



THE SATURDAY STAR

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Metro Edition

THE STAR STUDY ON DOMESTIC VIOLENCE

Hitting back at spousal abuse: A solution

By CAROLINE MALLAN, RITA DALY AND JANE ARMSTRONG
STAFF REPORTERS

How San Diego battles abuse, C1 The Star's view, C2

A "get-tough, zero-tolerance" policy toward wife batterers could be a reality in Metro courts today.

Under current practice vicious assaults are going virtually unpunished by a legal system that has been unable to deal effectively with domestic violence, an eight-month Toronto Star in-

vestigation has found.

The Star study, published over the past seven days, found that to effect change, not a single law would have to be altered.

What's needed, this 133-case study clearly suggests, is a new attitude among crown prosecutors.

That new attitude already exists in places like San Diego, Calif., where city attorneys prosecute domestic assault cases vigorously whether the victim is willing to testify or not.

The prosecutors rely on a host of other evidence collected by police including:

■ Photographs. The victim's injuries must be photographed.

■ 911 tapes. These emotionally charged recordings are often used in court.

■ Witnesses. Prosecutors call as many witnesses as possible — police, neighbors or family.

In San Diego, "we have a section of the penal code and it says, 'Prosecutors you will aggressively pursue the most serious sentence that you can, you will pursue this case as quickly as possible... you will, you will, you will,'" says assistant city attorney Gael Strack.

She says a victim's reluctance to testify is not a good enough

reason to drop a spousal assault charge.

"The thing is, it's really up to the prosecutor to just keep pushing and pushing and pushing even if the judge says no (to different forms of evidence)."

Could this happen in Ontario?

"Yes," says Alan Young, a criminal law professor at York University's Osgoode Hall Law School. "There has been a revolution in the law of evidence in the past five years."

As one Provincial Court judge put it, what's needed are crown attorneys, like Strack in San Diego, who are "willing to push the envelope."

Recent Supreme Court of Canada decisions on the laws of evidence have handed prosecutors the tools to proceed with cases without the victim.

Young says these revolutionary decisions enable crown attorneys to introduce victims' (P Please see Crowns, back page)

Bouchard leaves 'the door open' for unity offers

By SANDRO CONTENTA
MONTREAL BUREAU

MONTREAL — Premier Lucien Bouchard has said for the first time that he'll study offers from the rest of Canada to keep the country together.

Bouchard even specified the form those offers should take — as a package first agreed to by all the provinces and Ottawa.

In comments that indicated he wouldn't reject such offers out of hand, Bouchard said yesterday that he's keeping a close watch on the brainstorming going on across the country to draft constitutional proposals.

"We have people following this closely, that's for sure," Bouchard said at a news conference after a two-day meeting of

his Parti Québécois caucus.

"The (Quebec) government for the moment is putting its immediate attention on job creation, protecting social programs and redressing public finances. And if while we're doing this a proposal from Ottawa arrives, we'll take a look at it properly," Bouchard said.

"I doubt they will be in a position to do anything serious. But let's give them a break. Maybe they will use it," he added.

Asked if he was opening the door to renewing federalism, Bouchard replied, "I leave the door open for Ottawa to make offers."

Bouchard said Quebec has learned from its experience with the 1990 failure of the Meech Lake accord to wait for others to approve a new constitutional deal before hopping on board.

"In the Meech Lake affair, Quebec was the first to sign, the first to ratify the Meech Lake accord, and we know what happened after. So now we won't be the first on board the train whose destination we don't know," he said.

The Meech Lake deal died even though eight provinces had approved it. Both Manitoba and Newfoundland failed to approve it after a three-year deadline expired on June 23, 1990.

Bouchard's comments cap a week of trying to put a more

Quebec has severe case of referendum fatigue

By SANDRO CONTENTA
MONTREAL BUREAU

MONTREAL — Jean-Guy Lafrenière saw first-hand how the referendum debate strained relations between English and French Quebecers — including their children.

He's the associate principal of MacDonald-Cartier high school, which houses two separate schools — one francophone, the other anglophone — under the same roof in St. Hubert, east of Montreal.

The two groups of students lived in harmony until francophones started waving sovereignist signs and anglophones pulled out their Canadian flags during the referendum campaign last fall, Lafrenière says.

To avoid clashes, the school imposed a ban on partisan displays in common areas like the cafeteria and library. Teachers were also told to give both sides of the debate when dealing with the issue in class.

"If we didn't take any measures, I think we could have had confrontations," Lafrenière said, adding that relations have gone back to normal since the referendum passed.

But outside the school's walls, the next referendum looms

MOOD OF THE LAND

Star reporters are talking to Canadians about their hopes for the country in the wake of the Quebec referendum. Today, Sandro Contenta reports from Quebec.

"like a gun to the temple" of Quebec society, says Jean Lapierre, host of a popular radio phone-in show.

"We're still recovering from the post-referendum syndrome and already we're starting to feel the pre-referendum stress. When do we relax?" Lapierre says.

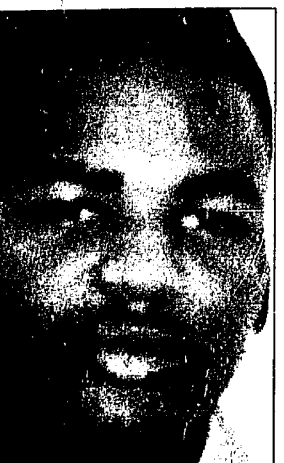
The thought of another referendum has a relentless impact on the economy, especially in Montreal.

Quebec Premier Lucien Bouchard now says he would prefer to have a referendum later rather than sooner, but he's keeping all his options open.

