

The Office on Violence Against Women in partnership with Praxis International

Audio Conference Training Binder

What's in a Word? How Definitions of Violence Against Women and Children Shape Our Interventions

with Ellen Pence

Wednesday and Thursday, May 28 & 29, 2008

Call at 2:00 p.m. Central Time

Dial 512-623-5114, then enter guest code 52533#

Things to Know:

Time zone conversion:

Eastern: 3:00 to 4:30

Central: 2:00 to 3:30

Mountain: 1:00 to 2:30

Arizona: 12:00 to 1:30

Pacific: 12:00 to 1:30

Alaska 11:00 to 12:30

Hawaii: 9:00 to 10:30

Cost: Long distance telephone call. All expenses can be covered by your OVW training funds.

Participation: Remember to say your name and state every time you start speaking – we can't see you!

Muting: Unless the operator has muted all of the lines, please keep your telephone on mute EXCEPT when you are speaking on the call. Press *6 on your keypad to mute your line. To un-mute, press *6 again.

To Leave: Hang up your telephone. This does not interrupt the session. If you need to step away temporarily, do not put the call on hold, as we may hear "on hold" music – simply rest the receiver on your desk.

Problems: Rarely, a caller may experience long-distance connection difficulties, such as a fast busy signal or message saying "All circuits are busy". You may simply re-dial the number to try to complete the call. If you have repeated problems, try using any standard long-distance calling card. Alternatively, you may use one of the following dial-around sequences: 1010636 + 1-405-244-5555 (Clear Choice – currently 5¢ / min), 1010220 + 1-405-244-5555 (MCI WorldCom – currently 99¢ for first 20 min, 7¢ / min additional), 1010834 + 1-405-244-5555 (Penny Plan – currently 9¢ / min). For other problems, please call us at 218-525-0487, ext 100 and we'll do what we can to assist you.

Trainer Biography:

Ellen Pence

Praxis International

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Ellen Pence has been an activist in the battered women's movement since 1975. She worked for four years helping to develop a network of shelters in Minnesota. In 1980 she and a small group of activists organized the Domestic Abuse Intervention Project in Duluth Minnesota. The City of Duluth was the first to coordinate the intervention of all its' criminal justice agencies under policies and protocols centralizing the protection of battered women. She co-wrote with her colleague Michael Paymar; *Tactics of Control an Educational Curriculum for Men who Batter*. Today it is the most widely used batterers rehabilitation model in the country. She helped organize the Duluth Visitation Center in 1988. From 1990-95 she worked with a team of national domestic violence experts to redesign the US Marine Corps response to family violence. During that time she received a Ph.D. from the University of Toronto and she designed the Safety and Accountability Audit Process used extensively by community teams seeking to enhance their institutional responses to domestic violence. Ellen has published extensively in this area, developed a number of professional training curricula, produced training films and lectured extensively both here and abroad. She is currently the Director of *Praxis International* which provides training and technical assistance on analyzing and changing institutional responses to battering.

Context is Everything
Part 1
Five Types of Domestic Violence

What is domestic violence?



Domestic violence

- Any act of violence committed by a person against an intimate partner



The problem with the term

- The term “domestic violence” lumps very dissimilar acts of violence into one category in ways that are often problematic.
- Legal and human service solutions to domestic violence were often designed with battering (one form of domestic violence) in mind, but applied to all acts of domestic violence.



Breaking down the term



- Battering
- Resistive violence
- Non-battering couples violence
- Pathological violence
- Anomie

Problems with breaking domestic violence down



- Gives batterers and their defenders a way of claiming to be using a less deliberate form of violence.
- Reinforces old notions that alcohol causes battering.
- Leads many to conclude marriage counseling will end the violence.
- Promote an individual-pathology approach to battering.

Does it help protect victims?



- Yes, it can because when used correctly, makes what is happening more transparent.
- Intervening agencies need to be able to answer the question;

Who is doing what to whom, and with what impact?

It will help us determine:



- Risk of future harm to victims
- Likelihood of a person escalating or continuing abuse
- Identify who needs protection from whom
- Which protective measures may be needed
- Which interventions may increase risk
- Relevance to the protection of children
- Relevance to justice and fairness

Defining battering:



- An on-going pattern of coercion, intimidation, and violence to establish and maintain control in an intimate relationship.

Battering;



- Element of domination
 - Physical
 - Psychological
 - Cognitive
 - Spiritual
- Gender is a major predictor of who is battering in hetero-sexual relationships



Battering and being abusive are not the same;

- Inclusion of fear/violence and its intent to establish dominance, separates it from controlling or hurtful acts in relationships.
- Fear and potential for violence is attached to all behaviors of the abuser.
- Includes ability to put victims in on-going fear of their physical and/or sexual safety.

Dozens of relevant dynamics for interveners

- Tactics shaped in part by victims' and abusers' social position.
- Pattern of abuse, its impact, and victims' responses are not static over time.
- The power differential created by violence shapes all inter-actions between outsiders and family members
- Vulnerability to continued acts of violence takes away victims' ability to speak freely...and on and on

Resistive violence



- Part of a victim's broader strategy to stop (contain) the abuse;
 - Negotiation
 - Appeals to family and friends
 - Appeasement
 - Anger and hostility
 - Separation
 - Withdrawal
 - Use of Force

Resistive violence



- Punishment (including the use of children)
- Drinking, drugs, suicide (attempts)
- Violence
 - Continuum of severity (far less likely to cause injury, etc.)
 - Pre-emptive strikes
 - Defensive violence during attacks
 - Retaliation
 - Threats
 - Seeking outsiders (relatives, and in extreme cases, hired killers)

Non-battering couples' violence (sometimes called situational)



- Not part of an attempt to establish an on-going position of dominance in a relationship.
- Not part of a strategy to keep from being battered.
- Could happen infrequently or regularly, related to a causal event or situation.

