arrangements can also be specified. Violations of Protection Orders are treated as misdemeanor crimes.

*Community-Based and System-Based Advocacy for Battered Women***Table A.5 Advocacy in Seattle and Phoenix**

Best Practice	Phoenix	Seattle
Confidential domestic violence shelters	x	x
Domestic violence programs work from an "advocacy" perspective		x
Support groups for women not staying in shelter	x	x
Community-based domestic violence programs provide legal advocacy (help with filling out Protection Order and dissolution paperwork, court accompaniment for support)		x
Domestic violence services and advocacy available in varied languages and for particular needs	One program serves Spanish-speaking women	Spanish Various Asian and African languages
Domestic violence services and advocacy available for women with particular needs and with particular marginalized identities		Legal advocacy and support programs focused on lesbians, African American women, Jewish women, Native American women, and Deaf and disabled women
Advocates in municipal prosecutor's office to work with victims of misdemeanor domestic violence crimes	1 advocate since 1996	12 advocates since 1984
Advocates to assist with Protection Orders in Superior Court		x
Advocates in county prosecutor's office to work with victims of felony domestic violence crimes		x

Community-based advocates are employed by local non-profit, non-governmental organizations. The funding for these positions often comes through city, county or state agencies, and the requirements for obtaining and keeping the funding is determined by those governmental agencies. However, community-based advocates are generally perceived to have more freedom to say what they think, take hard positions, and be less invested in particular institutional outcomes than system based advocates. They are also housed in organizations which may be more trusted by members of marginalized communities than many government agencies, and so may be more accessible to more domestic violence victims.

System-based advocacy refers to a specialized advocate employed within part of the criminal justice system; for example, an advocate employed by the prosecutor, courts or police. System-based advocates may have somewhat different goals, opportunities and constraints than advocates based in non-governmental organizations. For example, prosecutors' advocates may have access to a wider variety of "official" information about a particular woman or her abuser via police reports, prosecutor's files and court records. Their goals may be more connected to the goals of the institution that employs them, creating some tension with the role of advocate as a supporter of women's individual decisions. System-based advocates may be more focused on part of a woman's

experience (such as prosecuting a particular assault) rather than on her whole experience or entire set of needs. Prosecutors may see advocates as assistants in the prosecution process who should be encouraging women to assist the prosecutor, versus finding out what the victim feels like is the best course of action and supporting that. Confidentiality constraints also differ; prosecutors may have more access to prosecution-based advocates' conversations with victims than they would with community-based advocates. Finally, system-based advocates face the same risks all repeat players in the criminal justice system face: becoming more invested in relations with other repeat players than with the people who they are supposed to be helping (Blumberg 1967).

Phoenix Community-Based Advocacy: As I started my research, I called each domestic violence program's hotline in Phoenix and asked if the program provided support for someone filing a Protection Order. No program provided such assistance. Several counselors answering my call tripped up on the phrase "legal advocacy" when I mentioned it—it was completely unfamiliar to them. No shelter in Phoenix provided legal advocacy. A couple of advocates did tell me about the new "self-help" kiosk at the Superior Court, where one could find paperwork for all kinds of civil actions, including Protection Orders and dissolutions. In 1997, recognizing this need and the lack of will/skill/ability on the part of local domestic violence programs to develop these services, the

Arizona Coalition Against Domestic Violence began an effort to start a legal advocacy hotline with several goals: to demonstrate the need for such a service, provide support and expertise to battered women, and to encourage domestic violence programs to begin providing legal advocacy.²⁹

The history of funding for domestic violence programs may have influenced the shape of services for battered women in Phoenix. The bulk of state funding for domestic violence programs comes out of the state's mental health budget, and is then funneled through the Department of Economic Services. Thus, the funding has been tied institutionally to the concept of providing "counseling" for victims. One program's brochure boasted that its shelters "represent half of the in-patient services" for battered women in the Phoenix area, and that its "out-patient program provides more than 2000 hours of counseling services annually."³⁰ Generally, programs in Washington have rejected language which is so closely linked to medical or psychological models, so clearly reflects an individualized, de-politicized approach to domestic violence, and treats being abused by an intimate partner as if it were an adjustment problem on the part of the battered woman. Another state-funded program in Phoenix worked from a

²⁹ Conversation with Bonnie Dedolph, the director of Public Policy at ACADV, 1997.

12-step model, treating being abused by one's partner as analogous to being addicted to drugs or alcohol. Again, this is a depoliticized approach which does not include a critique of gender relations and the failure of the community to respond to domestic violence. Within this 12-step model and the mental health model inheres an assumption that if the woman changed, the violence would not continue—a subtle form of victim blaming. Not every program in Phoenix had such overt conceptual links to a psychological model as demonstrated in the Chrysalis brochure, but the legacy of the mental health approach to the problem was reflected in job titles in many agencies. Even Sojourner, with a more clearly feminist model, had staff titles like "clinical director."

It appears that even though many of the domestic violence programs in Phoenix were initially formed in conjunction with consciousness raising and organizing efforts connected to the women's movement, a clearly feminist point of view did not survive as the guiding philosophy for most of them. How and why this occurred is beyond the scope of this study. However the emphasis on mental health models evolved, the result was that relatively less organizing and effort focused on access to justice and reform of the legal system took place

³⁰ Chrysalis Shelters for victims of domestic violence 1997 brochure.

there than in comparison to Seattle, and when women sought services or refuge, they were likely to be met with an analysis of their situation which de-emphasized systematic injustice and focused more on their individual responses to the abuse.

Phoenix System-Based Advocacy: In Phoenix, most parts of the criminal justice system did not separate out domestic violence as a particular kind of crime which would require a particular kind of intervention. However, the prosecutor's office had just obtained federal monies to set up a specialized unit, consisting of one prosecutor, a paralegal and one advocate. This had been in place only for about a year. With such limited resources, this small but dedicated team had come into contact with only a fraction of the large number of domestic violence victims (35) in Phoenix, and it had not been able to impact the functioning or norms in the rest of the prosecutor's office. Similarly, the police department had set up a specialized domestic violence unit with one or two detectives to follow up on the worst domestic violence-related crimes. Other than these very limited resources, criminal justice institutions in Phoenix did not provide any legal advocacy.

Seattle Community-Based Advocacy: One of the most distinctive features of the policy context in Seattle is the relatively large number of "advocates" in various institutions and organizations who see it as their job to

help women access the legal system. The commitment to advocacy, and particularly advocacy within legal institutions, has a long history in Seattle. The larger battered women's programs in Seattle had employed "legal advocates" for many years, and Seattle had one of the first prosecutor-based advocacy programs in the nation. Unlike the development of the programs in Phoenix, in Seattle, helping women overcome obstacles to accessing legal interventions in domestic violence played a central role in domestic violence programs, as well as the Seattle prosecutor's office.

Policy and practice regarding domestic violence in Seattle has been significantly influenced by a more feminist/activist model. Historically, it seems that advocates for battered women hewed more closely to a strain of feminist activist analysis dominant in the battered women's movement regarding the problem and how to address it. This analysis focuses on the social permission given to abusers to be violent when the criminal justice system and other accountability structures within the community failed to hold them accountable, and on the institutional barriers to battered women's self-determination, achieving safety or leaving their abuser. It points to the historic lack of institutionalized response to men's violence against their wives, argues that the lack of social controls results in women's diminished opportunities for self-determination, and insists that (as Susan Schecter articulated) "institutions must

take responsibility for stopping the violence, using their power to declare that men cannot beat their wives," and that doing so will actually expand battered women's autonomy because strong institutional response can interrupt the abuser's ability to control and take away choices from their partners (Schechter 1982, p175).

State funding for domestic violence programs came out of the general fund and was funneled through the Department of Social and Health Services. DSHS is the state's largest bureaucracy, charged with child and vulnerable adult welfare, provision of AFDC and now TANF. The culture of DSHS tends more toward that of social work (with its attention to "social problems") versus mental health (with its emphasis on counseling). Domestic violence programs are required to provide support and "counseling" for battered women; however, the Washington Administrative Code governing the standards for funded programs specifically clarifies that programs should use an "Advocacy-Based Counseling" model which the Washington Administrative Code defines this way: "Advocacy-based counseling' means that the client is involved with an advocate counselor in individual, family, or group sessions with the primary focus on safety planning, empowerment, and education of the client through reinforcing the client's autonomy and self-determination" (WAC 388-61A-0025). Feminist battered women's advocates have been successful in influencing written policy at both the

state and municipal level. The Administrative Code governing the use of state shelter funding was written with substantial input from feminist battered women's advocates and reflects concerns that services be focused on helping women get past socially imposed barriers to safety and justice, versus treating women as if they had mental health problems.

The concept of "legal advocacy" is well developed in domestic violence programs in the Seattle area. Most of the programs in Seattle have included accompanying women to court for Protection Orders and during criminal proceedings in the services they have provided since their inception. The Seattle City Prosecutor's office Family Violence Project's (discussed in more detail in the section on System-Based Advocacy) volunteer program may also have fed the emphasis on legal advocacy. Over the years, many volunteers from this program went on to volunteer or work in community-based programs, bringing a wealth of information about the inner workings of the prosecutor's office, and, frequently, a belief in the importance of legal advocacy. The program also provided a model of advocacy, and demonstrated the difference advocacy could make in how women felt about the criminal legal process.