Meanwhile, companies are holding back on investments, some are quietly making plans

(P Please see Referendum, A10)

Man shot in back, autopsy finds



ANDREW BRAMWELL

An autopsy has shown that a 24-year-old man killed by a Metro police officer was shot in the back three times.

Three of the rounds fired by Constable Andy Kis entered Andrew Rudolph Bramwell's lower back from the side and a fourth struck the back of his upper right thigh.

The Special Investigations Unit is tracing the "origin and ownership" of a non-police-issue weapon found at the scene.

Police say Bramwell turned and pointed what appeared to be a handgun at Kis when the officer chased him Thursday evening.

Concerned residents of the Jane St.-Finch Ave. W. area held a meeting there last night. (P Story, A3)

Townfolk call Dunblane murderer 'secretive, weirdo'

Living room wall covered by photos of boys

By BILL SCHILLER
EUROPEAN BUREAU

STIRLING, Scotland — The night before he massacred a teacher and 16 precious 5- and 6-year-olds — wounding another 12 before killing himself — Thomas Watt Hamilton had dinner with his mother at her modest home in Hazelbank Gardens, Stirling.

He rose early the next morning at his own home at 7 Kent Rd., picked up a newspaper from a nearby service station and, after catching a car ride back home, bid farewell to the driver with a hearty wave and a smile.

And then he trudged out into a wintry morning in nearby Dunblane, and performed a



THOMAS HAMILTON

deed so unimaginably evil that words fail — fail utterly — to communicate its supernatural horror.

It is a cliché to say Hamilton's action shocked the world. It sickened it.

Who was the man and why did he do this?

Hamilton was a 43-year-old

failed Boy Scout master and businessman, a gun enthusiast, amateur photographer, perceived weirdo and suspected pervert who was slowly being cut off from society and pushed to its edges where he fell into a deep well of paranoia from which he could not escape.

But on Wednesday he did escape. And he exacted a heavy and vengeful toll.

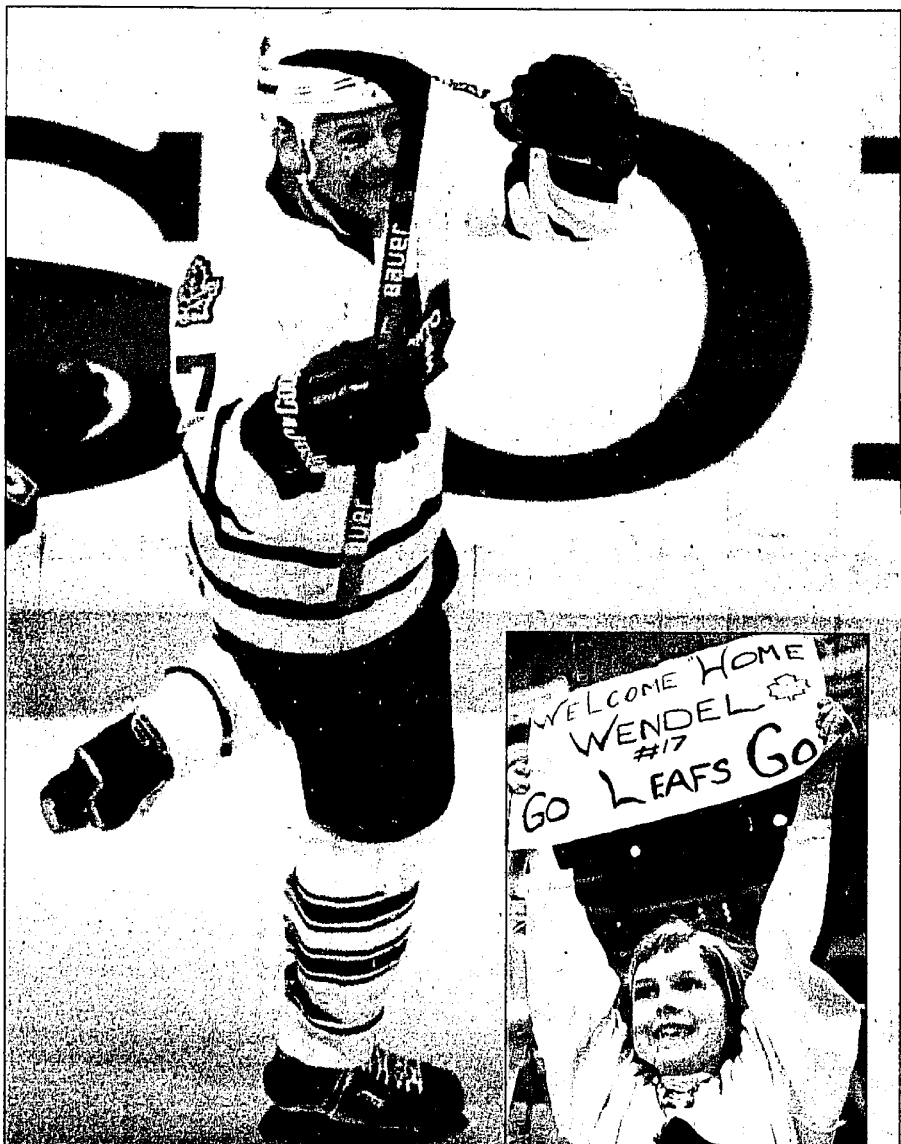
"He was shunned and I believe this was his way of getting revenge," said 71-year-old Cathleen Kerr, his closest neighbor.

Hamilton always wanted to work with boys and did work with young boys for more than 20 years. But that world was slowly being constrained.

Suspicion of what may have been his socially unacceptable interest in young boys stemmed back to 1974

(P Please see 'Secretive', A30)

Clark's home in style



Kayln Cherney, 7, celebrates the return of Wendel Clark, who helped the Leafs beat Dallas 3-0. Stories, A8, E1



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Crowns urged to keep pushing in abuse cases

Continued from A1

first statements to police even if they change their story later on. San Diego is a model for North America when it comes to taking a new approach to the problem of victims who won't testify against their partners or change their story to help get them off.

