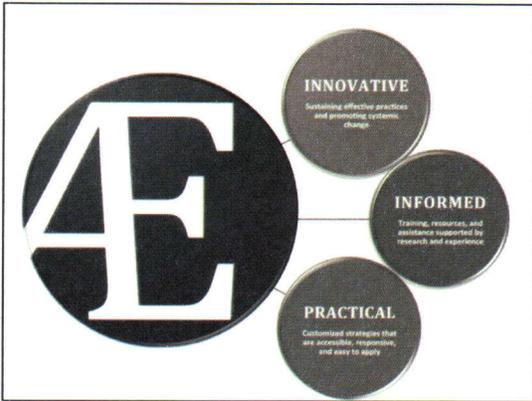


IDENTIFYING THE PREDOMINANT AGGRESSOR AND EVALUATING LETHALITY

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AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN



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CONTEXT IS CRITICAL

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What happens to cases in which both partners are arrested and charged with crimes of domestic violence?

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HYPOTHETICAL

- Sarah was arrested for striking her boyfriend in the face with a coffee mug causing a laceration.
- An independent credible eye witness states that there was an argument and Sarah's boyfriend shouted "Now you did it" but never struck Sarah or motioned that he was about to strike Sarah before he was injured.
- Sarah was arrested after fleeing the scene.

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WITH WHAT YOU KNOW

- Should Sarah be charged with a crime?
- Do you have all of the information necessary to make a decision?
- What additional information would you need to make a decision?
- Is the history of their relationship relevant to your decision?
 - Is it relevant whether or not Sarah was previously abused by her boyfriend?

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'VICTIM-DEFENDANT'

- Victim of prior battering
- Charged with a crime involving violence
- Complainant is a prior batterer

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Can prosecutors ethically treat battered women who use violence differently than batterers who use violence?

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THE CHARGING DECISION

“the capacity of prosecutorial discretion [is] to provide individualized justice is “firmly entrenched in American law. As we have noted, a prosecutor can decline to charge, offer a plea bargain... the power to be lenient is also the power to discriminate.”

McCleskey v. Kemp, 481 U.S. 279 (1987)

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CHARGING DECISION, CONT'D

- (i) the prosecutor's reasonable doubt that the accused is in fact guilty;
- (ii) the extent of the harm caused by the offense;
- (iii) the disproportion of the authorized punishment in relation to the particular offense or the offender;

STANDARDS FOR CRIMINAL JUSTICE § 3-3.9(b) (AM. BAR ASS'N).
Prosecution and Defense Function

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CHARGING DECISION, CONT'D

- (iv) possible improper motives of a complainant;
- (v) reluctance of the victim to testify;
- (vi) cooperation of the accused in the apprehension or conviction of others; and
- (vii) availability and likelihood of prosecution by another jurisdiction.

STANDARDS FOR CRIMINAL JUSTICE § 3-3.9(b) (AM. BAR ASS'N).
Prosecution and Defense Function

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Abuse victims who are arrested are unlikely to seek help from law enforcement in the future.

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**Mistrust of law enforcement
could put the abuse victim at
greater risk.**

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IDENTIFICATION AND EVALUATION

**Using Contextual
Analysis**

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THE INTENT OF THE VIOLENCE

- Helps to differentiate among acts of violence
- Helps to determine most appropriate response

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CATEGORIES OF VIOLENCE

Battering

- Intent is to control the victim or the relationship

Pathological Violence

- Intent is impacted by pathology

Situational Violence

- Intent is to control a situation

Reactive/Responsive Violence

- Intent is to address or respond to the battering

Anti-Social Violence

- Intent is to be hostile and aggressive towards others, contrary to accepted social norms

Battering is “[a]n ongoing patterned use of intimidation, coercion, and violence as well as other tactics of control to establish and maintain a relationship of dominance over an intimate partner.”

PENCE & GUPTA

REACTIVE/RESISTIVE VIOLENCE

(1) escape and/or stop violence that is being perpetrated against the victim and

(2) establish a semblance of parity in the relationship as a method of protecting themselves and their children against escalating abuse.

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SITUATIONAL VIOLENCE

Used against an intimate partner to express anger, disapproval, or to reach an objective in a unique situation, no pattern of violence or abuse

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PATHOLOGICAL VIOLENCE

Includes "individuals who abuse alcohol or drugs, suffer from mental illness or physical disorders, or have neurological damage" and use physical violence against others, including their intimate partners

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ANTI-SOCIAL VIOLENCE

Not restricted to a particular partner or gender and may occur in a number of social settings, including bars, work, home, sports fields, etc.