Community-based and system-based legal advocacy became widely available by 1992 as a result of a process which began in 1988. That year, the King County Executive Council passed an initiative which provided for the

development of a domestic violence services comprehensive plan. As part of this, the Council requested a comprehensive report on domestic violence in King County which would identify system gaps and make recommendations. This report made some recommendations which then provided an agenda for activists in the coming years, and which reflected "best practices" as they were evolving in the national dialogue on domestic violence among domestic violence advocates. The recommendations included specialized case handling within the criminal justice system and identified "contact persons" or experts within each part of the criminal justice system; establishing Protection Order advocates within each District Court; consistent training for all law, justice and safety personnel; increased funding for the provision of specialized services to limited English speakers, specific groups of people of color, disabled women, and lesbians. Reflecting the Mobilization Facilitation model in Seattle, this report notes: "In a model system, the only reason services are not accessed is that they are not needed. Inaccessibility, insensitivity, and inadequacy of services are unacceptable conditions for a community committed to breaking the cycle of violence" (Powers 1988). The report argues that these problems currently exist and then goes on to make a series of recommendations to address these problems.

Over the next ten years, multiple efforts at organizing the criminal justice

and social service providers responding to domestic violence took place, and active lobbying occurred to increase resources for services to battered women (with an emphasis on legal advocacy and peer support) and to increase accountability for batterers. A substantial and widely distributed report on the state, city or county's response to domestic violence was issued almost every year by different groups, drawing the attention of policy elites to the issues and giving voice to battered women's advocates' agenda for change.³¹

³¹ These reports include:

- *Domestic Violence: A Community Crisis Waiting for an Effective Response*, issued in May 1989 by the Domestic Violence Intervention Committee which was comprised of the Family Violence Project of the Seattle Prosecutor's office, King County and Seattle probation departments, and several abuser treatment programs.
- *Stop Family Violence Now: Steps Toward a Community Free of Family Violence* by the Human Services Roundtable. This plan included a comprehensive Regional domestic violence plan formed in consultation with community-based domestic violence programs.
- *Domestic Violence Program Status* report, issued October 11, 1990 jointly by the King County Department of Judicial Services and Department of Human Services. This report provides an update on the implementation of recommendations in the 1988 report, and new recommendations.
- *Domestic Violence: A Community Responds – Progress Report on the Implementation of the 1990 Regional Domestic Violence Plan*, written by the Human Services Roundtable (a coalition of elected officials in King County).
- *Domestic Violence Report and Preliminary Plan for the City of Seattle*, prepared by Susan Hannibal, City of Seattle Office for Women's Rights, July 1990.
- *Domestic Violence Report and Preliminary Plan for the City of Seattle UPDATE*, prepared by Susan Hannibal, July 1991.
- *Final Report of the Washington State Domestic Violence Task Force in June 1991*, prepared by the Office for the Administrator of the Courts. This report was mandated by the state legislature in 1990 to study domestic violence issues in the criminal justice system and make recommendations for reform.
- *Evaluation of Domestic Violence Victim Advocacy Services in King County: Assessing the Impact of 'Local Criminal Justice Fiscal Assistance' Funds*, April 1993; prepared by the King County Department of Human Services.

However, in 1990, an important event happened which substantially increased the number of legal advocates in King County and Seattle. In that year, the state legislature gave some local governments additional taxing authority in order to generate revenues for "law, safety and justice" needs. Many officials in King County, among other counties, lobbied for this. Some counties used the revenues from these additional taxes to hire more police officers or buy helicopters. However, in King County, the executive council decided that a portion of the estimated \$20 million per year generated by these additional taxes would go to create twelve new domestic violence legal advocate positions and twelve new community-based domestic violence advocate positions, along with a coordinator position for the legal advocates. Further, the vision called for these advocates to be placed not just in existing domestic violence programs, but also in agencies focusing on serving "specialized populations." Thus, funds to hire domestic violence advocates were made available to agencies serving Asian and African refugees, Latina, lesbian, disabled, and African American women. Some organizations which had previously operated on an all-volunteer or informal basis (such as the programs serving lesbians and disabled women) were able to hire staff and begin working on a new level. These advocates educate battered women regarding their rights and options within the legal system, assist in filling out Protection Order forms

and accompany women to Protection Order hearings, provide support and court accompaniment in criminal trials, facilitate support groups, and provide one-on-one support and problem solving. Widespread consensus existed about this use of funds. The reasoning supporting the creation of these advocate positions had its roots in the various reports which had emphasized the importance of access to justice, eliminating barriers, culturally appropriate services and providing advocacy to women where they were comfortable receiving it.

In 1991, in part as a result of the recommendations, lobbying and common goal clarification reflected in the many official reports on domestic violence in King County and Seattle, advocacy to domestic violence victims in King County was significantly expanded with revenues obtained through tax increases. Paul Sabatier theorizes the existence of "advocacy coalitions"—"actors from various public and private organizations who share a set of beliefs and who seek to realize their common goals over time" (Sabatier 1986). The way the increased funding for advocacy came about in King County reflects the efforts of strong organizing and a widely shared vision among a domestic violence "advocacy coalition" comprised of advocates in community-based domestic violence programs, grant and contract managers within the city and county structure, city and county prosecutors, representatives of law enforcement agencies, and activists and volunteers working in the community.

Also in 1990, the City of Seattle adopted a domestic violence plan which included increasing shelter space, expanding outreach to victims not served by mainstream organizations, increasing coordination, training and public education for the public. Partially as a result of this plan, Seattle increased its available funding for community-based advocates and shelter programs. Thus, by 1997, at least thirteen domestic violence legal advocates were serving battered women in ten community-based organizations in Seattle. Most of those organizations employed more generalized "advocates" in addition to their legal advocates. These advocates generally had a working understanding of Protection Orders, how the police were supposed to respond and other legal issues, but were not specifically funded as "legal" advocates.

Seattle System-Based Advocacy: In addition to the large number of community-based advocates in Seattle, a significant number of system-based advocates also existed. The City of Seattle Prosecutor's Office had twelve advocates, and the King County Superior Court system had a total of ten advocates throughout the county, with three based in the downtown courthouse Protection Order advocacy office, where any Seattle resident filing for a PO would go. The King County Prosecutor's Office also employed two advocates to support domestic violence victims whose assaults were being filed as felonies. The Seattle Police Department also had victim advocates and was developing a

volunteer advocate program in 1997.

Police Response

Table A.7 Police Response

Best Practice	Phoenix	Seattle
Mandated domestic violence curriculum for all new recruits		X
Advocate involvement in domestic violence curriculum design		X
Ongoing training for officers via role call training, etc.	X	X
Leadership commitment to strong enforcement of domestic violence laws		X
Domestic violence victim advocates based within the police department		X
Specialized domestic violence unit	X	X

As noted above, the legislation in Arizona and Seattle regarding domestic violence is typical of many states. However, the priorities for use of law enforcement resources, methods of implementation and policy regarding enforcement of law are determined on a local level. While many states have laws which allow police officers to make an arrest based on probable cause that a domestic violence offense has been committed, and which intend to encourage arrest in domestic violence situations, local jurisdictions implemented and

declined to implement these laws. Thus in spite of sometimes dramatic and hard-won battles regarding state level legislative reforms, very little changed in the implementation of law at the local level. In Phoenix, in spite of legislative change, training and modifications in the department's written policies, very little changed in the actual implementation of the law since the 1980 reforms: generally, officers chose not to arrest in domestic violence situations. In Seattle, change in the implementation of the law was more dramatic, with a strong mandatory arrest policy.

Phoenix: Kathleen Ferraro documented in 1989 how little difference the 1980 reforms had made in police response to domestic violence (Ferraro 1989). In 1984, the Phoenix police adopted a presumptive arrest policy. The Chief at the time issued a written policy which stated in part: "Officers should arrest domestic violence violators even if the victim does not desire prosecution. When probable cause exists, an arrest should be made even if a misdemeanor offense did not occur in the officer's presence" (Ortega 1984, quoted in Ferraro 1989). Ferraro's research team observed police response at sixty-nine "family fights" in order to gauge the effect of the new policy. Keep in mind that at this time, officers had the ability to make an arrest based on probable cause for four years. Ferraro found that officers did not make an arrest in over 80% of the cases. In half the cases, the police attempted to counsel the parties, minimizing the

dispute (and violence)—a practice quite discredited by experts even at that time (Ferraro 1989).

Ferraro identified several reasons for non-arrest: officers' interpretation of the law (often incorrectly, officers did not think domestic violence applied to the specific case) (Ferraro 1989, p66), ideological (for example, officers referred to people of color and poor people as "low lifes" or "scum" and "believed arrests were a waste of time and meaningless for these people" (Ferraro 1989, p67), or believed battered women made a choice to stay in abusive situations), practical (officers were reluctant to make arrests in the hour before they were to get off, as processing the arrest may delay the officer leaving work) (Ferraro 1989, p71); internal or external politics (policing domestic violence carries no status, there were no incentives for following the policy) (Ferraro 1989, p71).

In 1996, using federal money made available through the Violence Against Women Act, the Phoenix Police Department set up a specialized domestic violence unit within the Assault Unit. The Sergeant in charge of this unit had a relatively good reputation with battered women's advocates at the time of my field research—being described as "good intentioned." However, the general perception was that the department had seen setting up the unit as an opportunity for getting federal funds and the mission of the unit did not have a high priority within the department as a whole. Repeated calls and letters to this

Sergeant requesting an interview were met with no response.