Examples of non-battering domestic violence



- A woman is an alcoholic and partner frequently pours her bottles down the sink. After discovering this, she then physically attacks him and he fends her off.
- A man has an affair and his partner physically attacks him every time she thinks he has been with the other woman.
- A sick, elderly parent moves in, causing stress and conflict and one partner hits another during a heated argument.

Pathological



- Caused by;
 - Brain injury
 - Pathological condition including mental illness (causing aggression)
 - Sometimes alcohol or drug abuse
 - Sobering up will stop the violence
 - No pattern of accompanying hostility and dominance.
- Violence is not targeted at family members only; more generalized.


Anomie (an e me)



- Conditions in a state, community or individual, characterized by a breakdown in social norms and values.
- Found in displaced communities (e.g. war, famine, or major natural disasters).




A focus on battering



What is unique about battering?

- Abusers tend to...
 - Promote victim's dependency and attack autonomy.
 - Use the victim to shield him from outside intervention.
 - Experience themselves as victims of their victim.
 - Promote isolation of victim, attacking all intimate and supportive relationships (family, children, religious and intervening supporters).
 - Promote victim self-blame; deny responsibility



Abusers tend to...

- Expect (coerce) the victim to act on his behalf so the abuser is likely to:
 - Experience her actions to obtain help as betrayal.
 - Punish her for acting without his approval or for putting her needs or children's before his.
 - Punish her when she isn't appeasing.

Abusers tend to....



- Convince victims and others that she is mentally ill and use her emotional instability (caused by abuse) against her.
- Make claims of mental illness, which stay in her case files,
- If a victim has a mental illness, it becomes a mitigating rather than aggravating factor for his abuse.

Abusers tend to...



- Shift tactics of control after separation (use of institutions, children, and more extreme violence).
- Increase level of threats and violence when victim attempts to leave or change the situation.

Abusers tend to...



- Draw children into the abuse of their mothers.....(more on this in Part Two)

What does this mean for interventions?



- Neutrality favors a batterer.
- Documentation.
- Adjusting the intervention to who is doing what to whom.
- Levels of severity and security.
- Need for state intervention.
- Need for advocacy.

Praxis International



This presentation was prepared by Dr. Ellen Pence of Praxis International as part of Award No. 2004-WT-AX-K061 awarded by the Office on Violence Against Women.

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Context is Everything Part Two *The Intersections of Battering and Child Abuse*



Abuse and the use of children by batterers

**Traditional Child Protection
framework for identifying abuse
and neglect of children:**



- Irresponsibility
- Lack of skill
- Lack of capacity
- Parental cruelty
- Excessive control and dominance
- Stress
- Pathology

**The four primary methods
batterers use to draw children
into the abuse of their
mothers:**



- Control and manipulation of woman through her children.
- Separate mother from her children.
- Force mother to raise the children according to abuser's guidelines.
- Hurt partner by hurting her children.

911 Transcript and tape



- Play tape and group follow along on transcript emailed before the session.

Impact of abuse of children within battering context



- Lessens their quality of life in the present
 - Children are not adults in waiting
 - Children frequently experience the present far more intensely than adults do
- Undermines relationship between mother and child
 - Make children a burden; woman more likely to stay in abuse because of children
 - Mothers are perceived as a source of harm
 - Interferes with intimacy

Impact of abuse of children continued...



- Undermines victim's parental authority
- Shapes boys' and girls' gender identity
- Shapes children's sense of right and wrong

Impact of abuse on children...




- Intensity about the wrong things
- Disrupts strong sense of;
 - Safety
 - Trust
 - Ability to act
- Brain and body impact

AI

Information to the court lacks this context... (handouts)

- Parenting assessment tools
- Guardians (see report)
- Prosecutors (pre-trial release arguments, plea negotiations, sentencing)
- Supervised Visitation reports (see sample)
- CPS (case file notes)
- **Custody Evaluators** (see report)
- Probation Officers




Advocacy for battered women as mothers



Visitation Centers funded by OVW

- Courts make decisions about on-going parental relationships.
- Advocates ensure that interveners protect adult and child victims of abuse from on-going harm and abuse during the separation process.
- Visitation Centers protect victims of abuse and their children during the visitation process and,
 - Help in the re-establishment of family relationships without violence, coercion, fear and harm.
 - 2 hours, 2 years, 20 years.



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Herrig – Case Notes

Background: Russ Herrig – Father, Angelina Herrig – Mother, and 6 children, Charlie (12), Barb (10), Tamara (6), Ben (5), James (4), Caroline (2)

01/26/00: Case is opened with Child Protection based on a report made by school of physical abuse of Tamara Herrig by her father, Russ Herrig. Russ Herrig admits to hitting the child on the back of the head with an object, leaving a bump with a bruised area. Police and prosecutor decided not to pursue an assault charge. Russ went through batterers group 2 years earlier, has been abusive but not violent to Angelina in the last 2 years.

NOTE: Documentation below taken from: Child Protection Worker's Case Notes and Progress Reports to CP Services from Child and Family Services (Independent Counseling Agency).