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HYPOTHETICAL 2: JAMES

- James, a 32-year-old male, is arrested for simple assault.
- He grabbed his wife, Sandy, by the shoulders during an argument, leaving bruises, and pushed her down on the couch.
- Police are called by a neighbor, who heard loud argument and a scream.
- Neighbor saw James jump in his car and leave the scene before police arrived.

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Does it look like James is a batterer?

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JAMES: ADDITIONAL FACTS

- Two months earlier, the couple's 8-year-old daughter collapsed on the playground and died on the way to the hospital.
- There is no history of violence.
- Sandy's been urging conversation and counseling to address their grief issues.

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JAMES: STILL MORE FACTS

- James refuses to discuss their grief, saying, "There's nothing we can do about it."
- On the date of the incident the couple were arguing. Sandy told James that he needed to confront the grief in counseling or their marriage would fall apart.
- Overwrought with stress and grief, James grabbed Sandy and pushed her down, then left to avoid further argument.

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DO THESE FACTS CHANGE YOUR THINKING?

Battering

- Intent is to control the victim or the relationship

Pathological Violence

- Intent is impacted by pathology

Situational Violence

- Intent is to control a situation

Reactive/Responsive Violence

- Intent is to address or respond to the battering

Anti-Social Violence

- Intent is to be hostile and aggressive towards others, contrary to accepted social norms

Different categories of intent and context require different prosecution responses.

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CHALLENGES

Mandatory/
pro arrest
policies

Self-defense

Predominant
aggressor
analysis

Illegal
conduct

Factual
evaluation

Case
disposition

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EVALUATING SELF-DEFENSE

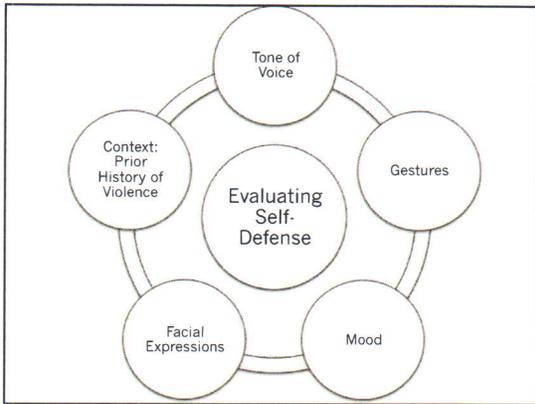
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NOT ALL VIOLENCE IS ILLEGAL

Necessity and imminence

- Is someone threatened with harm?
- Is the threat imminent?
- Is it necessary to use force to defend against the threat?
- Is a reasonable degree of force used to defend against the threat?

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PREDOMINANT AGGRESSOR

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MANDATED INVESTIGATION

- History of violence between parties
- Physical injury
- Threats creating fear of physical injury
- Statements from the parties
- Self-defense analysis

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EVALUATING LETHALITY

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JENNIFER & TODD

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POLICE REPORT

- Who is the predominant aggressor in this case?
- Are there any indicators that either party is in danger of further violence or death?

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911 CALL

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911 CALL

- Who is the predominant aggressor in this case?
- Are there any indicators that either party is in danger of further violence or death?

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ASSESSING DANGEROUSNESS

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DANGEROUS CASES

What signs or “red flags” have led you to believe that a victim was in danger of being killed by an abusive partner?

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ASSESSING DANGEROUSNESS

- ◉Victim safety is always an issue
 - Lethality factors
 - Risk factors
 - Risk inhibitors
- ◉Intimidation/obstruction

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PROCESS-ORIENTED APPROACH

Context	<input type="checkbox"/> Case history
Evidence	<input type="checkbox"/> Thoughtful and thorough investigation
Analysis	<input type="checkbox"/> Sophisticated versus basic issue spotting
Justice	<ul style="list-style-type: none">• Probable cause• Guilt shall not escape and innocence shall not suffer

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LOOK AT BROADER FACTORS

- Physical
- Legal
- Economic
- Familial
- Social risks faced by victim

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CONDUCTING AN ASSESSMENT

Can't rely solely on an instrument!

- Criminal history data
- Interview victim and perpetrator
- Family & friends of victim and offender
- Ask probing questions
- Interview victim advocate
- Victim has the most reliable information

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HOMICIDE RISK FACTORS

- | | |
|----------------------------------|-----------------------------|
| •Threats of homicide or suicide | •Stalking behavior |
| •"Ownership" of the victim | •Strangulation |
| •Centrality of the victim | •Guns |
| •Increased frequency of violence | •Forced sex |
| •Increased severity | •Drugs and/or alcohol |
| | •Assault of pregnant victim |
| | •Children threatened |
| | •Avoided arrest |

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HOMICIDE RISK FACTORS, CONT'D

- ◉Is he unemployed?
- ◉Do you have a child that isn't his?
- ◉Do you believe he is capable of killing you?

