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A close-up portrait of Protima Pandey, a woman with dark hair, wearing a light-colored blazer and a necklace. She is looking slightly to the right of the camera with a neutral expression.

## *Racing the Clock to Protect Battered Women*

Legal aid attorney  
Protima Pandey

**The Fallout from  
Prison Realignment  
+  
Whistleblower Blues**

**W**HAT WOULD IT TAKE FOR THE STATE TO realize that cutting court budgets to the bone is morally indefensible? Here's one scenario: A young woman applies for a temporary restraining order against her physically abusive husband. She knows that he is violent and unpredictable. She also knows that he will be furious with her once he finds out what she has done. But the court is so crippled by budget cuts that it is unable to respond to her request promptly. Hours turn into days, and before a judge can sign off on a TRO, both she and her small child are brutally murdered in their own home.

Implausible? Hardly. In fact, abused women are most vulnerable between the time they file for a restraining order and when they actually obtain one. Which is why courts are supposed to make every effort to rule on these requests the same day they are filed. But these days, that's increasingly difficult to pull off.

"This is where the effects of the budget cuts are both real and tangible," says Eric Berkowitz, a San Francisco-based writer and attorney who, for this month's cover story, spent time at a legal aid office in Redwood City. There he met a number of battered women seeking help from Protima Pandey, an attorney who does her best to guide clients through a system that is, as Berkowitz shows, profoundly broken ("Desperate Hours").

"Every time I visited the family courts and facili-

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tators' offices, it was like walking into an alternate reality," he says. "Crowds of people, most without the slightest clue how to manage the court system, were just sitting there waiting for someone to help them. Some wait for days. It made Kafka's *The Trial* look like a rational situation."

Also in this issue, Los Angeles writer **Matthew Heller** tells the story of Dimitrios Biller, a former in-house lawyer for Toyota Motor Sales, U.S.A., who drew national attention when he accused the company of withholding incriminating information about the safety of its vehicles ("[Inside Out](#)"). It's a complicated tale that unfolds in state and federal lawsuits, arbitration, and eventually in Biller's personal bankruptcy. It also raises an unsettling question that all in-house attorneys would do well to ponder: What, exactly, should a good company lawyer do when faced with a choice between betraying an employer's confidences and enabling illegal behavior? "It's a very murky area," Heller acknowledges. And not one that's likely to be resolved anytime soon.

Finally, I'm pleased to announce the addition of four new members to our distinguished board of editorial advisors. They are **Teveia R. Barnes** of the California Department of Financial Institutions; criminal defense attorney **Ben Pesta**; **Russell C. Swartz** of Southern California Edison; and Ventura County District Attorney **Greg D. Totten**. To all, I say welcome aboard!

*Martin Zarden*

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# Desperate Hours



LEGAL AID ATTORNEY PROTIMA PANDEY WORKS AGAINST THE CLOCK TO PROTECT BATTERED WOMEN.

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BY ERIC BERKOWITZ

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PHOTO BY SAUL BROMBERGER AND SANDRA HOOVER

**E**ARLY ONE MONDAY LAST SPRING, THREE YOUNG WOMEN STOOD WITH THEIR small children outside of a locked legal aid office in Redwood City. Each of the women had already made a life-changing decision to seek a restraining order against her abusive partner. But now that they had done so they felt more vulnerable than ever. Until they could get a judge to issue the order, there would be nothing to protect them from the beatings they were so desperate to stop. And so as the women waited on the sidewalk that morning, they made sure not to let their children wander, and they kept their heads turned away from the passing cars.

When the Bay Area Legal Aid clinic (BayLegal) finally opened its doors at 9 a.m., the women grabbed their kids and rushed inside. There to greet them was attorney Protima Pandey, a brusque 37-year-old with an Indian accent and a tight schedule to keep. In just a few hours, Pandey needed to get up to speed on the women's stories, coax them into revealing humiliating secrets, fit the facts of their cases into tight legal holes, and prepare up to 120 pages of documentation for the San Mateo County Superior Court to review. Along the way, there would be tears, linguistic and cultural misunderstandings to sort out, and other unexpected challenges. But if the women stood any chance at all of obtaining a protective order by the end of the day, the papers would have to be filed by 12:30 p.m., no matter what the obstacles.