Ten years after Ferraro's study, it seemed the Phoenix Police department still made a minimal number of domestic violence arrests. I had considerable difficulty locating battered women who had experienced their partner being arrested. In response to a formal public information request, the Department provided me with the information contained in Table A.8.

Table A.8 Phoenix Police Department Domestic Violence Related Calls for Service, Reports and Arrests

	calls for service	reports written	arrests made
1995	65361	17697	7611
1996	54627	14752	6478
1997	55430	14802	6479
1998	52275	14398	6505
1999	49802	12865	5723

Information provided by the Phoenix Police Department indicates that in the latter half of the 1990s, the Department generated reports on an average of 27% of the domestic violence incidents to which they responded, and made arrests in about 11% of those cases.

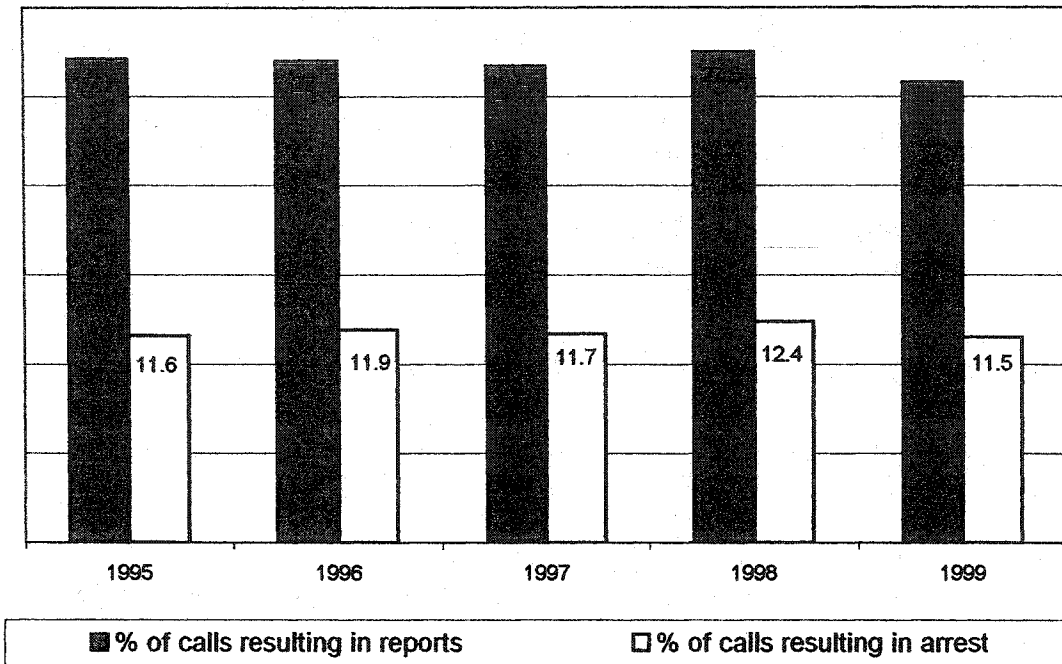


Figure A.2 Percentage of 911 Domestic Violence Related Calls Resulting in Incident Reports and Arrests (Source: Phoenix Police Department)

The 1980 reform legislation required that the police give victims of domestic violence information about their rights and resources. Ferraro's research team witnessed police handing out this information in only about 3% of the cases they observed (Ferraro 1989). In my interviews with women, I was not able to identify any woman who remembered receiving information. (This does not mean the information was not handed out, although that is a likely explanation. It does indicate that if information was handed out, it did not make an impression on women as being particularly helpful.)

As of 1997, when victims of crime needed resources, the Phoenix police provided referrals to the Victim-Witness program, based in the prosecutor's office. The Victim-Witness program has historically been focused on getting victims restitution for the crimes committed against them and referring them to other agencies for services. Victim-Witness programs generally do not work at coordinating services or improving investigations or prosecutions. They generally do not take a political or social change view of the problems which lead to victimization. In 1997, Phoenix police carried one pamphlet to give to all crime victims. The two pages focused on domestic violence were in the middle of the 24-page pamphlet. On the last page, the pamphlet listed the names of a few shelters, but did not offer any additional information about what kind of services one may expect to receive at these programs. Phoenix shelters, like those of most cities, are usually full to capacity. Between 1995 and 1997, shelters in Maricopa County turned away over 13,000 battered women and their children each year (Steckner and Amparano 1998).

Seattle: The Seattle Police Department has made a significant commitment to respond to domestic violence since the mid-1980s. The Department's commitment to a strong and sensitive response to domestic violence increased in the early 1990s when Norm Stamper became the Chief of Police. Chief Stamper saw domestic violence as a key priority for the department, and established a

specialized domestic violence unit to track the department's response to misdemeanors and provide follow-up investigation for domestic violence crimes. Supervising this unit was treated as prestigious, and some officers who had served in this unit went on to promotions and increasing status in the department.

Seattle police officers generate written incident reports regarding domestic violence calls at a rate about twice that of Phoenix officers. About half of all 911 calls regarding domestic violence result in a written report in Seattle. While calls to 911 result in arrests about 12% of the time in Phoenix, in Seattle, about 18% of calls resulted in an arrest.

Table A.9 Seattle Police Department Domestic Violence Calls for Service, Reports and Arrests

	calls for service	reports written	arrests made
1995	16,062	7,733	2,772
1996	15,377	7,770	2,546
1997	14,459	7,392	2,557
1998	13,681	6,933	2,342
1999	12,679	6,765	2,280

Figure A.3 shows reports and arrests made as a percent of 911 domestic violence-related calls in Seattle. Seattle officers generate reports on a larger percentage of domestic violence incidents than do Phoenix police.

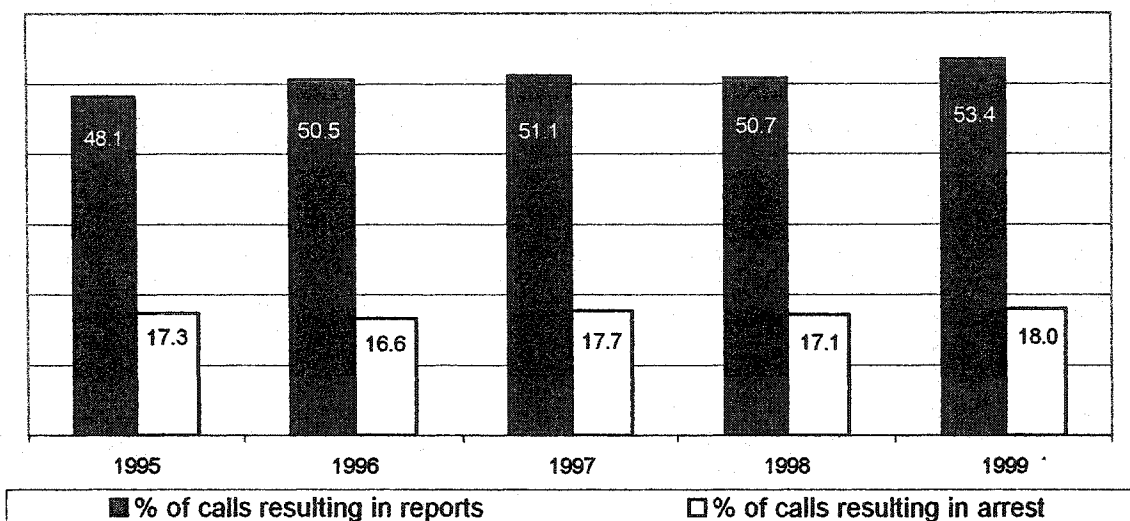


Figure A.3 Seattle: Percentage of 911 Domestic Violence Related calls Resulting in Incident Reports and Arrests (source: Seattle Police Department)

About half of all calls to 911 in result in written incident reports in Seattle, in contrast to the roughly 27% of calls in Phoenix that result in a written report, as illustrated in Figure A.4. The generation of a written incident report is significant, because even if an arrest or prosecution does not take place, the existence of a report documents the abuse and can be referred to by the prosecutor in future criminal actions, or a judge during the course of a civil action. The presence of a written report also increases the odds that policies and practices were followed.

