Figure 11.3. OBSERVATIONAL PLANS: Questions with a Causative Aspect 3

EM9608: The Globe and Mail, January 3, 1996, page A3

Women's lives saved through U.S. initiative

Prosecutors get results with tough new policy on wife batterers

BY HENRY HESS
Crime Reporter

TORONTO – A San Diego city prosecutor's determination to take wife-battering as seriously as murder is credited with saving dozens of women's lives in that city.

When Casey Gwinn decided in 1988 that it wasn't fair to expect victims of spousal abuse to bear primary responsibility for bringing their abusers to justice, he revolutionized domestic-violence prosecutions in San Diego and laid the foundation for similar programs across the United States.

After all, "we go forward on homicide cases without victim participation," Mr. Gwinn's assistant, Gael Strack, said in a recent interview in Toronto. "It's no different."

Now, the head of a Metro Toronto anti-battering group is calling on Canadian police and Crown prosecutors to learn from that example.

"In the States, there has been incredible progress made," said Vivien Green, co-ordinator of the Metro Woman Abuse Protocol Project. "They are prosecuting these cases and having great success reducing homicides. Here, the system says: 'Oh, no, no, no. It's not that important.'"

This past fall, Ms. Green's group invited Ms. Strack, a deputy city attorney in San Diego's domestic-violence unit, to share her expertise. In several workshops aimed at police and Crown officials, Ms. Strack described how her city's decision to take a hard line against spousal abuse has reduced homicides attributed to domestic violence by 60 per cent.

For years, she said, 25 to 35 women a year died at the hands of their partners in San Diego, a sprawling metropolis of about 1.5 million in Southern California.

Even though California had added a chapter to its criminal code in 1984 specifically outlawing spousal assault, police and the courts were treating it like a traffic violation. If a woman complained of being beaten, police would issue a ticket. But often the person charged did not show up in court, and in most cases, nothing happened.

"You practically had to kill a woman in San Diego to get arrested."

It was Mr. Gwinn and the case of the judge's girlfriend that turned things around, she said.

The case involved a pregnant woman who had been badly beaten, allegedly by her live-in lover, a San Diego judge. "She came into our office, and what she told us was horrifying. We got the 911 tapes, medical records, her torn and bloody clothing."

Mr. Gwinn was outraged. He photographed the woman's injuries and talked to neighbours, who told of a history of domestic violence. But when the city attorney's office, which prosecutes criminal cases in San Diego, charged the judge with spousal assault, it found itself at the centre of a firestorm.

"We issued the complaint – and all hell broke loose," Ms. Strack recounted. The news media and legal establishment sided with the judge; the victim vanished into Mexico and could not be found.

> **'They are prosecuting these cases and having great success reducing homicides. Here, the system says: 'Oh, no, no, no. It's not that important.'**

"So we decided to go forward without her, on the basis of her statements given in evidence" before disappearing, she said.

Every judge in the city disqualified himself from presiding over the trial, so they had to bring one out of retirement, Ms. Strack said. He threw out half the evidence by ruling that the jury couldn't hear the tape of the woman's 911 call or the evidence of prior assaults.

After an eight-day trial, the jury came back split 11-1, with the majority favouring a not-guilty verdict. That was enough for the presiding judge, who not only dismissed the charge but also rendered a decision of factual innocence, Ms. Strack said. "That's even better than not guilty."

Mr. Gwinn decided to figure out what went wrong and how to change it. Why weren't police laying charges? Why weren't doctors reporting cases of suspected domestic violence to police, as required by California law?

Later that year, he persuaded city council to form the first unit in the United States dedicated to prosecuting cases of domestic violence.

"At first, when we started prosecuting cases we were losing them," she said, so they changed tactics.

When they found it impossible to get convictions from judges, they decided to try all cases before a jury. Gradually, they started getting 911 tapes and other supporting evidence admitted. They also worked with police to improve the investigation of spousal assaults.

One of the most radical decisions was to prosecute even when a victim refused to testify or sought to have charges dropped.

"There's nothing in law that says the victim must consent to prosecute a homicide or robbery," Ms. Strack pointed out. Why should spousal assault be different?

"That was the first thing we agreed on in San Diego: to stop asking the question 'Do you really want to prosecute.'"

The close relationship with their abuser puts awful pressure on victims of domestic violence, she noted. "Our figures of the last 10 years show that 75 per cent of the time the victim will lie, recant or disppear."

The key to successful prosecution is to have the evidence, Ms. Strack told a workshop at Metro Hall. They learned there is a 48-hour window of opportunity to gather evidence "before the victim starts forgiving and retracting."

"The evidence is there. All you have to do is ask the right questions."

She encourages police to interview paramedics, look for the bloody towel the victim may have used to clean herself up, get access to medical records for indications of previous abuse, and take pictures.

"As soon as we started getting convictions, things started happening," she said.

The number of charges for spousal abuse more than doubled, from 7,000 in 1990 to 15,000 in 1994. Ninety-five per cent of those accused now plead guilty before the case ever gets to trial; of those that do get to court, 89 per cent are convicted.

Sentences average 90 days in prison, she said, but that is less important than the other conditions. "What we care about is three years probation and [an order for] counselling. Everything else is negotiable."

Experience has shown that few of those

(*continued overleaf*)

convicted reoffend. "There's a very low recidivism rate after going through a full-blown jury trial."

A batterer's greatest fears, she said, are going to jail and being exposed as a nasty person. "Many are Jekyll-and-Hyde types."

"We're not better than everyone else", Ms. Strack told the workshop, "but we don't take no for an answer and we just don't give up."

She added that success requires more than just pro-arrest policing. "Arrest without the rest of it means nothing."

In Toronto, police and Crown officials said it is hard to measure what is happening here against San Diego's experience. The Criminal Code of Canada treats domestic violence like any other assault, so there are no reliable statistics on the number of charges, the conviction rate or sentencing patterns.

(Metro police statistics suggest that 10 of last year's 64 homicides were linked to domestic violence.)

Ms. Green said that in tracking individual cases, her group has found that too often Crown prosecutors and the courts take spousal assault too lightly.

"Police have made gains. They're laying more charges and putting those charges before the courts, but the courts aren't dealing with it."

She said the lack of publicly funded counselling programs is also a major flaw. "We do have a system where most of these guys get probation and judges order some kind of counselling as a condition", but there are not nearly enough spaces to accommodate them, and provincial cutbacks threaten those that do exist.

Ms. Green said her group estimates there are 21,000 adults on probation in Metro, one-quarter for a domestic-violence offence, but only 118 spaces for group counselling. There is a four-year waiting list to get into the only program in Metro that gets provincial funding.

"So, judges are putting them on probation and there's no consequences."

In San Diego, Ms. Strack said, offenders have to pay for their own counselling.