As far back as 1993 the state Legislature recognized the need for procedural speed when it passed Family Code section 6326—a statute that requires courts to rule on restraining order applications in domestic violence cases on the same day that they are filed or, at worst, the next business day. As the Senate Judiciary Committee observed at the time: “Delay can be devastating, as the victim remains at risk. Murder of the victim has been attributable to the delay.” (Cal. Sen. Comm. on Judiciary, Bill Analysis re AB 1331 (1993–94 Sess.) at p. 3.)

But good intentions in Sacramento do not always translate into action in San Mateo, or in any other California county where huge budget cuts have made it increasingly difficult—if not impossible—for the courts to provide quick legal protection. Indeed, since

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*Eric Berkowitz is a San Francisco-based attorney and author of *Sex and Punishment: Four Thousand Years of Judging Desire* (Counterpoint, 2012).*

2008 a toxic mix of recession-driven factors has at once swollen the number of domestic violence victims and left more of them without the help they need.

For the victims, the consequences have been devastating. In San Mateo County alone, the superior court over a three-month period last year failed to meet its deadline obligations for more than 100 restraining order requests filed by BayLegal's Domestic Violence Restraining Order Clinic. And with the governor talking about yet another round of crushing budget cuts, the outlook statewide has only gotten grimmer.

California's trial courts have taken the brunt of the judiciary's \$653 million in funding cutbacks since 2008, overall losing nearly 24 percent of operating funds; at the same time, the demand for court services has sharply increased. Bobbie Welling, the supervising attorney at the Judicial Council's Center for Families, Children and the Courts, likens the crisis to Hurricane Katrina. "There is a flood," she says. "There are waves of litigants coming in, and flows of resources going out." And under Gov. Jerry Brown's revised 2012–13 budget, the courts will lose an additional \$300 million. But at least in San Mateo

County, just about everyone agrees that the system has no fat left to trim. "We think we're as lean now as the public would want the judicial branch to get," says the court's CEO, John Fitton.

That Monday morning in Redwood City, though, Pandey is not thinking about the intricacies of budget policy; she has three traumatized women and their children to tend to. We'll call them Maria, Priya, and Karen.

Pandey guides the women into a room where she instructs them to write out accounts of their abuse in longhand. "In three weeks you can tell your story to a judge; for now we do it on paper," she says. "Get started."

Writing does not come easily to the women; two speak little to no English, and the third is functionally illiterate. By 9:45, one has asked Pandey how to spell *knife* and *Asian*, and all are struggling to craft coherent sentences. "We come across clients who are illiterate all the time," Pandey says. "Now they are in two spots. They have suffered domestic violence—which is hard for them to come to terms with—and they can't tell their story. We have to help them."

Apart from language difficulties, the women also find it painful to recount their ongoing abuse. "I don't want to relive all of this stuff," Karen says as

she tries to describe how her boyfriend slammed her into a chair. “If you go through this,” Pandey responds, “you’ll know you can do what you need to do to protect yourself in life.”

Meanwhile, more women come streaming into the BayLegal office. But because they have arrived 15 minutes after the 9:30 deadline, the staff promptly turns them away, referring them to other agencies. The clinic has always insisted on punctuality, but federal and state funding cuts have made it all the more essential. Until 2011 the clinic served about 1,000 women each year. Now, with a patched-together staff of five and a rotating crew of volunteers, it can handle only about 650. “If we help the late ones, we can’t help the ones already here,” Pandey explains. Besides, she claims, battered women need “tough love” to help them learn how to reclaim control of their lives. “These people have gone through so much trauma, they have lost the tools to live. This is one way to help them regain life skills.”

Maria’s case presents an added complication: She has just fled to California with her baby, leaving her abusive husband in Texas. Now, the husband is calling with threats and profane insults.