The first step is accepting that these women will not be willing participants in sending their spouses to jail.

The second step for prosecutors and police is realizing that other evidence must be rounded up to prove the case in court.

To make this approach work in Ontario, Young says, both crowns and police would have to work in tandem with a common goal: getting a conviction. That means police would have to be extremely diligent in their evidence-gathering techniques, because that evidence is more likely to be called upon in a courtroom.

In Metro, this approach is rare. The Star's study of 133 spousal abuse cases, which began during Canada Day week last year, showed that if the victim would not co-operate, charges were either withdrawn by the crown or dismissed by the judge.

"From what I know of San Diego, we can do what they do in a lot of cases," says Crown Attorney Bob Morris. "But, ideally, a co-operative victim is the

best thing for the prosecution."

Morris, who is the crown for the Lake Huron town of Goderich, says that a 1993 Supreme Court of Canada decision paved the way for prosecutors to proceed despite a reluctant victim.

"I really do see it as a way of dealing with future recantations, especially if we do videotaping or audiotaping. I think it's going to prevent recantations for a lot of reasons."

Morris says the current laws of evidence allow 911 tapes to be heard in court, even though judges are hesitant to accept them. But he says if the tapes can help secure a conviction, "they're certainly worth a try." In The Star's study, 911 tapes were never used as evidence.

Photographs of victims' injuries are also admissible in our courts but were not introduced as evidence in any of the cases tracked by The Star.

A senior Provincial Court judge, who asked not to be named, says it's up to eager and determined prosecutors to bring new forms of evidence before the court.

The common response from crowns to new ideas is, "We can't do that," the judge says. "If only the crowns are willing to push the envelope. New (case) law is made by people who are willing to push the envelope."

The San Diego approach is not unique.

Morris, who travels the conti-

nent speaking on the subject, runs a program in Goderich, based on a model developed in the early 1980s in Duluth, Minn.

The Duluth model — which has many similarities to San Diego's — aims to bring together all agencies involved in domestic violence, including police, prosecutors, shelter workers and abuse counsellors. The team also monitors success rates for prosecutions and questions why certain cases fall apart.

Morris, the only crown attorney in his community, says the

sharing of his information makes him work harder for convictions and appropriate penalties.

"It helps me because I feel that knowing that someone's there watching makes you do a better job. It's made me more vigilant in what I do."

Morris says The Star's tracking of 133 cases should have the same effect on crown attorneys in Metro. "You've put them under scrutiny for the first time."

In Saskatchewan, legislators stepped in and created new civil legislation to bolster the crimi-

nal process. The Victims of Domestic Violence Act, proclaimed in February, 1995, allowed police to contact justices of the peace directly from the victim's home. The officer can get an immediate court order dictating that the woman gets to remain in the house, while the man is ordered out.

"This means that the woman doesn't get revictimized by having to leave her own home," says Gary McLennan of Saskatchewan's justice department.

If a woman flees to a shelter, she can still go to court and

have her spouse ordered out of the home, even if he is out on bail and has moved back in. She can also be granted temporary possession of the car and any belongings.

In September, 1990, Manitoba set up a family violence court in Winnipeg to deal exclusively with a growing domestic assault caseload. The court, with a specially assigned team of prosecutors, handles more than 4,000 cases a year and aims to get as many men as possible into a treatment program.

Tamil attack on army post leaves eight soldiers dead

COLOMBO (Reuters) — Separatist Tamil Tiger guerrillas today stormed an army post in northeastern Sri Lanka, killing eight soldiers and wounding more than seven, a defence ministry official said.

The attack took place shortly after midnight near a town about 200 kilometres from Colombo, he said.

About 200 guerrillas belonging to the Liberation Tigers of Tamil Eelam took part in the attack, which lasted for more than three hours, military sources in the east told Reuters.

The army fought back, calling in airforce helicopter gunships, but it was not clear yet whether any guerrillas had died.

The attack came a day after the Tigers, fighting for an independent homeland for minority Tamils in the island's north and east, blasted a joint army and naval sea patrol off the north-west coast, killing eight security personnel.

The government says more than 50,000 people have been killed since the Tigers launched their separatist campaign in 1983.



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INSIGHT

Saturday, March 16, 1996 Section C

HITTING HOME: SPOUSAL ABUSE

HITTING BACK

IN SAN DIEGO

This southern California city is winning the battle against domestic violence — by using all the evidence available. Prosecutors prefer that the abused *not* testify.

BY JANE ARMSTRONG, RITA DALY
AND CAROLINE MALLAN
STAFF REPORTERS

SAN DIEGO, Calif. — From the moment police slapped the handcuffs around Anthony Sparks' wrists, he denied ever hitting Lynette Merrill, his common-law wife.

When they interviewed Merrill last fall, the police saw it differently. Bruises covered the 27-year-old's arms, body and upper thigh. She told them Sparks grabbed and punched her during a fight, then took the side railing from their waterbed and beat her on the thigh.

No visible injuries were found on Sparks. At his spousal abuse trial last month, Sparks stuck to his story. He was defending himself, the 23-year-old electronics technician told the jury. He and Merrill were fighting and, in a fury, she lunged at his head. "She was enraged," he said, speaking in measured tones. "Lynette, when she argues, she gets in your face."

The fight started after a day at the beach last Sept. 10, Sparks continued. He wanted to stay and watch the sun set. Merrill wanted to go to a party, he said.

He went home and Merrill arrived later, drinking and belligerent. She tried to lock him out on the balcony. He forced his way in and when he opened the door, she fell back on the bed.