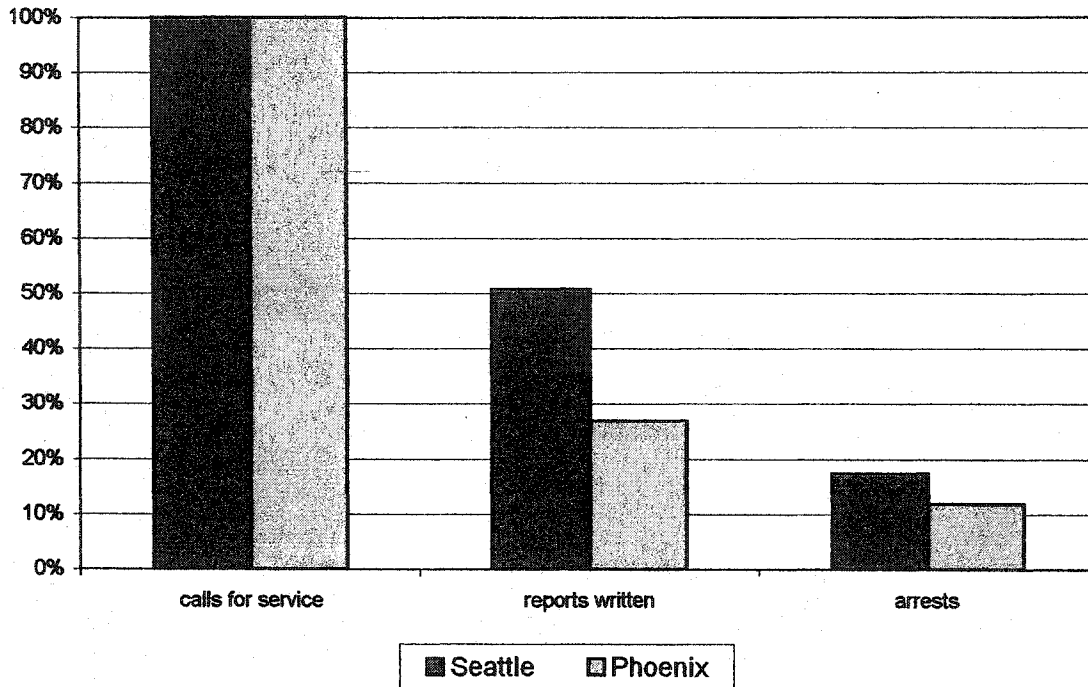


Figure A.4 Reports and Arrests as a Percentage of Domestic Violence 911 Calls in Phoenix and Seattle Average for 1995-1999 (sources: Seattle and Phoenix Police Departments)

The Seattle Police Department, in cooperation with the prosecutor's office, has embraced a model of victimless prosecution. This model had guided police investigations in San Diego, California, where Chief Stamper previously served. The model calls for pursuing prosecution without dependence on the testimony of the victim. This requires the police to conduct investigations at the scene which allow for evidence-based prosecutions. Police are expected to obtain detailed statements, take photographs and perhaps even videos, even at

misdemeanor scenes. As of 1997, the department had provided extensive training regarding domestic violence to patrol officers, and continued to provide continuing training.

A substantial amount of the training Seattle police officers received regarding domestic violence was authored and controlled by battered women's advocates or designed in cooperation with advocates. The state Criminal Justice Training Academy's curriculum on domestic violence was created in cooperation with the Washington State Coalition Against Domestic Violence (WSCADV), which is a coalition of battered women's programs. It totaled twenty-two hours of in-class training and performance-based testing, eight of which were taught by a staff member of the Coalition.³² The City of Seattle's Office for Women's Rights obtained funding to research and write a Law Enforcement Model Operating Procedures manual in 1993, which has been updated and redistributed by the WSCADV. In addition, WSCADV has offered a yearly training which brings together three-member "teams" of police officers, advocates and prosecutors for three intensive days of training on domestic violence. The Seattle Police Department has both provided faculty for this training and consistently sent its

officers to it.

Generally officers have received a strong message about the importance of proper response to domestic violence from their leadership, and rewards and incentives have been connected to performance on domestic violence calls. The woman who initially set up the domestic violence unit has gone on to become an assistant chief of the department, and others who have served in this capacity have gone on to promotions as well.

Seattle's efforts to get domestic violence information to victims stands in sharp contrast to Phoenix's. Police officers carry a domestic violence information pamphlet which lists resources, provides tips on safety planning, and informs victims of their right to obtain an order of protection. In Seattle, victim information pamphlets were translated into Spanish and a variety of Asian languages. An extensive booklet published by the county—which included tips for safety planning, clear explanations of Protection Orders and the criminal process, and detailed listings of resources—was made widely available to non-profits and appeared in many city and county offices.

³² State code requires 20 hours (RCW 10.99.030).

*Prosecutor Response***Table A.10 Prosecutor Response**

Best Practice	Phoenix	Seattle
Specialized domestic violence unit for prosecution of domestic violence misdemeanors	Since 1996	Since 1978
Specialized domestic violence unit in county prosecutor's office for domestic violence felonies		Since 1993
Domestic violence victim advocates within the prosecutor's office	1	14
Victimless/evidence-based prosecution		X

In any jurisdiction, the vast majority of domestic violence crimes will be prosecuted by the municipal prosecutor as opposed to the county prosecutor. This is because municipal prosecution offices generally handle misdemeanors, and county prosecutors handle felonies. Most domestic violence assaults end up classified as misdemeanors, even when the level of violence is quite high. County prosecutors generally decline to file domestic violence cases unless they include threats or attempts to harm or kill with a weapon, or significant and documented injuries, such as a broken bone (and even these cases are often

processed as misdemeanors).³³ Thus, most battered women will only have contact with the municipal level prosecutor, if they have any contact with a prosecutor at all. City prosecutors' policies cast the most significant shadow into the community regarding domestic violence.

Phoenix: Phoenix started a specialized prosecution unit in 1996. This change was brought about by the availability of federal Violence Against Women Act funds, which allowed departments to spend additional dollars to create specialized units without having to rely on the city budget process (and thus, local will) for the money. The Phoenix domestic violence unit consisted of one prosecutor, one advocate and a paralegal. The prosecutor in this unit described as his mission the prosecution of the "most egregious misdemeanors." These included misdemeanors which may have been classified as felonies if the victim/perpetrator relationship were different: those with injuries, which involved threats with weapons, or perhaps extensive property damage. In 1997, the domestic violence prosecutor had a high rate of success in prosecuting these

³³ The priorities for prosecution of crimes charged as misdemeanors in the City of Seattle were described in a memo from the City's Law Department as (with 5 being the highest priority): "5/ cases involving broken bones or use of weapons, 4/ Violation of court orders, 3/Assaults (black eye, laceration, etc.) 2/ simple assault (no injuries) and 1/ harassment (in person or by phone)." This characterization clearly indicates that very serious assaults were being filed as misdemeanors, a common practice in family violence cases. (memo provided by an advocate)

cases, meaning many resulted in a conviction or guilty plea. However, the number of cases this unit was able to handle was relatively low—about thirty-five per year. This represents only a fraction of the several thousand domestic violence cases referred to the prosecutor's office by law enforcement each year. The remaining domestic violence cases are handled as part of the routine workload among the other prosecutors in the office. It does not appear that the Phoenix prosecutor's office tracks these cases separately, and so was unable to provide me with information on the number of domestic violence cases prosecuted each year. In theory, the Victim Services office could provide support to victims of domestic violence whose case was outside the domestic violence prosecutor's office, in the general pool of cases. Victim Services employed ten advocates and four volunteers at the time of this study, and focused on providing support to victims of all types of crimes. The Victim Services staff were not closely connected to organizing and education efforts regarding domestic violence in Phoenix, and no woman I spoke with ever recalled having contact with one. The battered women's advocates interviewed did not reference Victim Services as a significant or helpful resource or referral in their work with battered women.

While the new domestic violence prosecutor sometimes prosecuted cases in which the victim did not wish to testify, generally, victim cooperation was

required for prosecution to move forward in all but the most extreme domestic violence cases. Thus, it if were clear that the victim would not testify, or if she called the prosecutor's office to say that she wished to "drop the charges," the prosecutor would not pursue filing charges against the abuser.

County prosecutors generally handle felony level cases from cities within the county, as well as misdemeanor prosecutions from unincorporated areas. The Maricopa County prosecutor's office did not have a specialized domestic violence unit, nor was there a dedicated domestic violence prosecutor.

While none of the women I interviewed were aware of their abuser being prosecuted at the county level, a couple of women had themselves been pursued by the county prosecutor in relation to custody disputes, because in fleeing the batterer they had taken their children out of state and the prosecutor filed kidnapping charges. Quantifying such prosecutions is very difficult, as no one keeps count of such things. However, the fact that several women in one support group had this experience suggests that punitively pursuing women who were fleeing their abusers around visitation issues was not uncommon, and perhaps reflects the conservative, traditional, family-oriented politics in Phoenix.

Seattle: The city of Seattle has had a specialized domestic violence prosecution unit since 1978. The office has gone through several names since

its inception. It was originally called the Battered Women's Project. In the mid-1980s, the office broadened its focus to include child abuse and changed its name to the Family Violence Project. In the mid-1990s, the name changed to the Domestic Violence Unit.

The office started with three full-time advocates who provided support and information to domestic violence victims. All misdemeanor domestic violence police reports are processed through the domestic violence unit. In its first year, the project screened 580 cases and 110 were set for trial (19%). In 1988, the project screened 7,953 cases, and set 2,835 for trial (36%) (Levinson, Sohl, and Company 1989). In 1997, the Project was screening 5,259 reports and filing charges in 2,592 (49%).

A 1989 report to the city council described the advocates' role in the Family Violence Project as including contact with the victim, "assessing the evidence and feasibility of prosecution, and preparing a pre-trial report and sentencing recommendation. Their duties also include providing the victim with information about the community resources for abused women and with personal support throughout the court proceedings. The Family Violence Advocates are also responsible for collecting court and police records needed to document prior arrests, convictions, violations of No Contact Orders and other matters heard in the King County Superior Courts as well as Seattle Municipal Courts" (Levinson,

Sohl, and Company 1989, p7). Over time, two things became apparent: the number of cases was rising as domestic violence reforms affected police practice and the number of community-based advocates increased, and the presence of advocates had a positive impact on case outcome, whether or not the victim wished to testify.

In 1984, a mandatory arrest law went into effect, dramatically increasing the workload of the Family Violence Project. Around the same time, advocates and attorneys within the prosecutor's office became more concerned about child abuse and wanted to have advocacy resources available to children and their parents in child abuse cases. Thus the program expanded its focus and increased its workload. In response, the city increased staffing for the project. In 1985, the Project changed its name to the Family Violence Project and began running with seven advocates, one focused specifically on child abuse. The next year, two additional advocates were employed so the Project could increase its focus on harassment crimes. The Project was operating with nine advocates at the end of 1986, and it had fourteen in 1997.