02/15/2000: Social Worker 1, Phone Call with mother

I called Angelina and advised her that there were be a child protection worker assigned to the family. I had concerns that the children were at risk for abuse because of the domestic violence, and Russ's unresolved issues of abuse. I recommended that Russ become involved in individual therapy and a parenting class to learn more appropriate forms of discipline as well as more realistic expectations of his children. I also indicated that the children should not be left in his care at this time. Although I recognized that he loved and cared for his children, that when he was stressed he could not be trusted not to hurt the children. Angelina said this was going to make things quite difficult for her. She then said that perhaps Russ could do the grocery shopping.

02/16/2000: Case Note Summary, Supervisor sign-off

This case is ready for transfer finding of maltreatment/services needed...in addition, SDM indicated a high risk

02/16/2000: Social Worker 3, Face-to-face, home

Went to visit Russ and Angelina. They argued with each other most of the hour. Russ appeared to be escalating quite a bit, so this worker asked the couple to stop arguing and to calm down. This worker explained that a case plan would be completed together and that some services would be offered. When discussing the services, Russ indicated that he would not participate in batterer's classes or complete a CD assessment. Angelina stated that she would maybe do individual therapy, but that she preferred a pastor rather than a licensed therapist. The couple was forthcoming about the incident that was investigated and they gave this worker a history of their abusive situation. Angelina was more straightforward, as Russ appeared to be minimizing his part in the abuse. Both minimized the abuse to Tamara. Angelina stated that she would be afraid of what would happen when this worker left. This angered Russ, and this worker again needed to ask the couple to stop arguing. Angelina indicated that the domestic abuse started when Tamara was 6 months old. The worker set up another appointment for 2/22/00 at 4:30pm to meet the kids. Caroline was present at this visit, and when the couple started arguing, she went into the bathroom and started crying. Angelina went to get her and stated that Caroline had fallen into the bathtub and that it was full of water. This worker had a concern about the lack of supervision of Caroline.

There was another incident where this worker had to tell Russ that while he was standing by the stove, Caroline was turning the burner knobs. This worker stated that a case plan would be constructed by all parties within a short time and that this worker would call Angelina later today to talk about how much contact Russ can have with the kids alone. Called Angelina later and told her that she need to use her own discretion with regards to leaving the kids with Russ and that it could be a Failure to Protect if he hurt the kids. She started talking a lot about past abuse and this worker asked to have a visit tomorrow at 8:45am.

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1 **Mrs. B's psychological evaluation**

2 [handwritten note on text: Court ordered evaluation of mother in domestic violence custody dispute]

3
4 COURT PSYCHOLOGICAL EVALUATION

5 EXAM: January 2, 1992

6 DOB: 7/6/61

7 AGE: 30

8
9 REASON FOR REFERRAL: Assessment requested in custody issue.

10
11 TESTS ADMINISTERED: Bender Gestalt, Projective Drawing Series, Sentence Completion, Rorschach,
12 Thematic Apperception Test.

13
14 CLINICAL DESCRIPTION: Mrs. B impressed as a bright woman who speaks rather quickly and
15 articulately. She is obsessive. Her mood is mildly depressed. Her manner conveys stance of victim.

16
17 EMOTIONAL FUNCTIONING: The projective data reflect that this is a woman who needs to feel
18 connected, who needs to feel attached, and who needs closeness in her relationship. There is evidence to
19 suggest that issues of rejection and abandonment have been longstanding. . Having others acquiesce to her
20 is a sign of connectedness and approval in her mind. Hence, there is a battle of control between her and her
21 husband. If she is in control and if she has things her way, then this is approval, this is connection, and this
22 is closeness.

23
24 Hostility and rage are marked in this woman. Her defenses do not appear very stable. She is emotionally
25 labile and is prone to verbal outbursts of hostility when she has difficulties with her husband pertaining to
26 control matters and feelings of rejection. She uses introjective defense, obsessive devices and to a
27 marked degree, denial. Her judgment is not particularly good. It is difficult for her to avoid confrontation.

28
29 Partially, her need for control relates to underlying self-image problems. She has never individuated into a
30 mature adult. There is a marked infantile quality to her. She is dependent upon her husband and is
31 markedly narcissistic. The narcissism is extensive and I feel that this is a woman who is rather self-
32 absorbed and who, on one level, does not really want responsibility. There is enormous ambivalence
33 pertaining to her child. On the one hand, she loves and cares for this child and wants to minister to him. At
34 the same time, she does not want the responsibility of caring for him. She is affectionate to her child and in
35 some way, this helps her with her chronic problem of abandonment and rejection. I do not feel that she is
36 in any way a danger to her child.

37
38 A mild depressive element was noted related to feelings of isolation and disconnectedness. She is a
39 woman, too, who feels victimized by others.

40
41 There are many indications, however, of serious psychopathology. Her thinking at times becomes rather
42 peculiar and preservative. Noted, for example, were Rorschach indications of autistic thinking and aberrant
43 logic. Significantly, these instances occur within the context of ungratified needs for connection and
44 deprivation of interpersonal warmth.

45
46 SUMMARY AND RECOMMENDATIONS: In conclusion, then, this is a narcissistic woman who is
47 controlling and infantile and who is prone to emotional verbal outbursts and to lability. Her defenses do
48 not appear stable. She displays peculiar thinking, autistic logic and indications of a thought process
49 disturbance. She cares about her child but is ambivalent about the responsibilities of physically caring for
50 the child. Issues of abandonment and rejection are chronic which triggers needs of control of, and
51 compliance from, others.