"She grabbed my hair and started kicking me," Sparks said. They struggled, then his roommate came in and told them to stop.

It was a compelling story. Sparks painted himself as a passive person, who avoided confrontation. Merrill, he said, was aggressive and argumentative. He was only trying to defend himself.

Even prosecutor Tracy Noonan admitted her case was shaky. Merrill didn't call the police until the next day, enhancing the defence's position that she was acting out of spite. And she changed some unrelated de-

tails of her story more than a couple of times, damaging her credibility. As a victim, she didn't go over well.

But the jury convicted Sparks anyway.

Why? "The pictures," the jury foreman told Noonan in the hallway after the verdict.

Jurors had a hard time believing Merrill because she fudged on minor details so often. But the 11 Polaroid photographs that were taken by police, showing her bruised body, changed their minds.

"There were a lot of bruises that weren't explained," the foreman said. "The deciding factor was the bruises."

It didn't matter whether they liked her or not. She was beaten, and without those photos, Sparks wouldn't have been convicted, the jurors said.

For that reason, all police officers called to domestics in San Diego — unlike in Metro — are instructed to photograph the injuries of domestic dispute victims.

It's part of a zero-tolerance approach to prosecuting domestic assault cases that has made San Diego one of the strictest jurisdictions in North America for people accused of beating their partners.

It's based on the premise that victims — mainly women — are reluctant, unreliable witnesses in domestic crimes because of the emotional complexity of the crime. So they're rarely asked to testify against their batterers.

Instead, the work of sending a guilty defendant to jail is left up to police and prosecutors, who have devised a three-pronged method of prosecution.

And it's getting results. Defence lawyers know that prosecutors and police are gathering evidence and not shrinking from cases if a victim doesn't co-operate. As a result, the vast majority of defendants plead guilty. Last year, the city attorney's office issued charges

☛ Please see Three-pronged, C4



IT WAS "THE PICTURES," ACCORDING TO THE SAN DIEGO JURY FOREMAN, THAT LED TO THE SPOUSAL ABUSE CONVICTION LAST MONTH OF LYNETTE MERRILL'S COMMON-LAW HUSBAND.



MERRILL WAS AN UNCONVINCING WITNESS BECAUSE OF INCONSISTENCIES IN HER TESTIMONY, WHILE THE DEFENDANT PAINTED HIMSELF AS A PASSIVE PERSON.



THE 11 POLAROID PHOTOGRAPHS TAKEN BY POLICE, SHOWING HER BRUISED BODY, BECAME THE DECIDING FACTOR.

DESIGN BY CATHERINE PIKE GRAPHICS BY CATHERINE FARLEY
PHOTOGRAPHY BY NANCEE LEWIS FOR THE TORONTO STAR

If Tories understood fairness, strike would end

WITH ONTARIO'S civil service strike in its 20th day, the government has come to a crossroads.

It needs to try something new. The Conservative government has tried to hobble the strike by 55,000 members of the Ontario Public Service Employees Union through the courts and the Ontario Labor Relations Board.

But with one small exception, both institutions have politely deflected the government's requests and, in effect, told it to go back and negotiate.

(The government's latest defeat on this front came this week when the labor board turned down its request to have an additional 70 meat inspectors declared essential workers.)

The government has also attempted to persuade rank-and-file civil servants to break with their union and return to work.

But, as The Star's William Walker reported this week, the government's own figures show that almost 90 per cent of OPSEU members are refusing to cross the picket lines.

THOMAS WALKOM

Queen's Park



Faced with a labor board that won't be pliant and a union that refuses to collapse, Premier Mike Harris and his government have three choices.

First, they can continue along the same path and hope that, eventually, they will wear the strikers down and smash their union. At one level, this would be attractive to some of the more blood-and-guts members of the Conservative government.

Even Dave Johnson, the usually cautious management board chair-

man who is Harris' point man on the strike, seemed to echo this sentiment this week.

"I think this (strike) has to play out," he said. "Reality has to set in somewhere; the government cannot give in."

But this strategy carries a risk: the longer the strike goes on, the more likely it is the public will blame the government for failing to solve it.

As the meat inspection issue demonstrates (the strike has forced small abattoirs to close), a drawn-out strike could end up irritating a wide array of citizens.

Second, the government can legislate an end to the strike when the Legislature returns on Monday.

But some in government feel that this would let the union off the hook. Johnson insisted this week that the government has "no plans" to legislate an end to the strike.

Third, the government can make a deal. Logically, this should be easy. On major money issues, the two sides are remarkably close.

Consider how far Johnson has moved already from what he called

his final offer of three weeks ago.

The union then asked for a system of early retirement incentives that would allow the government to meet its staff-cut targets without having to fire workers.

Johnson said the government couldn't afford it.

The union wanted to keep existing seniority, or bumping, rights.

Johnson said the government didn't have enough time to let a proper seniority system work; he insisted bumping had to be tightly limited.

The union objected to a government proposal for short-term layoffs. Johnson was adamant; he said he needed the flexibility.

Yet this week, in a new offer, the government moved on all three fronts. And it has moved even farther in a deal struck with another civil service union of middle managers.

Both sides know that the government has little choice except to offer OPSEU at least the deal it worked out with its middle managers.

One key issue remains — successor rights. Last fall, the government arbitrarily removed from its own em-

ployees a right enjoyed by all other Ontario workers — the right to keep existing unions and collective agreements if the workplace is sold to another employer.

Johnson says he can't give that right back. He told reporters this week that if the government did so, it might not be able to get such a good price when it privatized great chunks of its operations.

"Successor rights," he said, "are a clear impediment to government restructuring."