Victim cooperation makes prosecution of a domestic violence case easier, as the victim is often the only witness to the crime. However, the City of Seattle has increasingly emphasized the idea of victimless prosecution or evidence-based prosecution in the last ten years. The thinking behind this is that abusers often

intimidate or threaten their victims, forcing them to recant, refuse to cooperate or request that charges be dropped. Some advocates have argued that as long as the burden on whether or not to go forward rests exclusively with the victim, then all an abuser has to do is intimidate the victim in order to avoid consequences for their abuse, and that this forces victims to take undue risks by speaking out against their abuser for uncertain "rewards"—it is unlikely that even a guilty finding would result in jail time, for example. The abuser would be free to continue abusing their victim, and perhaps focus on revenge or retribution for the victim's "betrayal." Victimless prosecution, like mandatory arrest policies, attempts to communicate that the community takes domestic violence seriously and will not tolerate it. To succeed, it requires careful investigation and gathering of evidence, and skilled prosecution. Seattle prosecutors have received training in this method of prosecution, and policies support its use.

*Judicial Response***Table A.11 Judicial Response**

Best Practice	Phoenix	Seattle
Mandated domestic violence training for civil and criminal judges		
Specialized domestic violence court		
Independent domestic violence "evaluator" for civil cases (custody and Protection Orders) staffed by evaluators with expertise in domestic violence		X
Model protocols for judges specific to state laws		X

While Phoenix and Seattle differ in significant ways, they have important similarities in regard to judges who hear domestic violence cases in civil and criminal court. Advocates in both Phoenix and Seattle pointed out that judges are a difficult group to reach with training, as they are very sensitive to accusations of being biased or overly sympathetic to victims. Neither Arizona nor Washington has ever mandated domestic violence training for judges. For judges who are interested, training opportunities exist on the national level (a one week program sponsored by the National Council of Juvenile and Family Court Judges is offered several times each year). In Washington, voluntary training has been offered on the state level as well by the Justice and Gender Commission (convened by the state Administrative Office of the Courts). The

Justice and Gender Commission has also issued extensive guidelines for judges in domestic violence cases. Tracking attendance at these trainings can be difficult, as judges prefer to be quiet about the training they seek so as not to appear biased.

While some municipalities have instituted specialized or integrated domestic violence courts in which both civil and criminal cases may be heard, neither Phoenix nor Seattle had such a court in 1997. Domestic violence cases were heard in courts hearing numerous other issues, and civil and criminal actions were not handled in tandem.

Advocates in each city could point to judges who were exceptional and who had taken leadership roles in domestic violence councils or other forums; however, these exceptions are not indicative of the general functioning of courts in the city. Most judges, especially at the municipal level, make decisions in domestic violence cases based on their understanding of law, and whatever their understanding is of domestic violence based on the "common knowledge" they have absorbed as a member of this society, not on any specialized knowledge developed in the context of study or training.

Methods

Interviews with twenty-six battered women in Phoenix and Seattle form the

heart of this study. I also spoke with prosecutors, police officers, government officials and battered women's advocates in each city.

Interviews with Battered Women

I enlisted the assistance of domestic violence programs in both Phoenix and Seattle to get in touch with battered women. I sent a summary of the study and its intentions to the shelter coordinators and community advocates in each program, and I met with program staff to explain the study in detail. In Phoenix, where I was less known to the domestic violence community, I gained the help of the Arizona Coalition Against Domestic Violence in opening doors at the largest domestic violence program, Sojourner. In Seattle, I had the privilege of having a longstanding relationship with the largest program in town, New Beginnings, and thus had some degree of entrée.

Both Sojourner and New Beginnings were concerned that the research would not place women at risk of further harm, and would be accountable to the women interviewed in terms of providing them with transcripts of their interviews and copies of the final product if they wished. The consent to participate in the project included these options, as well as the assurance that names and identifying details would be changed, that women would not be contacted unless they let me know it was safe to do so. The consent also made clear that the project was voluntary and their participation or lack of participation

would not affect their ability to receive services from the agency. The consent and informational flyer also explained that results of the study would be shared in articles, and with policy makers and battered women's advocates.³⁴

Phoenix: During 1997, I traveled to Phoenix several times to recruit and interview women for the study. Sojourner operated a large weekly support group attended by shelter residents, former shelter residents, and women who had never been in shelter but had sought support from Sojourner. At the start of these groups, I would briefly explain the intent of the study, and hand out surveys and consent forms, inviting women to contact me after the group to set up a time for an interview if they were interested. The Sojourner shelter opened their doors to me, allowing me to interview women on their grounds, as this was a convenient, safe space for the women. I also met women in conference rooms at the public library and in diners.

In Phoenix, I was also assisted by the Arizona Coalition Against Domestic Violence, which had drawn together a group of formerly battered women who provided support to one another and also served as trainers and resources to the

³⁴ While I did not have immediate plans for wide distribution of this study, I wanted to gain consent to as broad a distribution as possible, in order to maintain maximum flexibility for what to do with the findings.

Coalition. Several of the women from this group were interviewed as well.

Seattle: While I had a longstanding relationship with New Beginnings in Seattle, having worked in the shelter program as relief staff in the early 1990s and teaching a significant portion of their volunteer training three times a year, I had more difficulty with access there than I had anticipated, and found that women were generally less interested in talking with me than the women in Phoenix.

In considering this, it seem there may be a number of explanations for the difficulty with access. Seattle and Phoenix are both close to major universities. However, it seemed that New Beginnings had been approached by many more researchers regarding access for study than Sojourner. This may be because Seattle has a much higher profile with regard to domestic violence than Phoenix, and the area attracts people who want to study various aspects of the problem. My request for access at New Beginnings followed a request by a well-funded team of research faculty from the University of Washington's School of Social Work. That group offered to pay subjects \$25 and also made a donation to New Beginnings. I was asked why I was not offering to pay women for their time as well.

The question of subject payments is a complex one. On one hand, paying women even a token amount for their time recognizes the value of that woman's

time and the fact that the researcher is taking something from the subject and should give something in exchange. On the other hand, saying no to participating in a study should be as easy as saying yes, if we are to feel assured that coercion played no role in participation. While women in all economic classes are battered, women seeking shelter tend to be poverty level. Offering a person who is poverty level money for participation in a study is not a neutral act. One could argue that a woman who has no money cannot really say "no" to an offer of money as easily as she can say "yes." I had initially decided against offering subject payments because I was concerned with this latter set of issues.

Eventually, however, I realized that the norms around research in Seattle in particular were quite different from those in Phoenix. New Beginnings was resistant to providing support and assistance without a subject payment. In Phoenix, it also seemed that battered women were quite hungry for someone to listen to their story, but that did not seem to be the case in Seattle, perhaps because of the greater availability of advocacy. Therefore, I decided to offer a \$10 payment for women who took the time to talk with me. Recruitment went more smoothly after that.

I was able to attend one or two New Beginnings support groups to explain the project, and women generally contacted me by phone in response to the flyer or my visit to the support group. I met women in libraries, hospital

conference rooms, on the UW campus and in their homes.

Interview process: I asked each woman I interviewed to fill out a short survey which covered some basic information regarding their age, racial identification, number of children, what sorts of abuse they had experienced, and ratings of their satisfaction with the police, judges and prosecutors with whom they had come in contact.

Interviews generally lasted about two to three hours. They were somewhat structured in that I had a list of questions and topic areas I hoped to cover (see Appendix A for study forms, including the interview and survey). Our conversations most often took the form of obtaining a history of the woman's experiences with their abuser, from their first identification that something might be wrong in the relationship, through their various efforts to cope with the abuse, efforts to control the abuse and gain support, and specific experiences with the civil and criminal justice system.

Characteristics of Sample

Race of women interviewed: As discussed above and illustrated in Table A.12, I had limited success in obtaining interviews with women of color in each site. In each city, the majority of the women interviewed were white.

Highlighting the difficulty of breaking race into neat categories, race breakdowns

in Seattle were made more complicated by three women's multiple racial identifications. (One identified as Hispanic and white; one as Black, Asian and Native American; and another as Native American and white. Neither of the women who identified as mixed Native American had grown up on a reservation, currently lived on one, or were closely identified with a Native American community or cultural practices. It is possible that at least one of them mistook "native American" to mean non-foreign born American citizen.)

Table A.12 Race Identifications of Women Interviewed

	Phoenix (n=14)		Seattle (n=11)		Seattle (n=11) Corrected for multiple race identifications	
	n	%	n	%	n	%
African American	1	7.1%	2	18.2%	1	9.1%
Hispanic/Latina	2	14.3%	1	9.1%	0	0.0%
Asian/Pacific Islander	1	7.1%	1	9.1%	0	0.0%
Native American	0	0.0%	3	27.3%	1	9.1%
Caucasian	8	57.1%	8	72.7%	6	54.5%
Other race	1	7.1%	3	27.3%	3	27.3%
missing	1	7.1%	0	0.0%	0	0.0%
	14	100.0%	18	163.6%	11	100.0%

In Table A.12, the first set of numbers for Seattle reflects these multiple identifications and thus the numbers do not equal the number of subjects. The second set of numbers presents the data somewhat differently, coding those three women as "other" and taking their multiple identifications out of the other racial categories.

