

REPORT TO THE PEOPLE OF QUEENS: DOMESTIC VIOLENCE - PART ONE

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Early in his tenure, DA Brown recognized the scourge of domestic violence and the toll it was taking on our community. According to the Center for Disease Control (CDC), one in three women has suffered physical violence by an intimate partner. DA Brown's desire to hold batterers accountable and keep victims safe led him to create the Domestic Violence Unit in 1997 after the office received one of the largest Violence Against Women Act grants in the country. In 2000, DA Brown established the Domestic Violence Bureau so that a dedicated team of assistants would be specially trained to handle these complex, difficult cases. If the definition of a progressive is someone who advocates for social justice using new and innovative ideas, then without question, Judge Richard A. Brown has consistently been one of the most progressive district attorneys in the country when it comes to protecting the victims of domestic violence and their children.

DA Brown's revolutionary approach to prosecuting domestic violence cases has evolved over the last two decades and it has been made clear to the residents of Queens County that intimate partner violence will not be tolerated. DA Brown recognized the need to ensure that the cycle of power and control, which is often perpetuated by coercion, threats, and includes economic, physical, psychological and sexual abuse, did not seep into the courtroom as well. Judge Brown knew the importance of preventing defendants, who used these abusive tactics in their home, from using them to avoid being held accountable in a court of law. He successfully defeated such tactics by employing an evidence based approach to domestic violence prosecutions.

This approach treats domestic violence prosecutions in much the same way that a homicide would be prosecuted. Rather than force an unwilling victim to testify, prosecutors rely on other evidence, such as 911 phone calls, police body-worn camera recordings, statements made in medical records, statements made by a victim immediately after an assault, digital photography, and other admissible evidence to prove their cases in court. These



innovative techniques have effectively stripped abusive partners of their power, by allowing ADAs to prove their cases, even when domestic violence victims are unable or unwilling to face their abusers at trial.

The dispositions of these cases are proof that our approach to achieving safe and livable situations for all victims through a commitment to the creative, unwavering prosecution of batterers, is working. Over the last 20 years, since the creation of the DV Unit, Queens County has consistently had the lowest DV case dismissal rate in the city. According to the Division of Criminal Justice Services, in 2017 Queens County had a dismissal rate of 27% for misdemeanor DV cases; the other four counties had dismissal rates ranging from 57.6% to 72.7%. On cases where domestic abusers were charged with a felony, Queens County had an 80.5% conviction rate; the other New York City counties ranged from 32.3% to 53.3%.

While convictions are not the only measure of success, they do help hold batterers, who often refuse to take responsibility for their actions, accountable. Judge Brown felt that simply dismissing case after case, which continues to be the norm throughout the country, would only continue the cycle of violence. In an attempt to break this cycle of power and control and address the myriad issues underlying domestic violence, low level offenders are offered and accept pleas with sentences that include programs such as anger management, batterer's intervention, alcohol and substance abuse treatment or probation as an alternative to incarceration. Each year, hundreds of defendants enter into these programs. Since the Domestic Violence Bureau was created in 2000, thousands of these

defendants have successfully completed alternative sentencing programs.

In 2002, the Queens County District Attorney's Domestic Violence Bureau landed on the front page of the New York Times because we were one of the first offices in the country to use digital photography in the prosecution of domestic violence cases. At the time, the NYPD and law enforcement agencies throughout the country were using Polaroid cameras to photograph victims' injuries and crime scenes. One of the drawbacks of this antiquated system was that bruises and other injuries suffered by victims of color were not being sufficiently documented because of the poor quality of the photographic images. The need to address this issue was particularly pressing, given that Queens is perhaps the most ethnically diverse county in America. DA Brown worked with the NYPD to have digital cameras placed in every precinct in Queens. As a result, we saw an immediate and dramatic decrease in the dismissal rate once these powerful photographs were available. After seeing the impact these photos had on our domestic violence prosecutions, the other boroughs followed Queens' lead and New York became the first major city in the country to adopt digital photography for DV cases throughout its entire police department.

In 2011, the Queens County District Attorney's Domestic Violence Bureau again found itself on the front page of the New York Times in an article detailing the bureau's innovative use of recorded inmate phone calls. In 2007, the Board of Correction held a public hearing to address the recording of inmate phone calls. At the time, DA Brown was extremely concerned about incarcerated defendants tampering with domestic violence victims by calling them in violation of orders of protection and coercing them to not testify. Since the calls were not recorded and victims were often afraid to testify about the threats they received over the phone, defendants were able to continue to control their victims and manipulate the court system without repercussion. Queens was the only DA's office to attend the hearing and the only agency to advocate on behalf of domestic violence victims. Our office argued that while defendants do have rights, a victim's right not to be intimidated or threatened by their abuser should not be forgotten. After the hearing, the Department of Correction began recording all inmate calls, except for those that were privileged, citing the testimony

of the Queens District Attorney in their decision.

The recordings confirmed what DA Brown suspected --that despite the fact that inmates receive several warnings that their calls are being recorded, some of our worst domestic violence defendants were calling their victims in flagrant violations of orders of protection and using threats, intimidation, bribes, false promises, and appeals to sympathy to coerce them into dropping charges. The Times article referenced a case where a man charged with burning his wife's face with a hot iron called her 437 times and told her to prepare the children to lie.

The Queens County District Attorney's Domestic Violence Bureau has successfully used recorded inmate calls like these to prosecute countless cases under the doctrine of "forfeiture by wrongdoing". This doctrine, which is based on a public policy of protecting the integrity of the adversarial process, allows the People to introduce at trial, statements made by a non-testifying victim if they can establish that the defendant's misconduct caused the witness to be unavailable or unwilling to testify. The best way to explain this concept is through an example. In 2015, the Bureau prosecuted a case against a defendant who had failed to appear in court after being released without bail on a domestic violence assault case. After his release, he broke into his ex-girlfriend's apartment in violation of an order of protection and assaulted her and her ten-year old son. As the defendant dragged her to another room, her son ran outside, screaming for help and an off duty police officer came into the apartment. The officer struggled with the defendant, who grabbed the officer's gun and shot the officer.

Although initially cooperative with the prosecution and describing a pattern of abuse that occurred over the 18 months prior to the incident, the victim suddenly became uncooperative. At a forfeiture by wrongdoing hearing, the People introduced evidence of 67 phone calls made by the defendant in violation of an order of protection, during which the defendant manipulated the complainant by begging her to stand by him, attempting to make her feel sorry for him, complimenting her on her strength, imploring her to remain loyal, and offering to take her on trips and buy her a home and marry her. The court found that these calls, although not overtly threatening, were made within the context of a relationship fraught with domestic violence and evidenced the defendant's intent to control and dominate the victim and to convince

her not to cooperate. Accordingly, the court ruled that the People could introduce previous statements made by the complainant at trial and the defendant was convicted of Attempted Murder and several additional charges. This case is just one of many examples of how Queens County's prosecutorial techniques divest abusers of their power and ensure that defendants, even those who successfully tamper with witnesses, are held accountable.

In Part 2, which will be submitted in the next few weeks, we will discuss the latest progressive approaches to Domestic Violence prosecutions and how we remain a national leader.

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