



**Why Should Advocates for Battered Women Want Batterers to be  
Provided with Adequate Legal Representation When They Are  
Arrested for Assaulting Their Partners?**

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## **WHY SHOULD ADVOCATES FOR BATTERED WOMEN WANT BATTERERS\* TO BE PROVIDED WITH ADEQUATE LEGAL REPRESENTATION WHEN THEY ARE ARRESTED FOR ASSAULTING THEIR PARTNERS?**

As a result of legal advocacy, interventions such as arrest and prosecution for domestic violence crimes have been implemented in many communities. The consequences of conviction for a domestic violence crime can be quite serious, including job loss, preclusion from certain employment, deportation, ineligibility for public benefits including public housing, and loss of voting or jury service rights.

Now advocates across the country are finding themselves in alliances with police and prosecutors and in opposition to defense counsel who are representing the alleged abusers. Advocates' support for the use of the criminal law to sanction violence against women should not, however, cause advocates to undermine the function of defense counsel. The existence of a competent defense bar in any community does not undermine the effort to use the law to stop domestic violence. A fair and well-functioning criminal legal system may create general deterrence even where the conviction rate is less than 100%.

Enforcement of criminal laws in the U.S. is accomplished through the efforts of the state, in the person of the prosecutor, to prove a suspect's guilt by a very high standard of proof, "beyond a reasonable doubt". This high standard can operate to cause some defendants who actually commit crimes to be acquitted but serves to lessen the likelihood that a suspect who is not guilty will be wrongfully punished. The presumption of innocence, in fact, lies at the heart of our justice system's design.

But the fairness and the equitable implementation of this adjudicatory system are only possible where both parties, the state and the defendant, have competent counsel. The state brings many resources to its side, especially relative to those of a low- or middle- income defendant. And the system is so complicated (and, like other institutions, tainted by race, class and other biases) that without competent counsel, a defendant is in jeopardy of being punished unfairly. Defense attorneys can serve many roles, including that of keeping the system honest and challenging system bias.

Advocates for battered women know only too well that legal rights and protections are sometimes the only tools available to help individuals obtain freedom and justice. Consistent with this belief is the principle that *all* defendants, including ones believed to be guilty, must be represented adequately. Only a system that treats *all* people fairly is one that can be truly just.

Good, responsible defense counsel can serve purposes beyond the protection of the rights of the individual and efforts to keep the system honest. Defense counsel can serve to actually protect victims of domestic violence by warning their clients of the consequences of continued violence, assisting their clients to obtain batterers' intervention or other services, and counseling their clients to avoid further harassment or harm to the victim. These efforts, in conjunction with those of the prosecutor who seeks to enforce laws, may actually help to persuade some batterers to change.

\*This paper does not address the point that ensuring that defendants get good representation will also increase the likelihood that battered women who are arrested have adequate counsel.

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