True. But so are minimum wage laws. So are child labor laws. The government could win an even better price from privatizing if it exempted the new owners from these onerous regulatory burdens as well.

But fairness requires that all Ontario workers, private or public, be protected by the same kinds of minimum wage and child labor laws.

In the same way, fairness demands that all workers have the same successor-rights protection.

If the Harris Tories understood this — if they were willing to be fair — then this strike would be over.

HITTING HOME: SPOUSAL ABUSE

Three-pronged Attack...

Photographs. 911 tapes. Every possible witness. But the victim is not relied on to testify because of the emotional complexities. In San Diego, the work of sending an offender to jail is up to police and prosecutors — not the battered woman.



KEN FAUGHT / TORONTO STAR
DEPUTY CITY ATTORNEY GAEI STRACK, WHO HEADS SAN DIEGO'S DOMESTIC VIOLENCE UNIT, SAYS SHE'S HEARD ALL THE 'EXCUSES' WHY THE SYSTEM CAN'T CRACK DOWN ON ABUSERS. SHE MET WITH JUSTICE OFFICIALS DURING A VISIT TO METRO LAST YEAR.



MARGARET CASTILLO GLARES AT SON GILBERT DURING HIS 'GRADUATION' FROM ANGER CONTROL PROGRAM.

'I believe domestic violence is related in some way to every social problem facing this country.'

CASEY GWINN
SAN DIEGO PROSECUTOR

Anger management

In San Diego, all convicted abusers must undergo a year-long counselling program that teaches them to control their anger. Abusers must pay \$10 a week for the sessions. If they don't attend, they can be jailed.

The results

Abusers who complete the course are significantly less likely to reoffend:

5% abusers reoffend

Whereas 70% of those who drop out of anger management counselling reoffend.



BATTERER HECTOR HERNANDEZ IN JUDGE WILLIAM CANNON'S COURT AFTER COMPLETING 34-WEEK ANGER MANAGEMENT PROGRAM. 'I DIDN'T KNOW THERE WERE OTHER WAYS TO DEAL WITH ANGER — I REALLY DIDN'T,' HE TOLD THE JUDGE.

Continued from C1
In 2,942 cases. Out of those cases, 95 per cent of defendants pleaded guilty.

And the conviction rate for the 58 cases that went to trial last year was 86 per cent.

In Ontario, there are no reliable statistics on the outcome of domestic assault cases. But a study by The Star of 133 cases from one week last summer showed a conviction rate of 60 per cent of the 100 completed cases. In most cases, the abuser was allowed to plead guilty to a lesser crime.

The central tenets of San Diego's so-called victimless prosecution include:

■ **Photographs.** Police are required to take pictures of the victim's injuries. Beat officers pay for their own cameras and carry them in their car trunks.

(In Metro, a special evidence-gathering unit can be called to take pictures of a crime scene. But picture-taking of domestics isn't mandatory. In The Star's study, photos were rarely taken.)

■ **911 tapes.** If the victim phoned the emergency police line, that first call for help is used in court. These tapes often provide chilling indications of the victim's terror and hysteria. In many cases, children make the call.

(In The Star's study, 911 calls were never introduced as evidence.)

■ **Witnesses.** Prosecutors round up as many witnesses as they can — police, neighbors or family members. At the trial, police are called to the stand to describe the victim's initial statements and demeanor. These comments — "Help me. He's trying to kill me" — are called "spontaneous statements or utterances." And they are useful when victims change their stories and say the assault never happened. Previously, prosecutors had a hard time admitting these statements because judges considered them prejudicial.

(In Ontario, crown attorneys are reluctant to use other evidence in domestic assault cases, such as 911 tapes and a victim's initial statements to police, even though it's permitted.)

The San Diego track record for winning domestic assault cases has been so good, prosecutors now prefer that the victim not testify. In fact, co-operative victims often hamper a case.

"Everyone has an image in their head of the perfect victim," says San Diego deputy city attorney Gael Strack, who heads up the domestic violence unit. "It's Mother Teresa.

"In reality, she doesn't exist. Victims of domestic violence aren't angels. They can be alcoholics and drug users. When juries see that, they start making judgments. It's much better to go with the other evidence."

The San Diego method differs sharply from most jurisdictions across North America — including Ontario — which rely on the victim to carry a case through to trial.

In the 133 cases The Star tracked, crown attorneys never used other available evidence if the victim refused to participate.

Strack welcomes the attention her city has received and wants to capitalize on it. When she was invited to Toronto last fall — by a group looking at ways to improve the prosecution of domestic violence — she noted the comparatively lacklustre efforts on the part of authorities and citizens to clamp down on the crime. She met with crowns, police and judges, and heard plenty of reasons why Canada's system is different.

She said she's heard these "excuses" before. "It may be a way of controlling the caseload because if you do it that way (only proceed with a case if a victim will testify), then you're eliminating 70 to 80 per cent of your caseload.

"You can do it without the victim. If you leave it up to the victim... you might as well ask the defendant: 'Should we prosecute you?'"

Strack leads a team of nine city attorneys, who only prosecute domestic cases. Each has a field of expertise: same-sex couples, stalking, elder abuse, teenagers who batter.

This zero-tolerance approach — reminiscent of the crackdown on drinking drivers — is yielding results.

In this sprawling city of 1.3 million people, the domestic homicide rate has dropped over the last five years, from 13 per cent in 1990 (18 domestic deaths out of 135 murders) to 10 per cent last year (9 out of 93). Metro Toronto has a lower homicide rate in general. In 1995, there were 57 murders, five of which were domestic related.

It's not just prosecutors who have declared war on spousal battery. In 1992, the San Diego police department established a special unit, enlisting a team of 19 detectives and three sergeants to work exclusively on domestic violence cases.