“You can’t get custody orders unless

the kids have been in California for six months and in San Mateo County for three,” Pandey tells her with the help of a Spanish-speaking paralegal. But the law is complicated. The residency requirements apply to marital dissolution cases (see Cal. Fam. Code §§ 2320 (a) 1)); however, in an emergency, if the child is present in California a court can issue an immediate order, provided there is an adequate factual showing that the child or petitioning parent has been subjected to or threatened with “mistreatment or abuse.” (See Cal. Fam. Code § 3424.)

Maria decides to go forward with the application. “Do I have to put in the bad words?” she asks as she struggles with her account. “Yes, of course!” Pandey replies. “The judge wasn’t there!”



EVER SINCE SHE WAS A LAW student in Bangalore, India, Pandey has been representing indigent clients. In fact, she participated in one of India’s first legal services clinics, which was located in a small village much like the one her father came from. “There was no plumbing or electricity,” she recalls. “Poverty has always been part of the landscape wherever I have lived.” The legal clinic helped villagers mostly

with family land disputes and small matters. Pandey even counseled a kid who was picked up for stealing coconuts. But none of those cases involved anything like battered spouses. “They do not consult lawyers for domestic violence or personal matters like that,” she explains.

After two years at Anand and Anand, a high-end corporate and intellectual property law firm in New Delhi, Pandey’s relationship with the man who would become her husband brought her to the United States. She earned an LLM degree from Washington University in St. Louis and then did IP legal research for several years while waiting for her green card. She came to California in 2001 and soon thereafter began to work on public-interest cases. “People from India started calling me right from the time I got to California,” she remembers. “When they find out about an Indian lawyer who also knows U.S. law, they are much more comfortable talking.”

In 2008 Pandey began a two-year stint at Inland County Legal Services in Riverside, after which she moved to Sacramento to do public policy work at the California Partnership to End Domestic Violence. Last year, BayLegal hired her to handle family law and domestic violence cases in Redwood City. Now she and one other lawyer

(there used to be four) represent clients of many nationalities, including Indians like Priya.

Because Pandey speaks an Indian language similar to Priya’s, they can communicate intimately with each other. But perhaps even more important is Pandey’s ability to understand the cultural factors underlying the abuse that Priya has endured. “Was this an arranged marriage?” Pandey asks. “Yes,” the young woman replies quietly, as her children run around the room. Priya’s husband had come to India looking for a bride and he brought her back to California. But only after they were married did she learn about his crystal methamphetamine addiction. Alone in a strange new country, she felt she had nowhere to turn for help.

“When Indian people have problems, they rarely call the police,” Pandey says. “There is no culture of 9-1-1. They call in-laws, friends.” In 2010, when Priya’s husband attacked her with his fists and doused her with scalding water, she called his parents for help. But they only defended him, no matter how violent he became.

One day while her husband was on a drug binge, she tried hiding his drugs from him. This so enraged him that he grabbed a blade and pressed it against

her neck in front of their children. Finally, as he ransacked the house looking for the drugs, Priya barricaded herself in another room and called the police.

She cries as she describes all of this to Pandey. And Pandey in turn tries to reassure her that she has done the right thing in seeking help. “Don’t blame yourself. Here in America, they will blame you if there are drugs in the house and the kids are hurt,” Pandey tells her. “It’s not the same as in India.”

By 11 a.m., none of the women’s TRO applications is even close to being finished. And to make matters worse, the judge they were about to petition is not feeling well, so the court calls to demand that the applications be submitted earlier than usual—by noon. Moments later, Karen receives a threatening text message from her boyfriend, and then one of the children spills a full cup of water on Pandey’s desk. Wiping up the spill, all traces of warmth leave Pandey’s voice as she orchestrates the final push to complete the paperwork. On a table she sets three thick piles of Judicial Council forms, which must be flawlessly filled out in a matter of minutes. The tension in the room becomes palpable as Pandey tells the women what sections to skip and

which boxes to check, and explains the ramifications of each of these actions. There is no time to cover anything in detail.

Finally, just past twelve, the papers are done and a paralegal rushes them across the street to the court clerk’s office. The women are told to come back at 4:30 to pick up the restraining orders. Visibly exhausted, Pandey readies herself for a meeting with another client, due to start shortly.