52
53 Psychologist Z

**Family Services Center
 Parent Skills Evaluation
 Conducted by Independent Counseling Agency**

PERSONAL GROWTH		
1) Regular attendance		
a) attends scheduled meetings		
b) keeps appointments		
2) Shows willingness to change behaviors by:		
a) accepting suggestions from the staff		
b) integrating behavioral changes into daily living		
c) following case plans		
FAMILY MANAGEMENT		
3) Provides adequate physical care for child/ren including:		
a) appropriate, safe housing		
b) sufficient food		
c) appropriate clothes		
d) medical/dental care		
e) adequate hygiene		
f) management of household finances		
4) Provides secure, stable environment necessary to meet emotional needs of child/ren by:		
a) maintaining control of household		
b) maintaining orderly schedule,		
c) providing for personal needs as well as child's needs		
d) minimizes child's exposure to adult/parental conflict		
PROTECTION AND SAFETY		
5) Shows ability to make appropriate choices for self and child/ren including:		
a) choosing appropriate living space		
b) choosing appropriate friends/companions		
c) ability to protect child/ren and self from harmful people and/or situations		
6) Provides for child's safety by:		
a) choosing appropriate caretakers.		
b) child-proofing home		
c) supervising children		
SUBSTANCE AND NURTURING		
7) Shows an attachment to child/ren by:		
a) speaking respectfully to and about child/ren		
b) using gentle touch with child/ren		
c) responding appropriately to others praising child/ren		
d) spontaneously talking to child		
a) praising child's qualities and/or behavior		
8) Shows realistic expectations of child/ren according to age and ability by:		
a) providing age appropriate toys and experiences		
b) encouraging developmental progress		
c) encouraging child to explore child's environment		
d) rewarding for positive behavior		

9) Shows appropriate knowledge of parental role by:		
a) initiating play with child		
b) not intruding on child's play without reason		
c) not teasing child		
10) Responds to child's distress by:		
a) attempting to sooth child both verbally and non-verbally		
b) maintaining control in response to child's distress		
c) refraining from making negative remarks to child or to observer		
d) showing empathy for child		
e) using alternative ways to discipline child		
DISCIPLINE		
11) Demonstrates range of responses to child's misbehavior		
a) diverting child's attention by playing games, introducing now toys		
b) allowing for appropriate choices		
c) refraining from making negative remarks to child or others about child		
d) refraining from yelling at child		
e) refraining from slapping, hitting or spanking child		
12) Parent's style of Interaction with child /ren shows:		
a) behavior that is not harsh or punitive		
b) behavior that is not overly permissive		
c) willingness to negotiate choices		
d) understanding of difference between discipline and punishment		
13) Uses appropriate methods of behavior management Including:		
a) limit setting		
b) choices		
c) time outs		
d) re-direction		
e) appropriate consequences		
COMMUNICATION		
14) Parent demonstrates the ability to communicate effectively by:		
a) talking to and listening to the child's request for attention		
b) giving appropriate responses to the child's attempts to communicate		
c) praising child's positive behavior		
15) Parent demonstrates ability to:		
a) express their needs and concerns to others		
b) understand information		
c) apply information appropriately		
d) maintain control of emotions during stressful situations		
1) Almost never (0-5%.of time)	Parent demonstrates no competence in this area.	
2) Seldom (5-25% of time)	Parent is inconsistent. Seems unable to follow through	
3) Sometimes (26-50% of time)	Parent is able to be consistent part a the time	
4) Often (51-75% of time)	Parent is consistent and puts forth effort	
5) Most of the time (75-98% of time)	Parent provides consistent care	

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TRANSCRIPT FROM STATE OF MARYLAND VS. KENNETH L. PEACOCK.
SENTENCING HEARING

State of Maryland vs. Kenneth L. Peacock

Case No.: 94- CR- 0943

October 17,1994

Reporter's Official Transcript of Proceedings (Sentencing)

Before the Honorable Robert E. Cahill, Judge

Appearances:

On Behalf of the State: **Michael DeHaven, Esquire**

On Behalf of the Defendant: **David B. Irwin, Esquire**

Mr. DeHaven: Good morning, your Honor. For the record, your Honor, Michael DeHaven, Assistant State's Attorney for Baltimore County. We're here for disposition of State versus Kenneth Peacock, 94-CR-0943.

Mr. Irwin: Good morning, your Honor. Mr. Peacock is here present in court. David B. Irwin for the record here on behalf of Mr. Peacock. Just briefly, for the record, through total chance, my lovely wife, Kendi Mather Irwin, is assigned to you, and I've talked to Mr. DeHaven. talked to my client, and in the normal course of business she wouldn't take down any of my cases. You have no problem with her being the court reporter today, do you, Ken?

The Defendant: No.

Mr. DeHaven: Certainly no objection on behalf of the State.

The Court: Nor does the Court.

Mr. Irwin: We're ready. We're ready for sentencing.

The Court: Let me state at the outset that I did have the opportunity to review Mr. Irwin's sentencing memorandum, pre-sentence memorandum, as well as letters which were forwarded under a cover letter of October 13. I've read all of those. I've reviewed my notes of the sentencing hearing. Were the guidelines previously submitted?

Mr. Irwin: We have agreed they're three to eight years. I don't know if they've been submitted.

The Court: That's what my notes indicated, it was three to eight.

Mr. DeHaven: I would submit them. Actually I'll finish them up.

The Court: Go ahead, finish those. I had a note to that affect. And my notes also indicate, of course, that the State's position in return for the plea to the charge of manslaughter was that the Court impose a sentence within the guidelines. And all of that is reflected in the memorandum of

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the plea negotiations, signed by the defendant and counsel. And it appears for the record that as a result of those plea negotiations this was simply a one-count information; is that right?

Mr. DeHaven: Yes, your Honor. The information charged first degree murder.

The Court: Charging first degree murder, but this is the plea to the lesser included offense with that, correct?

Mr. Irwin: That's correct.