"We (police) used to be referees," says Lieutenant Ray Sigwalt, who heads up the department's Family Protection Section, which investigates domestic assault and child abuse. "Now, we're not just taking down a story, we are investigating a crime."

Police have had help from the California legislature which has, over the last decade, tightened some laws pertaining to spousal abuse.

For example, it's a felony now for anyone to disable a phone. That means police can arrest a man who has yanked a phone from his partner's grasp.

Unlike Canada, California legislators have recognized spousal abuse as a distinct crime under the penal code.

Prior to 1985, it was listed as battery and punishable by up to six months in jail and a \$1,000 fine. But 10 years ago, spousal abuse was added to the penal code. A person convicted of this crime faces a year in jail, three years probation and mandatory counselling. A judge can also order the batterer to pay up to \$5,000 to a women's shelter.

In Canada, domestic assaults aren't distinguished from other assaults under the Criminal Code.

Police and prosecutors in San Diego speak with pride about their efforts to reduce domestic violence. Both offices — police and prosecutors — have dubbed their units the Murder Prevention Unit.

It's 8 a.m. and Gael Strack is holding her weekly "standing" meeting with staff to preview the week's trials and hearings.

Nine city attorneys cram into her small sixth-floor office in San Diego's downtown civic plaza. From her corner office window, the city's grimy, white courthouse is visible two blocks to the west. Beyond that, the Pacific Ocean glimmers in the warm February sunlight.

The attorneys are young and ambitious; most have just a few years experience under their belts. As Strack goes through the list of cases, the nervous energy in the room is palpable. One woman cracks her knuckles, another tears at a hangnail on her thumb. Feet and pens tap.

Attorneys who prosecute domestic violence cases must request to work in this unit. Many come for the challenge. The experience gained prosecuting a domestic trial is among the best. "You never know what is going to happen," says Noonan, 27, who argued the Sparks case.

Strack looks for lawyers who share her missionary zeal. "When we're in training I always say, 'Is there a zealot or maniac among you,' because that's the kind of person who can lead the charge. What you need is someone who won't take 'No' for an answer."

It's not a 9-to-5 job. Attorneys in this unit are

asked to volunteer on the city's domestic violence council, a body of professionals — including police, prosecutors, judges, shelter workers, and military and medical personnel — who make recommendations on how to reduce domestic violence.

Strack's workload is even heavier. The mother of two has criss-crossed the continent talking about San Diego's program, which is renowned as one of the most successful on the continent.

At 38, Strack has made it her life work to change the way the courts deal with men who beat their spouses.

"I see so many women who are beaten," she explains. "And the effect on children... it just bothers me. My satisfaction comes from trying to stop that."

The 10-hour days and six-day weeks sometimes take their toll. Last month, she dreamed she was being stalked by a neighbor. Other nights, she lies awake dreading that a victim in one of her cases will end up dead.

But Strack's enthusiasm and good humor are infectious. Most Monday morning meetings she plays an upbeat rock song on her tape-player to motivate staff, songs like "You Gotta Be Bad" by Des'Ree.

Down the hall from the Sparks trial, prosecutor Beth Harris swings into the tiny courtroom with a pile of court files in one arm and a boom box in the other. She is about to demonstrate the power of 911 tapes as evidence in abuse cases — this time in an elder abuse case.

Seated at the defendant's table is Andres Aguilera, 28, a heavy-set man with a shock of black wavy hair. For the second time in a year, he is accused of beating his 81-year-old father, this time with a belt, even though he was ordered to stay away from the old man's apartment.

Harris wants his probation revoked. Aguilera denies hitting his dad. But when Harris presses "Play" on the tape machine, the sound of Aristeo Aguilera's cries fill the courtroom:

"I've been whipped with a belt by my son," the old man can be heard telling a 911 operator. "A little while, about five or 10... about 10 minutes ago. And he just left, he left the house for a little while... but I think he's coming back."

There is no mistaking the man's terror.

Judge Rafael Arreola agrees. He revokes Aguilera's probation and sentences him to another six months in jail.

San Diego's approach is not just another example of American-style law and order. The goal isn't to lock up batterers and throw away the key. It is to reduce violence to women and make batterers change their behavior.

One of the reasons domestic violence escalates and festers untreated is because many batterers don't think they're doing anything wrong — and their victims are too afraid to speak out.

Continued on next page



RAFAEL AND MARY GARCIA IN COURT. SHE SAYS HE HASN'T HIT HER SINCE HE STARTED ATTENDING ANGER COUNSELLING.

HITTING HOME: SPOUSAL ABUSE

Attitude Adjustment...

In California, anger management counselling is mandatory. 'If the goal is to stop the violence, then you have to change the batterers' behavior,' says San Diego Judge William Cannon. 'Domestic violence is a learned thing.'

Continued from previous page

Those days are over in California for anyone found guilty of spousal abuse. Once convicted, a batterer must undergo a year-long treatment program. It costs them on average \$10 a session. If they don't attend, they can go to jail.

Every two or three months, batterers are hauled back in front of a judge and asked to show proof they've attended class. Those who haven't can have their probation revoked on the spot.

Judge William Cannon, a family court judge in suburban Chula Vista, says forcing batterers to undergo mandatory counselling is the only way to treat, and prevent, further violence.

Cannon's courtroom deals largely with cases of domestic violence. He gets to know the regulars, and has a good idea of which cases are more serious. "If the goal is to stop the violence, then you have to change their (the batterers') behavior."

Cannon has become renowned, among domestic violence experts and criminals themselves, for his tough stand on defendants required to undergo treatment.

On Valentine's Day, his court was the scene of a so-called graduation of batterers who pleaded guilty to spousal abuse over the last year.