While obtaining these twenty-six interviews felt at times like a Herculean task, the number is extremely small and not amenable to statistical analysis. Women of color make up such small portions of my sample, it is difficult to draw broad conclusions regarding the effects of race on my research questions; this is one of the most significant disappointments of the study in its present form.

Age: The average age of women interviewed in Seattle was twenty-nine, while the average age of the women in Phoenix was thirty-eight. This significant difference in the ages of women seeking help from the shelter programs may also reflect the fact that women in Phoenix had often been struggling with extricating themselves from their abusive relationships longer than women in Seattle. It may be that the Mobilization Facilitation infrastructure found in Seattle helped women get connected to helping resources more quickly and at a younger age than the Legal Protection model operating in Phoenix.

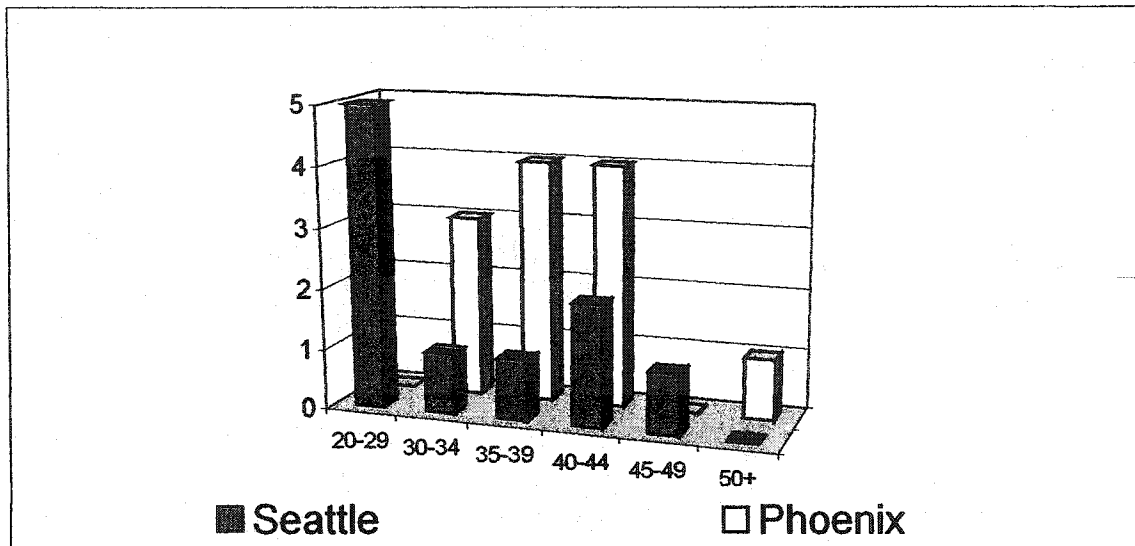


Figure A.5 Age Distribution

Figure A.5 visually illustrates the different age spreads between the two interview groups and highlights the lack of women under thirty in the Phoenix interviews.

Status of relationship and recent assaults: The survey asked four questions to get at the status of women's relationships with their abusers: marital status, whether or not the woman was living with the abuser, whether they saw the relationship as "broken up" or ongoing, and the existence of children in common (see Appendix D for a copy of the survey).

Women in Phoenix had been broken up or separated from their abusers longer on average than women in Seattle (an average of nineteen months versus

ten months). (See Table a.13) However, even though they had generally been separated longer (some for as long as four years), when asked how long ago

Table A.13 Time since Breakup and Most Recent Assault

	Time Since Break-Up				Most Recent Assault			
	Seattle		Phoenix		Seattle		Phoenix	
	n	%	n	%	n	%	n	%
Within one week	2	33.3%			2	18.2%	2	15.4%
Less than a month					2	18.2%		
One month to 3 months			3	27.3%			3	23.1%
3 – 6 months					3	27.3%	3	23.1%
6 months to a year	1	16.7%	2	18.2%	2	18.2%	2	15.4%
One to two years	2	33.3%	4	36.4%	2	18.2%	3	23.1%
Two to three years	1	16.7%	1	9.1%				
Three years or more			2	18.2%				

they had experienced their most recent assault, time frames for Seattle and Phoenix women were similar, indicating that even long after break-ups, women

in Phoenix were still experiencing domestic violence and still needing and seeking the help of support services.

Because I located them through domestic violence advocacy and shelter programs, the women I interviewed had, for the most part, made a decision to leave their abuser. This decision shaped their desire for how they wished the legal system to intervene in their lives. Women who have made a decision to stay with their abusers may have different desires and concerns which are not well represented here.

Protection Order Mobilization: A majority of women in Seattle and Phoenix sought Protection Orders, but in Seattle, women were much more likely to feel good about the process. Of the Seattle sample, 63% had sought a Protection Order, whereas in Phoenix, 85% had sought Protection Orders (PO). No woman in Phoenix was aware of having been issued a criminal No Contact Order, while 18% of the women in Seattle had. Asked whether or not the judge treated them fairly in the PO hearing, 85% of the Seattle women who had orders of protection said yes. In Phoenix, only 27% felt they had been treated fairly by the judge. Asked to rate their satisfaction with their treatment, 75% of the women in Phoenix chose "mostly dissatisfied" or "very dissatisfied" while 85% of women in Seattle chose "very satisfied" or "mostly satisfied." This highlights the

importance of looking at how the system *works*, not just what it offers.

Superficially, it would seem that it was possible to get a PO in both Seattle and Phoenix. However, the quality of that experience differed significantly between the two cities. Women in Seattle were far more likely to feel supported and respected during that process, increasing their sense of the reasonableness and possibility of resistance.

Once women obtained Protection Orders, their partners almost universally violated them. While 89% of the women in Phoenix reported these violations, they were very disappointed with the results of their efforts at gaining support for resistance. 85% of Phoenix women reporting PO violations rated their satisfaction with the police response to those violations as "very dissatisfied." In Seattle, while only 50% of the women with a PO reported violations to the police, when they did report, they experienced greater satisfaction with the police response, with two-thirds selecting "mostly satisfied." Protection Orders are an important area to examine community support for women's resistance to violence, as they are initiated and essentially enforced by the battered woman herself. In Seattle, ample support exists for obtaining orders. A woman can go to a community agency or the court to get help in filling out the paperwork, and most of the women I spoke with were accompanied by an advocate when they went to court. In Phoenix, in contrast, no community agency provided help with

the paperwork or would accompany a woman to court.

*Open-ended Interviews with Legal Actors and Key Observers.*³⁵

Interviews with advocates, prosecutors, policy makers and government officials provided the opportunity to see how people shape the institutions they work in, to get a look at discursive practices and unpack the notion of "going to court" (or other institutions). As McCann points out, "institutional forces are manifest in, and to a great degree 'work' through, the culturally defined structures of intersubjective knowledge, conventions, and norms that people carry around in their heads and act on in everyday practice" (McCann 1994, p9).

Conversations with key observers and legal actors (police, court advocates, judges, commissioners, community-based legal advocates) increased opportunities to ascertain how meaning is ascribed to disputants' actions by those people with whom disputants must interact if they seek to mobilize law. In order to learn more about the context in which battered women make decisions about mobilizing law, I interviewed a variety of legal actors in each city: police, prosecutors, advocates and workers in battered women's shelters and advocacy programs.

Examination of Official and Unofficial Documentation

Many have found some examination of official documentation useful to bolster points or check against perception. For example, David Engel finds that perceptions of litigiousness in Sander County do not coincide with court records, which indicate Sander County is significantly less litigious than other places. This provides credence to his sense that complaints about litigation serve as a refrain in the "oven bird's song" in which far more than court filings are mourned (Engel 1984).

In seeking out such data, it became clear that one of the challenges scholars, activists and anyone wishing to understand the legal system's response to domestic violence faced in Phoenix was a lack of credible data. The Maricopa County Superior Court keeps no records of how many Protection Orders are filed and granted, for example. No agency in the state of Arizona publishes a report comparable to the *Crime in Washington* report issued yearly by the Washington Association of Sheriffs and Police Chiefs. This report includes detailed information about domestic violence crimes in each jurisdiction in the state, including a section breaking down the number of domestic violence crimes by

³⁵ David Engel introduces the idea of key observers in *The Oven Bird's Song* (Engel 1984).

types of offense (assault, harassment, robbery). Arizona apparently has nothing similar. In Washington, all law enforcement incident reports have a domestic violence check box. This allows a report to be tagged as domestic violence related, no matter what the specific complaint (theft, assault, etc.). In Arizona, no such mandate exists, and as a result, data on domestic violence crimes is harder to come by.

Calls to the Phoenix Police Department for information revealed an atmosphere somewhat resistant to providing information such as how many domestic violence-related calls the department responds to each year and how many domestic violence arrests are made. In order to obtain the same information made freely available to the public in Washington via the WASPC report, a public information request must be made to the Phoenix Police Department. The Department's 1996 annual report, in its only mention of domestic violence, noted that "More than 14,500 reports for criminal prosecution of domestic violence originated in Phoenix" (Frazier 1996). In response to my public information request, the department finally sent some information.