Mr. DeHaven: That's correct, your Honor. I'm submitting the guidelines at this point, which do reflect that.

The Court: I'm saying that for the edification of my court clerk, who will ask me what count it is, and I never know. Is there anything, Mr. DeHaven, that you wish to add at the outset?

Mr. DeHaven: At the outset, or is the Court going to give me another opportunity after defense? I would prefer to have the defense go, and then the State will give its recommendation. Nothing further at this point based on the defendant's memorandum.

The Court: Go ahead, Mr. Irwin.

Mr. Irwin: The only thing that Mr. DeHaven and I have discussed, that I'm sure he'll talk to the Court about, he and I have talked to Mary Lemon. Mary Lemon is Sandra Peacock's mother and would in essence be the input from the victim's family.

The Court: I noted that I had nothing on that.

Mr. Irwin: And I'm sure Mr. DeHaven will cover that point for the Court. Your Honor knows that Mr. Peacock is thirty-six years old, no prior brush with the law. He has got a wonderful family, many of whom are here. Eugene Manifold, his employer, is here, whose letter you have read, Bruce Peacock and his wife, Michelle. Bruce is the twenty-year veteran, whose letter you've read, Mike Hertzog, his friend, whose letter you have read, Barbara Bauer, his fiancée, Bruce Peacock, Sr., the thirty-eight year employee of the Baltimore Gas and Electric company, who is Kenny's father, who is here today with his stepmother, who loves him dearly. You have read her letter, and Mr. Peacock, Sr.'s letter. His mom, Jane, is here today, and Lisa Stinson, a friend of the family. They're all here. A lot of times lawyers say, Boy, it would be nice to be a judge today, I wouldn't have to come in and prepare, I could sit up there and be a referee have a nice parking place downstairs and all that. But I'm sure this is the one time—

The Court: Except for the newest judge, who has to park against the wall.

Mr. Irwin: Oh, good point. I see the Court of Special Appeals judge has to park across the street.

The Court: That's right. He is not happy about that at all.

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Mr. Irwin: But at any rate, it goes without saying this is a time where nobody wants to sit in your [the judge's] chair up there. This is obviously the hardest job a judge ever has. You have got on the one hand a beautiful family, a kid who has worked his whole life. He marries a lady he is in love with, he has been married five years, and for the second time he finds her in this tragic situation [having sex with another man]. He has a fatal flaw. He is an alcoholic. I've had him evaluated. He has met a couple times with Nick Gianpietro, a certified alcohol evaluator. And based upon what happens today, it is obvious he has to be in some kind of program, whenever he is not incarcerated, if he is not incarcerated from the outset, or later on, he is going to need treatment for that. It is a disease that runs in the family. And when you mix alcohol, emotion, the incredible emotion of the situation he found himself in, and firearms, a tragedy happens. And Sandra Peacock, for all her fragilities, it is a tragedy that she is deceased. From the one hand, the State obviously cries out for justice, we need jail time. He is a wonderful person, but we can't have a death, so jail time is certainly appropriate for them to recommend. It is certainly appropriate in our situation with this beautiful family—the problem, he has got two brother that are police officers, and I would worry about his safety down there. Bruce is a twenty-year veteran, Brian is an eight-year veteran. Brian served in Desert Storm. Kenny didn't become a police officer mainly because he started working and getting a real paycheck ever since junior high school. He has worked every day that he could his entire life, as you know. Work is his therapy. Since he was released after serving sixteen days in jail before he got out on bond, he has been working every trip he could work. Mr. Manifold [his employer] took the trouble to come down from Pennsylvania. he is in the back, the gentleman in the tie and coat, he took the trouble to come down here. He needs him to work. You have seen letters from his customers, he is nice and polite. What the heck, why are we here? Again, it is that incredible confluence of alcohol, firearms and high emotion that shouldn't ever be put into the same equation. You know all the facts of this case. You know everything. The one thing you don't know is that he keeps working hard to do his obligations. One of the things, Sandra, because of her drinking, and she had a gambling addiction to playing Keno at these bars. Everybody says Keno is a great thing, but she spent hundreds of dollars a day playing Keno, of his money, her money. They left a lease. They were at the farm where they were, after they had left a lease in another apartment where he believed she had paid up the landlord, settled with the landlord. The landlord still is owed eleven hundred bucks. We had to work that out. He had been paying \$100.00 a month just settle that. He didn't even know that that existed. We worked that out and went to rent court with him and worked that out. He has paid his lawyer bills slowly and on time. I'm fully paid. The landlord is being paid. He is just a tax-paying great member of society. But what do you do with him? My suggestion, your Honor, is of course I think that there is a rationale, and because of all this, you could hang your hat on giving him probation, strict probation, alcohol treatment and all that. If you can't swallow that, which a lot of judges wouldn't have the courage to swallow in a situation like this, because of the loss of life, I would strenuously argue that it would be severe punishment for him to be locked up in the Baltimore County Detention Center for up to eighteen months, which is the longest you could give him, recommend work release, so he can pay his taxes, pay for his room and board, and be punished. Also community service, alcohol treatment. He would have—he would be locked up, his freedom would be lost, which would be important to him, a message would be sent to the community, if that's necessary in this case, which I honestly don't think it is, under this circumstance as a deterrent for a spousal infidelity, classic manslaughter case, I don't know that you can send a deterrent to somebody and make them think

