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FORUM: MANDATORY PROSECUTION IN DOMESTIC VIOLENCE CASES

INTRODUCTION

Sheila James Kuehl*

The statement “domestic violence is a serious problem” has almost become an American truism, thanks to more than twenty-five years of work by advocates toiling to shed light on this epidemic and to create an ever safer world for battered women and their children. Every year, more than two million women report that they have been assaulted by a spouse or boyfriend, with more than 350,000 of these cases occurring in California. Ninety-four percent of employers polled in a recent survey ranked domestic violence as a serious workplace problem because of threats and violence by batterers toward employed victims. Several studies have substantially linked child abuse with spousal abuse. One out of fourteen married women in one survey reported incidents of severe violence and thirty-two percent reported that violence re-occurred within six weeks after separation from an abuser.

In assessing the best way to respond to this problem, state legislatures and the United States Congress have assigned primary responsibility to the criminal justice system. That system’s approach to domestic violence is, therefore, a critical policy issue and one in which the method of prosecution plays a major role. It is no surprise, then, that great attention is being given to a recent debate about whether mandatory prosecution, undertaken with or without the help of the victim, should be utilized by prosecutors in dealing with domestic violence cases.

* Speaker pro Tem, California State Assembly.

A mandatory prosecution policy requires district attorneys to file charges against a defendant in every domestic violence case in which there is legally sufficient evidence to proceed. California encourages such policies, and also mandates warrantless arrests, even in misdemeanor domestic violence cases. Legislators and advocates argue that such policies safeguard the victims by removing any possibility that they can be blamed by the batterer for choosing to prosecute or arrest. Others disagree.

The 1996 UCLA School of Law Legislative Forum arose out of this debate and focused on mandatory prosecution in domestic violence cases. The authors of the following two Essays participated in the forum and their pieces are adaptations of their presentations. Donna Wills, Head Deputy of the Family Violence Division of the Los Angeles County District Attorney's Office, supports mandatory prosecution as a crucial part of combating domestic violence. Linda Mills, Assistant Professor of Social Welfare and Law at UCLA, argues that the policy of mandatory prosecution places the victim of domestic violence and her family in even grater jeopardy and is, therefore, an inappropriate policy.

In her Essay, Donna Wills points out that the crime of domestic violence goes beyond injury to the victim and is detrimental to all of society. Speaking from her prosecutorial experience in the Family Violence Division of the Los Angeles County District Attorney's Office, she argues that the role of the prosecutor is to represent the People of the State and that the decision of whether or not to prosecute a crime should not rest with the victim but with the People.

Since a victim is often terrified of retribution, guilt-ridden about prosecuting a loved one, weakened by the violence committed against her, or torn between conflicting emotions, Wills argues that the decision is better made by the State. She argues that this policy protects the victims of domestic violence because, by giving decision-making power solely to the State, it relieves victims from pressure exerted by the batterer to simply drop the case. By using this uncompromising means of enforcing the law, the State can send a strong message that "there is no excuse for domestic abuse."

Linda Mills counters in her Essay that a mandatory prosecution policy actually has a negative effect on victims. She argues that mandatory prosecution disempowers victims by robbing them of their voice in the decision to prosecute. Suggesting that

prosecutors should use greater flexibility in dealing with domestic violence, she advises adding “intuition and insight” to the decision-making mix, rather than adhering to a rigid formula of mandatory prosecution. She proposes two new approaches based on her observations of current practices by district attorneys.

It is my hope, in presenting this issue, that greater open debate will occur on the positives and negatives of mandatory prosecution policies and that such a debate will continue to inform those of us charged with making public policy in these areas. All of those involved in these discussions are attempting to craft solutions to help end the nightmare for millions of victims of domestic violence. On with the debate.