It could have been a scene from anyone's graduation: Rows of young people lined up in the gallery, words of congratulations and good luck from the educator. Relatives were also on hand, patting the heads and hands of the graduates and whispering words of encouragement and pride.

These men, though, are all convicted batterers. They have just completed a 34-week program to help control their anger and learn why they started to hit in the first place. Most defendants were first-time offenders who pleaded guilty.

At first glance, it's a menacing-looking crew. Many wear the sullen, bored expressions of people who have grown up in the criminal justice system. But when Cannon takes his seat and begins his address, the courtroom falls silent and all eyes are riveted on the smiling, bearded judge.

"Would all of those who are here for the last time please stand up," Cannon says.

About 60 men and two women stand, many with heads bowed.

"Let's give a hand to these people — and give a hand to yourself."

Faces dissolve into relieved smiles. A young man sits down and turns to the woman beside him. She beams at him and touches his arm.

One by one, the men and women are brought to a podium in centre court where Cannon examines their report card from the counselling course and asks what they have learned.

"At first, I didn't think I belonged," says Hector Hernandez, 34.

"There are a lot who think 'I don't need this,'" Cannon responds.

"It's like an alcoholic. Violence was in my blood and I had to take care of it," says Hernandez.

Again, Cannon nods. "Domestic violence is a learned thing."

Hernandez and Cannon chat for another five minutes, mostly about Hernandez' relationship with his wife, Olivia, before Cannon sends him on his way. Outside in the corridor, Hernandez, a barber, says the program changed his life — and probably saved his wife's life.

He recalls growing up in a violent home, and never questioning the use of force to settle a dispute, even on a woman. But last fall, his temper landed him in jail for the first time.

It happened on the way to work. They were arguing. His wife was driving, and in a fit of rage, she pulled the car over on the freeway and got out. Hernandez ran after her and dragged her back to the car. Then he slapped her. Passing motorists who called police said they thought the violent scene was a carjacking.

Hernandez pleaded guilty and was ordered to take the treatment program. He didn't want to go. But sometime around the eighth or ninth session, he started listening.

Hernandez speaks about group counselling with the zeal of a convert. Now, he and his wife are also getting marriage therapy. "I think everyone should have to take a course on how to be married."

As Hernandez heads down the escalator, the young couple who were all smiles earlier in the morning walk out of the courtroom. Mary and Rafael Garcia were married four years when he hit her during a quarrel last fall. Their three children were present. Like Hernandez before them, the Garcias say they were following violent patterns instilled by their parents.

"My mom went through the same thing," Mary, 24, says in a matter-of-fact voice. "He (Rafael) saw his father do the same thing."

Mary says Rafael hasn't hit her since he started the program five months ago.

Still, old habits die hard. Rafael says he went to the class because he was ordered to, not because he thought he had a problem. "I was mad at my wife. I thought if I have to be here, so should she. But I learned that it (the violence) was my fault."

The couple, who have three children under age 5, still fight. But now, "if it gets bad, I leave. It's hard. But you can learn. I would leave before I hit her again."

Back in the courtroom, Cannon is finishing a pep talk to one of the last "graduates."

"If you see me on the street, come up and say hello," Cannon tells a number of men. "But I hope I never see you in this courtroom again."

There's a good chance he won't. The recidivism rate for people who complete the program, which has now been extended to 52 weeks by the Cal-

ifornia legislature, is 5 per cent. For those who drop out, the repeat rate jumps to 70 per cent.

San Diego wasn't always on the cutting edge of prosecuting domestic assault cases.

Ten years ago, this city was using the same method most jurisdictions still cling to: The victim's testimony is the best evidence and without it, the case goes nowhere.

Casey Gwinn, who is now running unopposed for the job of city attorney, was 25 and just out of law school when he started prosecuting in the criminal division.

At the time, domestic cases were the hardest to win because the onus for proceeding rested on the victim. Prosecutors, who are trained to argue cases they feel they can win, would dump domestic assault cases first. So defendants routinely pleaded guilty and walked out of courtrooms with minimal or no consequences — only to repeat the crime again.

Gwinn saw what was happening, and set out to change it. When asked why, he leans forward on his desk, his blue eyes narrowing in intensity.

"I believe domestic violence — whether it's verbal or physical — is related in some way to every social problem facing this country.

"Teenage pregnancies, gangs, the homeless. I bet most of those people come from unhealthy homes. If we could get a handle on domestic abuse, we could get a handle on a lot of social problems that we're spending millions of dollars on today."

With the help of interested friends, including police officers, medical professionals, educators, and judges, Gwinn set up a task force to study how to best change the method of dealing with domestic violence cases. One of the group's first recommendations was to urge prosecutors to proceed even if the victim didn't co-operate.

The city attorney's office adopted the policy. But the rule had no teeth. Gwinn and other prosecutors would diligently round up evidence, namely 911 tapes and photos as well as witnesses. But judges routinely refused to admit this evidence, saying it was too prejudicial.

What changed everything in the course of a couple of months was the headline-grabbing case of a 41-year-old judge accused of beating his 24-year-old pregnant girlfriend.

The case dominated San Diego news for months, and because the victim wouldn't testify, shone the spotlight on the city attorney's victimless prosecution policy.

After Joseph Davis was arrested for beating Anna Garcia, the judge claimed self-defence and Garcia went into hiding, first in Nevada, then Mexico. At first glance, it appeared to the prosecutor that even without Garcia, he had a strong case.

There were 911 tapes and witnesses. Officers called to the scene found Davis seated at the kitchen table reading law books. His hysterical girlfriend had fled to a neighbor's.

Police found her there upset and crying. Her clothing was torn. There were red marks on her arms and neck. She claimed she was kicked in the stomach. Neighbors saw Garcia run screaming from the house the day of the alleged assault.