twice before they do something like this. But I understand what the Court—I'm not the Court, I can't understand all the pressures you have, but I can guess at the pressures in a case like this. I would strenuously argue for that as opposed to a sentence in the Department of Correction. And I'm not going to go on and on, when it is obvious what the points are here. I would just say that I have talked to Mary Lemon, and Mr. DeHaven was nice enough to share with me a little about what she said. She is a very religious lady. She prays for her daughter. If she were her, she would tell you about her daughter's frailties and how nice Ken was to her son from a prior marriage. That son wasn't living with her because she wasn't considered to be a mother that could handle a son, and the grandmother, Mary Lemon, is raising that boy down in Texas. But she would say she understands his problem and sympathizes very much with Ken. She's a religious woman who does not believe that a life should be taken as a result of this, even this horrible situation, and that she prays for your Honor as well as Ken, and prays for Sandra, that all this will all come out right in the Lord's eyes. I hope it does. She has told me she has no animosity towards Ken. I'm sure she wants to see justice done, whatever that is. and I'm sure she's going to be another on that passes that up to you, passes the buck up to you. But I just wanted to say for the record, she was very cordial to me, the defense attorney. I was amazed at how cordial and friendly. And she's just a fine lady. With that. I'll leave it to you. Thank You, your Honor.

The Court: All right. Before I hear from the defendant. Mr. DeHaven?

Mr. DeHaven: Thank you, your Honor. Your Honor. I did speak as Mr. Irwin stated, to Mrs. Lemon this morning. Basically what she told me is that she has mixed feelings about this. I asked her quite some time ago, if she could, to articulate in a letter to you or to me how she feels about this case, and basically give her victim impact statement so that the Court could be fully aware of what is going on. She couldn't [do] that. She told me she was thinking up until the moment I called her this morning what to say. And she indicated to me, again, she has mixed feelings. She indicated to me on one side, and I'm going to incorporate the State's argument of course along with this, but basically her feeling is the State's feeling as well, your Honor. She indicated to me that on one hand she can see her daughter provoking the anger that it did, and causing the anger that later led to this incident. And as we talked all along about this case, I said, well that was the reason basically the State agreed to proceed on the manslaughter charge. The State believed that provocation was sufficient to proceed just on the manslaughter as opposed to the murder in this case. And she talked about the other aspect of her feelings, and that is what the State is going to argue to you today, that the defendant should be punished for his actions. The defendant had an opportunity to walk away that night. It is clear that the defendant decided to take matters into his own hands, to pick up that gun, to pull the trigger, and eventually took the life of another person. Mrs. Lemon indicated to me she believes this Court should punish the defendant appropriately. The State believes that appropriately in this case means a sentence of incarceration within the guidelines. They are three to eight years, your Honor. As the Court notes from the guideline sheet, nothing has to do with the offender score. The defendant up until this point, his life, he has been an exemplary citizen. In fact, remains so even while out on bail awaiting sentencing today. The State does not believe that really he is going to be a threat to society when he gets out. I do believe this is an isolated incident. However, your Honor, the offense score—I won't say mandate, because we're not anywhere near Federal Court—suggests—

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The Court: You can say it. It simply isn't.

Mr. DeHaven: —suggests to this Court a sentence of incarceration between three and eight years. The State fully believes that based on the offense in this case, three to eight years incarceration in the Division of Correction is the appropriate sentence. With that, your Honor. I would submit to the Court.

Mr. Irwin: Kenny, now, as we discussed, you have a right of what is called in the law allocation, which means you can say anything you want to Judge Cahill at this time before he passes sentence on you. Do you have anything to tell him?

The Defendant: I would like to tell your Honor I'm very sorry about what happened. I can't change what has happened. I would like to continue working, and it helps me out mentally and everything. I'm just willing to accept whatsoever you will do for my actions. That's all I can say.

Mr. Irwin: Thank you.

The Court: You are blessed with a very supportive family. Mr. Irwin is correct, that people who meet judges for the first time frequently, those not acquainted with the system, frequently ask what is the most difficult thing that you have to do. The old saw is that it is decide custody, but that truly is not the most difficult thing that a judge is called upon to do. The most difficult thing that I have found is sentencing noncriminals as criminals. This case is very similar and equally tragic to the very difficult manslaughter by automobile cases that I've handled in the past year. The consequences are as tragic. I was called upon to sentence a young man who while driving under the influence killed his brother. I recently had to sentence a noncriminal citizen, a lady who had attended Christmas parties last December or a Christmas party, overindulged and got on the ramp going the wrong way and killed her best friend, leaving two children that that lady was supporting. And previously I was called upon to sentence an individual, an employee of Xerox who had never had a brush with the law in fifteen years and had had a prior ticket of some nature up in Pennsylvania. but while driving home after his wife had left him sometime before and having had too much to drink one night, he struck and killed a ten-year-old child on a bike. Those are brutally difficult choices. This [trial of Kenneth Peacock] is nonetheless, it is equally as difficult. There is a distinction. The courtroom contains visitors only on one side, and so I get the benefit of in effect sentencing in anonymity. I don't have Mothers Against Drunk Drivers present. The chances are this case will not even be written up. There is a chance that it might because of the current emphasis on spousal violence and that phenomenon is our society. This judicial conference, where all the judges of this state gather once again because the budget constraints allow it, for two years we had none, but that meets here in Towson a week from Thursday. and upwards of 250 judges will be present. The sole topic for the two-day meeting is domestic violence. I will certainly go with a great deal of current experience, when I attend the conference. You could not fictionalized a more tragic circumstance than this. On the one hand there is real sympathy for the defendant and how he should have reacted to this terrible situation. You ordinarily would not have such an explicitly factual explanation for the circumstances, whereas here the third party was available to explain the circumstances of the evening, which could only have made it worse had the defendant known those facts. But the victim is nonetheless a victim, and she is deceased. And her mother will never be the same. Nor will the