Without statistics at their disposal regarding the most basic workings of the system, it becomes difficult for scholars and activists alike to compare responses across jurisdictions. Implementing the ability to simply count the phenomenon one is interested in is often a first step to efforts to address problems. The state

of Arizona does not require that police departments track domestic violence crimes separately from other crimes. Federal Uniform Crime Reporting requirements inform most states' crime data gathering, and the UCR does not request that law enforcement agencies separate domestic violence crimes from other violent crimes. Without this separation, it becomes impossible to separate assaults against the perpetrator's intimate partner from assaults between bar patrons. The state of Washington has implemented a system for separating domestic violence assaults, and UCR data has been enhanced with this information in annual *Crime in Washington* reports since at least 1990. Arizona had no similar system at the time of this research, although upon request, the Phoenix Police Department was able to provide some statistics regarding domestic violence response.

Limitations of the Study

Any sample has weaknesses, as does this one. My recruitment methods did not produce a random sample of battered women. Challenges to obtaining a random sample of battered women are myriad. These challenges start with defining who "counts" as a battered woman, a problem I avoided by simply accepting women's self-definition. Contacting women through shelters means that women will have already identified as "battered" or "abused," bringing in an element selection error. There may be many women whose relationships would

qualify as abusive according to any number of criteria but have not said to themselves: "This is abusive" or "I am battered." These women were not reached. In addition to these practical problems, I also felt that it may not be ethical to attempt to contact and interview women who were not connected to ongoing support systems, as the interview itself had the possibility of triggering a great deal of emotional distress. For these reasons, the findings are tilted toward the perspectives of women already connected to advocacy and who have decided to leave their abuser.

Challenges also include problems of confidentiality, endangerment and abusive tactics such as isolation and control which would prevent women from being identified or participating. Any study focused on battered women will face this limitation, one posed by the essential challenges and tragedies in the lives women with abusive partners lead.

Other problems include the exclusion of women who could not speak English, and the fact that the sample does not represent fully enough the experiences of African American, Asian and Latina women. Because making contact with women who identify as being abused is such a delicate issue, and because programs serving battered women are (rightfully) suspicious and cautious toward researchers, a study like this one would best be undertaken in collaboration with community-based agencies. A collaborative relationship with

community-based agencies serving women marginalized by immigration status, language abilities or racial identification would have enhanced this research by creating greater investment in the local agencies and greater willingness to open doors and inform women about the study. Alas, that was not possible in this case. Thus this research, like a great deal of other research, neglects the experiences of the most marginalized women in both Phoenix and Seattle.

Additionally, the women interviewed in this study, had, for the most part, made a decision to leave their abuser. This clearly shaped their hopes and expectations about legal institutions and legal actors. Women who have made a decision to stay with their partners may have desires and concerns not well represented here.

A final difficulty with this study was my lack of success in obtaining interviews with judges in both cities, and law enforcement officers in Phoenix. While battered women pointed to judges as key people in shaping their experiences with legal systems, getting interview time with judges is very difficult. Time and resource limitations in this case precluded aggressive pursuit of interviews with judges.

APPENDIX B: RECRUITMENT FLYER

**Is the legal system helpful
to battered women?**

What doesn't work? What works? What could be better?

If you've had:

Good experiences

Bad experiences or

No experience with police, prosecutors, and courts

What you have to say is important

You are invited to participate in a study if

- ❖ you have been abused by an intimate partner
- ❖ and you lived in Seattle at the time of the abuse.

**RESULTS OF THIS STUDY WILL BE SHARED WITH POLICY MAKERS, BATTERED WOMEN'S
ADVOCATES AND PEOPLE IN THE CRIMINAL JUSTICE SYSTEM.**

Please participate: Take part in an interview and fill out a survey.

*Participation is completely voluntary and your confidentiality will
be protected.*

You will be paid \$10 for your time.



To volunteer: please call Margaret Hobart at 206/860-1990
and leave your name and a safe number where you can be
contacted.

Resisting Violence in the Shadow of the Law Project

MARGARET HOBART PO Box 353530 UNIVERSITY OF WASHINGTON SEATTLE WA 98122

APPENDIX C: CONSENT FORM**Resisting Violence in the Shadow of the Law Project****Consent Form**

October 14, 1998

Dear participants in the _____ program

I would like to invite you to participate in a study about how women in Seattle, Washington and Phoenix, Arizona decide when to get help from the legal system for domestic violence.

This study could help police, judges, and people who provide services to women to understand what works and what doesn't work for women struggling with domestic violence. Results of the study will be written up in articles and books, and distributed to people in the criminal justice system and in battered women's programs in Phoenix and Seattle.

I would like to meet with you individually and talk about your experiences with the legal system. With your consent, I will tape our conversation so I can quote you accurately. Your name will never be used in any written material which results from this study, and your confidentiality will be protected.

In addition to an interview, I would like to ask you to fill out a four page survey. The survey will ask some questions about your background such as your age, ethnicity/race, education, as well as about your experiences with domestic violence and contact with the legal system.

I am happy to provide you with a transcript of our interview, and a copy of written results of the study. Because of safety issues, I will not be contacting you after our interview unless I am certain I have a safe number or address. However, if you would like a copy of the results of the study, you will need to provide me with a safe telephone number or address. The study won't be completed and written up until fall of 1999.

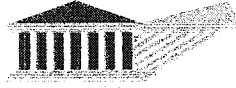
This project is voluntary and you do not have to participate.

If you would like to talk to me, please give me a call at 206/ 860-1990 or 800/909-4797 code 11 and we can arrange to meet. The interview will last about one and a half hours.

If you are willing to participate, please sign the attached consent form and return it to me. If you have any questions, please feel free to call me.

Thank you,

Margaret Hobart



Resisting Violence in the Shadow of the Law

I agree to participate in an interview for the Resisting Violence in the Shadow of the Law study carried out by Margaret Hobart.

I understand the following:

- participation is voluntary
- I may be quoted directly and my experiences may be summarized
- my name will not be revealed and my confidentiality will be protected
- results of this study will be distributed to policy makers, people in the criminal justice system, and battered women's advocates in Phoenix, Arizona and Seattle Washington. They may also be published in books and articles.

Initial

_____ I would like a copy of the transcript of our interview

_____ It is okay to contact me in the future at the following telephone number:

_____ I understand that if I want to receive a copy of the results of the study, it is up to me to let Margaret Hobart know where I am and a safe way to contact me.

Printed name

Signature

date

APPENDIX D: INTERVIEW AND SURVEY



Resisting Violence in the Shadow of the Law Project

Participant survey

1. What is your current age?
2. What is your current relationship? (Check on in each column)

Legal Status	Where you live	Emotional status	Children
<input type="checkbox"/> married	<input type="checkbox"/> living together	<input type="checkbox"/> in the process of breaking up	<input type="checkbox"/> no children in common
<input type="checkbox"/> divorced	<input type="checkbox"/> never have lived together, always had separate places to live	<input type="checkbox"/> broken up or separated (for how long? _____)	<input type="checkbox"/> children in common (how many? _____)
<input type="checkbox"/> never married / no legally recognizable relationship	<input type="checkbox"/> lived together in the past, but not now	<input type="checkbox"/> together, relationship is still happening	

3. What is your race or ethnicity? (Please check as many as apply)

<input type="checkbox"/> African American/Black	<input type="checkbox"/> Native American/Alaskan Native
<input type="checkbox"/> Hispanic/Latina	<input type="checkbox"/> Caucasian/White (non Hispanic)
<input type="checkbox"/> Asian/Pacific Islander (specify) _____	<input type="checkbox"/> Other (specify) _____

4. Which of the following do you consider to be domestic violence or abuse? (Please check as many as apply)

When a partner or spouse:

- fires a gun at their partner, or stabs/cuts their partner
- threatens their partner with a gun or knife
- hits, slaps, punches, kicks, chokes or otherwise physically assaults a partner
- threatens to hit, slap, punch, kick, choke or otherwise physically assault their partner
- forces or attempts to force sexual contact at a time their partner does not want it

- forces their partner to be dependent on him or her for money, by controlling all the money or taking their partner's money
- destroys sentimental or valued property when they are mad, like pictures or clothes
- hurts or kills pets when they are angry or want to intimidate their partner
- hurts or threatens to hurt the children when they are angry or want to intimidate their partner
- tries to control or intimidate their partner
- keeps their partner from contact with other people, friends and/or family
- keeps "tabs" on their partner, following them, calling to see if they are home, spying, showing up at their partner's work, school or home uninvited
- puts their partner down with criticism, name calling or insults

5. Have you ever been abused by a spouse or partner? yes no I am not sure

6. Have any of the following ever happened to you?

Has your partner ever:

- fired a gun at you, or stabbed / cut you?
- threatened you with a gun or knife
- hit, slapped, punched, kicked, choked or otherwise physically assaulted you?
- threatened to hit, slap, punch, kick, choke or otherwise physically assault you
- forces or attempted to force sexual contact at a time when you did not want it
- forced you to be dependent on him or her for money, by controlling all the money or taking your money
- destroyed sentimental or valued property when they were mad, like pictures or clothes
- hurt or killed pets when they were angry or wanted to intimidate you
- hurt or threatened to hurt the children when they were angry or wanted to intimidate you
- tried to control or intimidate you
- kept you from contact with other people, friends and/or family
- kept "tabs" on you, following you, calling to see if you are home, spying, showing up at you work, school or home uninvited
- put you down with criticism, name calling or insults

7. How long since you were last abused by any partner? (Make a best guess if you

can't remember exactly)

- | | |
|--|---|
| <input type="checkbox"/> within the last week | <input type="checkbox"/> 3 months to less than 6 months |
| <input type="checkbox"/> one week to less than 1 month | <input type="checkbox"/> 6 months to 1 year |
| <input type="checkbox"/> 1 month to less than 3 months | <input type="checkbox"/> 1 year or more |