But the judge trying the case refused to admit this evidence, ruling it prejudicial. He wouldn't even allow the jury to know Garcia was pregnant.

The case resulted in a hung jury, and the judge dismissed the case. The loss devastated Gwinn, but galvanized the city attorney's tiny domestic assault unit.

"I learned a lot of things from that trial," Gwinn says. "A lot of what was allowed or disallowed was the whim of one judge." So Gwinn set out to educate judges.

Over the next four months, from February to June of 1987, he tried 21 domestic assault cases, most without the victim's co-operation. On many, he called up reporters just prior to the trial and urged them to cover the case. Gwinn won 17 of those 21 cases.

The winning streak brought attention to Gwinn's unit at the city attorney's office. And by



FAMILY COURT JUDGE WILLIAM CANNON.

How the systems compare

Police and prosecutors in San Diego, Calif., have a zero-tolerance approach to domestic violence. They collect better evidence, build better cases, and generally take spousal abuse more seriously than any other city in North America.

Ten years after this initiative began, San Diego has an almost perfect conviction rate, the number of repeat offenders is low and the domestic murder rate has dropped.

Conviction rate for domestic abuse

95%

San Diego (1995)

60%

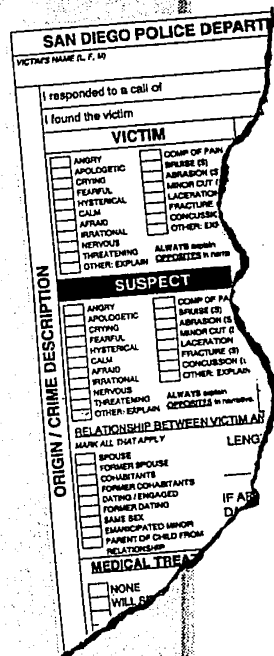
Toronto

* Toronto conviction rate based on Star study of 133 cases in one week, 1995. No official figures kept.

The key differences

In Metro, the victims are the cornerstone of the prosecution's case. When they change their story or refuse to testify — usually out of fear — the case is lost. In San Diego, the work of convicting an abuser is left up to the police, the prosecutors and the evidence.

	SAN DIEGO	TORONTO
At the scene		
Specially trained unit responds to domestic assault calls	✓	✗
Police must take photographs of domestic injuries	✓	✗
Police fill out detailed spousal abuse report	✓	✗
The trial		
Special prosecutors' unit for spousal abuse	✓	✗
Same prosecutor takes the case through the courts	✓	✗
Victim interviewed by prosecutors well before the trial	✓	rare
Injury photographs and 911 calls used as evidence	✓	rare
Abuser can be convicted without victim's testimony	✓	rare
The punishment		
Distinct charges and sentences for spousal abuse	✓	✗
Mandatory anger management counselling for convicted abusers	✓	✗



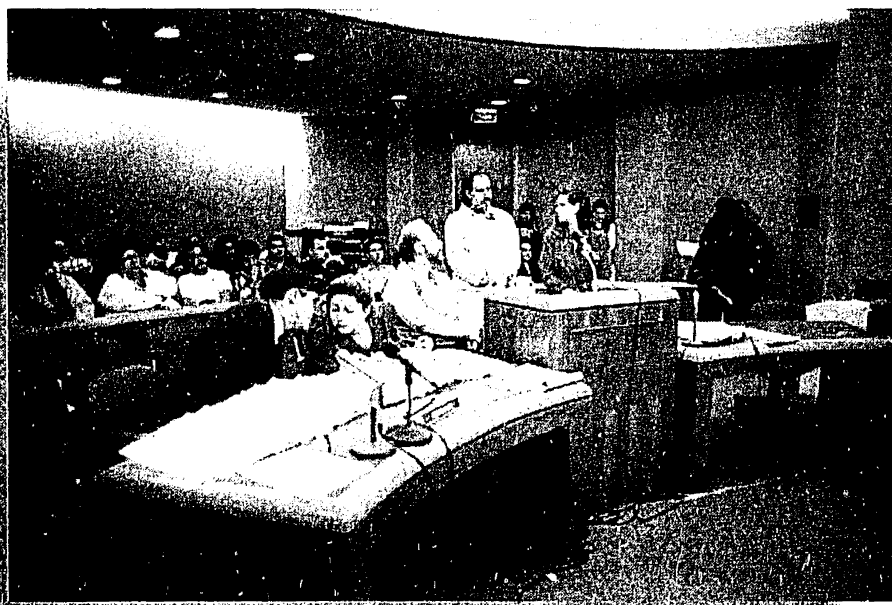
1991, the number of prosecutors arguing domestic violence assault jumped from one to five.

Like Strack, Gwinn has no time for naysayers. You can change the world, is something he says frequently. Changing a court system is a difficult and arduous task. But persistence will eventually pay off.

"You can re-socialize judges," he said. "It can be done."

- Last Saturday: Seven days: The face of domestic violence
- Sunday: The accused: Crime and punishment
- Monday: Anger management: Does it work?
- Tuesday: Different cultures, different attitudes
- Wednesday: Three women in the life of a serial abuser
- Thursday: The hidden costs of domestic abuse
- Friday: Police and prosecutors speak out
- Today: San Diego: Is this the solution?

IN SAN DIEGO, POLICE MUST FILL OUT A DETAILED REPORT (INSET) WHEN THEY ARRIVE AT A DOMESTIC VIOLENCE SCENE. THE REPORTS ARE USED IN COURT AND TO TRACK SPOUSAL ABUSE.



JUDGE CANNON'S COURTROOM IS RENOWNED IN SAN DIEGO COUNTY. BATTERERS ARE WELL AWARE OF HIS TOUGH STAND ON SPOUSE ABUSERS.

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