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defendant. Nor will his family. That, too, is tragic, but that's part of life. The guidelines—I understand the State's position, I don't quarrel with it. I think the State has been extremely fair in this case. I don't always say that. But generally I do, and certainly this case is a case where the State has acted with great recognition of its responsibility to the individual, the decedent, the victim, and the public. It is easy to say now that this is simply a manslaughter case, but that's what it is. Manslaughter is a serious offense, as the guidelines indicate. Three to eight years for a first offender is a heavy sentence. And for those who have never had the misfortune of spending a day behind bars, they can't understand how heavy that is, because I say we're dealing here with an individual who by his background is a noncriminal. He now is a criminal, unfortunately. All the more difficult, his brothers are in law enforcement, and have had long, having seen the rest of the family, I would expect, distinguished careers in law enforcement. But what do we do with Kenneth Peacock? The two elements of sentencing, the cases tell us, are the individual, the deterrent aspect, the background of the individual, and punishment. I agree with Mr. Irwin, that just as in vehicular manslaughter cases, my sentences in the three cases I mentioned will not prevent other people from killing people with automobiles. I do think that the most recent case could have a great effect on the one where the poor unfortunate middle-aged woman killed her girlfriend after a Christmas party. It might save some lives this Christmas if she carries through with her agreement to allow that unfortunate incident to be used. But, generally speaking, I can't prevent the next vehicular homicide. But, also. I must take into account that Mothers Against Drunk Drivers have accomplished a great deal in recent years to stop the whole of deceased people on the highways. Had they not been around in recent years, we might still be killing people at a much higher rate, and driving when we shouldn't be driving. And I say we. But whether or not the sentence in this case will deter, I can't really say. I would hope that it does. But I cannot think of a circumstance whereby personal rage is uncontrollable greater than this for someone who is happily married. And that is not mere lip service, it is a fact. To be betrayed in your personal life when you are out working to support the spouse under the heightened circumstances of this case are almost unmanageable, I would think, even if a person did not have alcohol as a contributing factor. I guess Mr. Peacock's single greatest problem in this case is the alcohol, but it does require some kind of sentence as a deterrent just as motor vehicle manslaughter by intoxication requires sentences. Judges simply can't say, in spite of how excellent the person's background may be, that appearing before the Court is enough, because there are other people watching and listening. So I am forced to impose a sentence in this case in my mind, not forced by any guidelines, not forced by any third parties, but only because I think I must do it to make the system honest. I have no question in my mind that no judge of this circuit and probably no judge of this state will ever see Kenneth Peacock again. That's why I'm not overly concerned in light of his history since this event and what he has done awaiting sentencing, I'm not real concerned about probation, the terms of probation, things of that nature. I think that will work itself out very quickly.

But I cannot send a message, and it could be interpreted this way, that if even under the most extreme circumstances you have a personal disagreement with a family member, you can settle it the way this ultimately got settled. And I give the defendant the benefit of the doubt, the fact that this was not a contact wound, that it could well have been rage and accident. But alcohol and rage creates that kind of accident, the same as alcohol and driving an automobile create fatal accidents and fatal outcomes.

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So I can at least look to my past in sentencing those cases and try to make this make some sense with those cases. It has been made easier again by the State's frankness with respect to the victim's mother, and Mr. Irwin doing his job the same way. She is a very responsible lady, obviously. She has found her way to accept the system and trust that the person who has the difficult job of administering will do that job. This is not the case in vehicular homicide cases, I can tell you that. I sat either in this courtroom or the one next door for forty-five minutes alone [with] the victim's father in one of those cases. But Mary Lemon certainly has acted responsibly in this case. Perhaps it is her faith in God that made it easier for her to do that.

So I must impose a sentence on Mr. Peacock. I had checked this morning to find out whether work release was available to a person who drove out of state. I'm told that it is. And I'm impressed by Mr. Peacock's statement that he needs work release to get by mentally. Dr. Spodak in his report has simply said, and I know you heard this from Mr. Irwin, Mr. Peacock, that you have an alcohol problem.

The Defendant: Yes.

The Court: And he put another psychiatric label in there, which I'm not surprised at because there are labels, but what he really has in an alcohol problem. Like some other people, it is easier said than done, but like some other people, you just have to stay away from alcohol, that's all. No more tragedies with no more alcohol. Your thinking will be clear.

But I must, as I said, impose a sentence as a deterrent and as somewhat of punishment for you, as the State put it, not walking away. I seriously wonder how many married men, married five years or four years would have the strength to walk away, but without inflicting some corporal punishment, whatever that punishment might be. I shudder to think what I would do. I'm not known for having the quietest disposition. Had you done that, you probably would have seen this Court in a different fashion, in a marital case. And that's extremely unfortunate for you. But I sense by your actions that you will handle this. And I don't know if you would handle or benefit or the public would benefit in any way by placing you within the Division of Correction.

So the sentence of the Court is that I will impose, and I think I have to say the first part, a sentence of three years—because under any stretch of imagination these facts would be the minimum of the guidelines, and I don't see the necessity of having the classic something hanging over your head aspect of sentencing, it doesn't exist in this case—to the Division of Correction for three years. suspend all but the eighteen months to be served at the Baltimore County Detention Center. As I said, I already spoke to the major this morning. I recommend work release immediately. I also will recommend, but leaving to the professionals the time for it, home detention, when the authorities deem it appropriate. That is generally speaking up to the people who do a very good job of running the work release program. It is not going to be pleasant, I can assure you of that. They're sleeping on the floors in the work release facility. We simply don't have any beds out here right now. But you will have to be very, very strong and get it behind you as quickly as possible.