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RISK INHIBITORS

- | | |
|------------------------------|--------------------|
| ◉Employment | ◉Support systems |
| ◉Education | |
| ◉Reputation in the community | ◉System controls |
| ◉Family ties | • Monitoring |
| | • Sanctions |
| | • Victim's options |

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"The department is committed to engaging in a comprehensive approach to intervening in domestic abuse incidents. **The investigation of these cases sets the foundation for almost every subsequent action by the courts and community-based agencies. It is the cornerstone of an effective, coordinated inter-agency response.** The intent of the law and this order is to protect victims from ongoing domestic abuse."

~ Duluth Police Domestic Abuse Policy

WHY SHOULD LAW ENFORCEMENT DO RISK ASSESSMENTS?

- Unique position to gather information when victim is likely to speak candidly
- May be only chance
- Information is gathered in a timely fashion and can be used immediately
- Asking risk assessment questions yields additional information about case

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DULUTH POLICE DEPARTMENT: RISK ASSESSMENT PROGRAM

1. Do you think he/she will seriously injure or kill you or your children?
 - a.
 - b.
2. Has he/she ever forced you to perform sexual acts under the treat of violence?
3. How frequently and seriously does he/she intimidate, threaten or assault you?
4. Describe the most frightening even/worst incident of violence involving him/her?

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QUESTION #2

Has he/she ever forced you to perform sexual acts under the threat of violence?

- Added to risk assessment in 2006
- Used to assess risk until 2010 when D.P.D. initiated follow up and tracking of all "Yes" answers

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QUESTION #2, CONT'D

YEAR	DV CALLS	QUESTION #2 ASKED	RESPONDED YES TO #2	PERCENTAGE
2010	464	355	36	10%
2011	475	343	39	11%
2012	409	294	28	10%

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MARYLAND LETHALITY ASSESSMENT PROGRAM

- First Responders
- Danger assessment
- Tailored Response Protocol
- Follow-up

MARYLAND NETWORK AGAINST DOMESTIC VIOLENCE,
www.mnadv.org (last visited Jan. 20, 2015)

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LOUISVILLE LETHALITY SCREEN FOR FIRST RESPONDERS

A "Yes" response to any of Questions # 1 – 3 automatically triggers the protocol referral.			
1	Has he/she ever used a weapon against you or threatened you with a weapon?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Ans.	
2	Has he/she threatened to kill you or your children?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Ans.	
3	Do you think he/she might try to kill you?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Ans.	
Negative responses to Questions # 1 – 3, but positive responses to at least four (4) of Questions # 4 – 11 trigger the protocol referral.			
4	Does he/she have a gun or can he/she get one easily?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Ans.	
5	Has he/she ever tried to choke you?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Ans.	
6	Is he/she violently or constantly jealous or does he/she control most of your daily activities?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Ans.	
7	Have you left he/she or separated after living together or being married?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Ans.	
8	Is he/she unemployed?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Ans.	
9	Has he/she ever tried to kill himself/herself?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Ans.	
10	Do you have a child that he/she knows is not he/hers?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Ans.	
11	Does he/she follow or spy on you or leave threatening messages?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Ans.	

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USE BY CRIMINAL JUSTICE SYSTEM

Pre-plea or pre-adjudication



Sentencing



Probation

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OTHER USES

- Civil or criminal protective orders
- Law enforcement
- Child safety centers

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PROBLEMS WITH INSTRUMENTS AND PREDICTING

- Accuracy of prediction
- Liability
- Lack of empirical data
- Accuracy of information
- Possibility of false assessments
 - Low risk: "Failure to protect"
 - High risk: Punitive sentencing/constitutional rights

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WHY CONTINUE TO USE ASSESSMENTS?

- Information can be useful to victims
- Helps the system with limited resources
- Provides practitioners with “red flags”
- Helpful in concert with other information

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EXAMPLES

Danger Assessment

www.dangerassessment.com

Lethality Assessment Program (LAP)

<http://mnadv.org/lethality/>

Contextual or follow-up risk questions

http://www.stopvaw.org/duluth_police_pocket_card

911 call prioritization

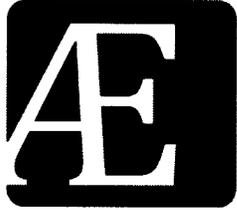
http://praxisinternational.org/blueprint_materials.aspx

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GOING FORWARD

- Avoid dual arrests
- Apply contextual analysis to determine a just result
- Use danger assessments to protect victims
- Educate the court about the danger a suspect presents

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