8. What was your employment status at the time of the last incident of abuse?

- | | |
|--|---|
| <input type="checkbox"/> employed full time
type of work _____
monthly income: _____ | <input type="checkbox"/> unemployed
<input type="checkbox"/> housekeeping or child care full time
<input type="checkbox"/> student
<input type="checkbox"/> other (please specify) |
| <input type="checkbox"/> employed part time
type of work _____
monthly income: _____ | |

9. What was your educational level at the time of the last incident of abuse? (Please check one)

- | | |
|---|--|
| <input type="checkbox"/> some high school | <input type="checkbox"/> college degree |
| <input type="checkbox"/> high school diploma or GED | <input type="checkbox"/> some graduate work |
| <input type="checkbox"/> some college | <input type="checkbox"/> graduate or professional degree |

10. How many children do you have?

- | | |
|---|-------------------------------------|
| <input type="checkbox"/> I don't have any children
_____ | I have this many children:
_____ |
|---|-------------------------------------|

11. Is your most recent abusive partner the parent of these children?

- | | |
|---|---|
| <input type="checkbox"/> Yes, the parent of all my children | <input type="checkbox"/> No, not my children's parent |
| <input type="checkbox"/> Yes, the parent of some of my children, but not all | |

12. How many children were living with you at the time of the last incident of abuse?

13. Have any of the children witnessed abuse? yes no not sure

14. At the time of the last incident of abuse, what was your relationship with the partner that abused you? Check one in each column:

Legal Status	Where you live	Emotional status	Children
<input type="checkbox"/> married	<input type="checkbox"/> living together	<input type="checkbox"/> in the process of breaking up	<input type="checkbox"/> no children in common
<input type="checkbox"/> divorced	<input type="checkbox"/> never have lived together, always had separate places to live	<input type="checkbox"/> broken up or separated (for how long? _____)	<input type="checkbox"/> children in common
<input type="checkbox"/> never married / no legally recognizable relationship	<input type="checkbox"/> lived together in the past, but not now	<input type="checkbox"/> together, relationship is still happening	

15. Have you ever sought a protection order from the courts?

yes no not sure

16. Was the order granted? yes no

17. How satisfied were you with your treatment in court?

1

2

3

4

very satisfied

mostly satisfied

mostly dissatisfied

very dissatisfied

18. Do you think the judge / commissioner treated you fairly?

yes no not sure

19. Did your partner ever violate the order?

yes no

20. If your partner did violate the order, did you (or someone else) call the police to report the violation?

yes no

21. How satisfied were you with the police response to violations of the protection order? (Circle one)

1

2

3

4

very satisfied

mostly satisfied

mostly dissatisfied

very dissatisfied

22. Have the police ever responded to a domestic violence incident involving you and your partner?

yes no

23. How many times have the police been called because of domestic violence involving you and your partner?

During the past year _____

During your lifetime _____

124. Who usually calls the police about the domestic violence?

I call

the neighbors call

my children call

other: (please specify)

25. In general, how satisfied were you with the police response?

1

2

3

4

very satisfied

mostly satisfied

mostly dissatisfied

very dissatisfied

26. Have the police made an arrest when they responded to the domestic violence? yes no

27. Who have they arrested? They arrested my partner They arrested me

28. How many times has your partner been arrested for domestic violence this year

_____ since you met _____

29. How many times have you been arrested for domestic violence

this year _____

since you met your partner _____

31. Do you think the police have treated you fairly?

yes no not sure

32. If your partner was ever arrested, did you want the prosecutor to file charges?

yes no not sure

33. Has the prosecutor ever filed charges against your partner?

yes no not sure

34. If the prosecutor filed charges, what happened? (Check all that apply)

Partner plead guilty

partner went to jail/prison (for how long? _____)

partner was referred to diversion

partner put on probation (for how long? _____)

case went to trial

partner acquitted/ found not guilty

other

(specify) _____



Resisting Violence in the Shadow of the Law Project

Interview Questions

Some basic information:

- 1) When did you meet the person who abused you? (month/year)*
- 2) How long were you involved with this person (in years or months)*
- 3) When did the abuse start? (month/year)*
- 4) How long were you involved with this person?*
- 5) Did you live together? How long did you know your abuser before you moved in together?*
- 6) Did you marry? When? How long did you know the abuser before you were married?*
- 7) Where were you living while you were involved with the person who abused you?*

A little bit about the relationship:

- 8) How did you meet the person who abused you?*
- 9) Where were you living at the time?*
- 10) Were there children involved? What were their relationships to you and the abuser?*

Identifying the abuse:

- 11) How did the abuse start?*
- 12) When did you first realized something was wrong about how your partner treated you?*
- 13) What made you think something was wrong?*
- 14) What did you do, once you realized this?*
- 15) Did you tell anyone? Who?*
- 16) Did anyone ever tell you they thought your partner was abusive?*
- 17) Did you ever think you were being treated in a way which might be illegal?*

Coping

- 18) *Did anyone else know you were abused?*
- 19) *Who or what influenced you about how to handle the abuse?*
- 20) *Who or what has been the most helpful to you coping with / ending the abuse?*
- 21) *How did you first learn of the laws about domestic violence?*
- 22) *Do you recall ever reading about or hearing about the policies regarding domestic violence here in (city)? Did you know battered women's shelters existed? Had you ever seen or heard information about domestic violence and how to get help for it on TV, the radio or in the newspaper?*
- 23) *Have you ever been politically active? Active in religious community? Other organizations? Did these experiences influence at all how you dealt with the abuse?*
- 24) *What sorts of help have you sought to deal with the abuse? (Shelter, church, counseling, support groups, etc.)*
- 25) *What do you think the people you sought help from thought about battered women in general, domestic violence and you in particular?*

Thinking about the getting help from the police and courts:

- 26) *Did anyone ever urge you to involve the legal system? For example, did they encourage you to call the police, get a protection order, etc.? Who? Did you follow their advice? Why or why not?*
- 27) *Had you ever known anyone else that sought help from the legal system for domestic violence?*
- 28) *How did their experience turn out? Were they satisfied or not? Did you think it was a good idea?*
- 29) *Have you ever been involved with the law before for another reason? Has your batterer?*
- 30) *Were you satisfied with your experience at that time? Did it seem fair? Helpful? Unfair? Unhelpful? How?*
- 31) *Did you ever seek legal help to cope with the abuse? (For example, call the police, file a protection order?)*
- 32) *Did you ever tell your abusive partner that you would call the police? What happened?*
- 33) *Did your abusive partner ever tell you NOT to call the police about the domestic violence, threaten to hurt you worse if you did, or tell you they would not help anyway? What did your partner say? Did you*

believe it?

The police:

34) What was your expectation about how the police would respond if you called them regarding DV?

35) If you or someone else ever called the police because of the domestic violence, what were your experiences with police been like? Please include where you were living at the time and who responded: city police? County sheriff?

36) If you never had contact with the police regarding the abuse, you can skip to question #

37) Were your expectations fulfilled? Were you disappointed? Any surprises? How?

38) What do you think the police think about battered women in general, domestic violence and you in particular?

Prosecutors:

39) What have your experiences with prosecutors been like?

40) Did the prosecutor ever file charges against the person who abused you for the domestic violence?

41) Did the prosecutor ask you to testify? Did you? Why or why not? What was the outcome? Would you make the same decision again? Why or why not?

42) If charges were filed, what was the outcome? Did you abuser plead guilty, get convicted, or were charges dropped? Was the abuser referred to treatment? Did he/she spend time in jail or prison? Did you think the outcome was a good one?

43) Was there ever a time when you wanted the prosecutor to file charges against your abuser for the violence, but they did not? Why didn't they file? How did you feel about it?

Courts, judges, court advocates:

44) What did you expect to happen if/when you went to court about the abuse?

45) If you did go to court because of the abuse, how were your expectations fulfilled or not? Any surprises? Where did you go to court? Please specify the city/county.

46) What do you think the judges/court personnel think about battered

women in general, domestic violence and you in particular?

47) If you went to court, was there a domestic violence court advocate there? what have your experiences with court advocates been like?

Overall evaluation of the criminal justice system:

48) How has seeking legal help to end the violence in your relationship been useful? How has it been problematic?

49) How has your involvement with the system changed your view of how the law works?

50) Has your involvement with the system changed your view of the abuse?

51) Would you change anything about the response you got from the legal system?

52) Do you think you would have been treated any differently if you were of a different race? If you had more / less money? If your partner were of a different race? How?

53) If the person who abused you was another woman, do you think that you would have been treated differently if the person abusing you had been a man? How?

Thank you for your help.

VITA

Margaret Hobart's interest in violence against women solidified when she volunteered for a rape hotline in the early 80's. She has worked in the battered women's movement since 1984. She received a Master of Arts degree from the University of Washington Department of Political Science in 1993. In 2003, she earned a Doctor of Philosophy from the same department. Ms. Hobart started Washington State's Domestic Violence Fatality Review, housed at the Washington State Coalition Against Domestic Violence, and has published two reports out of that project: *Honoring Their Lives, Learning From their Deaths: Findings and Recommendations from the Washington State Domestic Violence Fatality Review 2000* and *Tell the World What Happened to Me: Findings and Recommendations from the Washington State Domestic Violence Fatality Review 2002*.