Upon his conclusion of eighteen months or that portion of it, I'm going to place Mr. Peacock on probation for a period of one year. And the sole purpose of that probation in this case, because I

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think the family will remain as supportive as they have been, the sole purpose of that is to have someone looking over him with respect to alcohol in that first year of release. You will have to abstain from alcohol during that period of time. You will have to be evaluated. And because your job is not the best type of job to have if you have an alcohol problem, and I know that from experience, seeing, in cases that I've handled, during the one year of supervised probation, you will have to submit random urinalysis, and participate in an Alcoholics Anonymous program to be with the assistance of TASC. If at all possible. I am also going to, as a condition of probation, require that the defendant not participate in the domestic violence program, but that he render assistance to domestic violence programs in existence in the form of fifty hours of community service, which could be spent allowing his dreadful and tragic experience to be used as an example that would help others. But I do require that that fifty hours be spent in that very limited fashion.

I didn't check, Mr. Irwin. Has Mr. Peacock spent any time?

Mr. Irwin: Sixteen days, your Honor. February 9 through February 24. The 24th was the day you got out?

The Defendant: Yes.

The Court: All right. The eighteen months to begin sixteen days ago, or the date of beginning, so he will receive full credit for the time of incarceration. And as I said, it will be spent at the Baltimore County Detention Center.

During the period of probation, because you already—you have conducted yourself as a responsible citizen pending the disposition in this case, I'm going to also require that you pay the supervisory fee of \$25 per month. Had you been a ne'er-do-well, I might not have done that, but that's appropriate under the facts in this case. And you will pay the costs of this proceeding, either during the period of work release or during the period of probation.

Mr. Irwin: Your Honor, thank you very much for your thoughtful sentence. I will advise my client. Ken, technically you have certain rights now. You have thirty days to file a petition with the Court of Special Appeals, as we explained at the time of the guilty... plea. You don't have an automatic right to appeal. You have very limited rights and it is basically not a worthwhile process, but I have to advise you you have thirty days to file it.

Because you have a three-year suspended sentence, you have thirty days to file for a three-judge panel, which Judge Cahill would not be a member. They could increase the sentence, leave it the same, or reduce the sentence. After hearing the facts, I strongly advise against doing this, because I think this is the most merciful sentence a judge could fashion for you.

I also have to tell you we have ninety days to file for this judge to reconsider this already merciful sentence, and we'll talk about that. I would like to also say on the record I appreciate the State's seeking justice in this case.

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Mr. DeHaven: Your Honor, one more thing to clear up as well. Should the defendant violate a condition of work release, would the Court consider that a revocation of probation and that the defendant would serve the three years in the Division of Correction?

The Court: I know that your office has been asking us to do this, and I frankly am confused by it. So I guess I'll do what I did the last time and say no. I certainly would consider the circumstances of what happens at the time. But the mere fact of saying now that violation of work release, which could be being late, could result in that, I simply can't do it. I have to deal with things as they occur, so I will not require that. But it happens any ways, if it happens.

Mr. DeHaven: Right.

Mr. Irwin: Thank you, your Honor.

The Court: Thank you, gentlemen.

Mr. Irwin: Does the system work now that he goes with the sheriff immediately? I had told him to be ready for that.

The Court: Yes. Because I think work release can be available so quickly.

Mr. Irwin: Fine. That's fine. We would rather get moving on it. Thank you.

Mr. DeHaven: May I be excused, your Honor?

The Court: Yes. Thank you, Mr. DeHaven.

Supervised Visitation Reports

Visit 1

VP says hi to the children as they walk into the [room] . . .VP asks if they want McDonalds next time. Both games end. VP asks if they want chicken nuggets. Child 1 pays w/ the sand. VP and Child 2 put the Stratego game away . . .

Visit 2

VP smiles and says hi to the children as they walk into the [room] . . . Asks how they've been this week . . . Child 2 walks over to the bookshelf and grabs the Stratego board game. Child 1 sits down in front of the coffee table and begins to set up game. VP sits down on chair across from Child 1 . . .Child makes a move and looks at VP w/ a smile...

Visit 3

Tuna sandwiches, rice, pickles, bread, macaroni and cheese . . . VP then told Children to join playing a puzzle game and they both played . . . VP insisted that children wash their hands and walked out to the bathroom w/sup . . .

Visit 4

VP arrived on time for visit . . . VP and children greeted each other with hugs and kisses . . . VP encouraged children to eat a balanced lunch, but they ended up eating a brownie and macaroni salad. They drank soda, but each only drank half a small mug ...

Visit 5

Sup, muffin, corn dogs, sandwich, macaroni, strawberries, cheese, corn . . . Children arrived with two target bags. VP said "hello, what you got there?" Children said soccer stuff. . . While coloring children told VP they wanted the color black but it was missing. VP asked sup if we had a pencil or blk pen and sup handed a black pen. Then they continued to color . . .

Visit 6

VP and children greeted each other w/hugs. All sat in visitation room. Children opened a package that VP had brought for them. The package contained a few small toys . . .

Visit 7

They were all glad to see each other . . . VP had corn dogs and only Child 1 ate. Child 2 just wanted to play w/ VP. They played blocks, barbies, and cars.

Visit 8

Children walk into [room]. VP says "hey guys, how are ya?" Children say hello to VP. Children smile. VP, "I brought some burgers for you guys." . . . VP leaves to the bathroom. Child 1 eats burgers. VP returns. All eat hamburgers . . . VP and Child 2 engage in discussion about computers and internet. Discussion is appropriate . . .