When Maria, Priya, and Karen return at the end of the day, however, the signed restraining orders have not come back from the court. Nor do the orders arrive the next day. In fact, it isn’t until that Wednesday, at 12:45 p.m., that the protective orders materialize.

By that time, Priya has already been summoned to a meeting with her in-laws and offered \$2,000 not to proceed against her husband. (Perhaps because she was simply fed up, or maybe because she no longer felt quite so alone and powerless, she took the cash to pay bills and told her in-laws she would testify against their son anyway. The husband’s parents, in turn, started proceedings to evict her from the family home.)

Maria, meanwhile, begins the process of having the restraining order served on her husband in Texas.

Of most concern to Pandey, though, is Karen; after that first day, she never returned to the clinic to retrieve her restraining order. To Pandey, this strongly suggests that Karen has gone back to her abuser.



AS CALIFORNIA'S BUDGET CRISIS continues to play out, the state's chief justice has seized upon the plight of battered women to underscore the dangers of cutting court budgets to the bone. In her recent State of the Judiciary speech, in fact, Chief Justice Tani Cantil-Sakauye described one woman in a "small rural county" who tried to secure a protective order against her abusive boyfriend. "The court, with its reduced hours of operation, couldn't help her when she needed it," the chief explained. "So she and her child spent the night in her car rather than take the chance of returning home."

In her years as a judge in Sacramento, Cantil-Sakauye presided over a courtroom dedicated to domestic violence cases. "These are some of the most dangerous cases we as judges face," she says. "By the time victims come to court for a TRO, it's because they have been beaten up that morning, and not for the first time. It could be

the fifth time. They have brought their kids. They need help the most, and they need it now."

Statewide, about 90 percent of the people who apply for restraining orders do not have lawyers, which makes the role of legal aid offices like BayLegal all the more crucial. Also critical are the publicly funded Family Law Facilitator offices, located in county courthouses throughout California to help people navigate the procedural minefields of family law. Since 2008, however, the facilitator's office in San Mateo County has lost half of its attorneys, scrapped several self-help programs, and reduced its hours—all due to budget cuts.

Beth Labson Freeman is the presiding judge of the San Mateo County Superior Court. Like the chief justice and Pandey, she too is alarmed by the state's growing inability to meet the needs of domestic violence victims. Freeman says judges in her court have no time to review restraining order applications except on breaks or after their regular calendar hours. And if the clerks have left for the day before a judge finishes reviewing an application, no order will be issued until at least the next morning.

And yet, in spite of everything that conspires against it, sometimes justice

is done. For Pandey, one especially satisfying moment comes one afternoon when she returns from court to find a client beaming and her colleagues cheering. The woman has been trying for months to win an extension of the temporary restraining order against her physically abusive ex-boyfriend. Her first attempt, which she made without legal assistance, was denied. BayLegal then took the case through several more contentious hearings.

Pandey's colleague Tulin Acikalin had argued the motion to extend the order and persuaded the judge to let the client bring out a witness from the East Coast to confirm the ex-boyfriend's ongoing threats to do her harm. The witness appeared several weeks later, but a substitute judge was presiding at the time and he refused to issue a ruling. The client couldn't bring the witness out again, and as the third hearing approached Acikalin prepared an emergency writ in case the motion was denied. But today the original judge was back and agreed that the witness need not testify again; the restraining order was then extended for five more years.

For Pandey and Acikalin, it is a moment to savor. But only a moment.

Earlier in the day Pandey herself had

gone to court in South San Francisco on behalf of a young woman who was legally blind and whose husband had been beating her for years. When she threatened to walk out on him with their child, he told her: "You can leave me if you want, but the court will never give custody to a blind woman." She left anyway, taking the child into hiding.

The hearing concerned custody, but final orders in such cases generally are not entered until the parties first participate in court-conducted mediation. A previous judge had refused to make the husband pay child support until the mediation took place. Not surprisingly, the husband didn't show up for the scheduled mediation session. So Pandey urged the judge to resolve the custody issue anyway. Instead, the judge merely directed the couple to mediate sometime within the next four months.

That would have seemed like a reasonable enough order—except for the fact that budget constraints had recently forced the South San Francisco courthouse to shut down its mediation services. 