The Paradox of Women Arrested for Domestic Violence: Criminal Justice Professionals and Service Providers Respond

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The Paradox of Women Arrested for Domestic Violence

Criminal Justice Professionals and Service Providers Respond

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Increasingly, women are being arrested for domestic violence charges as part of dual arrests (when their partner is also arrested) or as a result of their own actions. Could this phenomenon be explained by women’s greater willingness to use violence against their abusive partners, or by a strict adherence by police and prosecutors to follow mandatory-or pro-arrest laws without examining the context of the incidents, or something else? This article explores this issue by examining one state’s experience, using interview data from criminal justice professionals and service providers who deal directly with women arrested for domestic violence charges.

Beth cut her husband’s throat so badly that he had to be medivac-ed to the hospital; he almost died. He was constantly abusing her throughout their 6-year marriage and at the time of the stabbing, she said he was beating the crap out of her and she grabbed a knife—it was the first thing that was near her. . . . That’s what she felt she had to do to get out of the situation.

—Probation Officer #1

Jenny was sexually abused by her brothers and violently assaulted by her first husband continuously, and now, with her second husband, more continuous assault. Basically, what she did was after a particularly vicious assault, she took his clothes out in the living room and set them on fire. She was charged with arson. But the police records document a number of times that she has been the victim of battering.

—Probation Officer #3

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These statements illustrate the varied situations experienced by many women who find themselves arrested for domestic violence charges by an incident-driven criminal justice system that responds uniformly to cases of domestic violence without differentiating between the motivations and consequences of such acts. In the two examples above, the authorities believed that the women broke the law and that these acts determined their subsequent arrests. By following the letter of the law, however, law enforcement officers often disregard the context in which victims of violence resort to using violence themselves.\(^1\) Often what is most revealing are the antecedents to the incidents that many battered victims share: They often act in self-defense, they may have long histories of victimization, and they may use a weapon to equalize the force or threat used by their partners who are bigger and stronger than they are. Hence, some of these arrests are inappropriate, particularly when battered women act in self-defense or when women are falsely charged by their savvy (male) batterers who have learned how to manipulate the system. At the same time, however, there are also women who are arrested who are victims of abuse who commit an illegal act, but this act occurs in the context of a long history of abuse (illustrated by Jenny in the second example above). This paradox gets to the crux of the matter: What is the appropriate criminal justice response to battered women who assault (as legally defined) their abuser or do other illegal acts and end up getting arrested, particularly when these acts of violence committed by victims are qualitatively different from acts of violence committed by batterers? The situation in which many battered women now find themselves is assuredly not the response that was envisioned when the cry for the criminalization of domestic violence was first heard. In particular, these arrest policies and their consequences raise multiple questions: Just what should the police do in these situations in which victims of violence experienced at the hands of their abusers may lead them to commit a violent act? Are police doing too good a job of making arrests and enforcing the law? Do police miss important contextual clues by being incident driven in their investigations, rather than contextually based? Given the devastating impact an arrest can have on victims’ lives as well as the increase in their risk of further harm, how should we evaluate the success of domestic violence arrest policies? Are there actions that the
police can take, such as determining the primary aggressor or uncovering the history of relationship abuse at the scene, that could have an effect on the course of action that police should follow? What if battered women did commit a technically illegal act—should they be treated the same as their (male) abusers? What do we want the prosecutors offices to do? This article explores one state's experience grappling with the issues raised and faced by women who have been arrested for domestic violence offenses. Interview data are analyzed to reveal the perceptions and experiences of criminal justice professionals and service providers who deal directly with these arrested women.

The social problem of domestic violence catapulted to the national scene in the 1970s with efforts of grassroots activists and victim advocates and with the success of civil liability suits against police departments who refused to treat domestic violence as a criminal offense. Many feminists and advocates (both women and men) for battered women fought hard and long for the criminal justice system to treat domestic violence more seriously, increase safety for women, hold offenders accountable for their violence, and rid the criminal justice system of gender bias. For the past two decades, the entire system—the police, in particular—has been under siege to change its tolerant stance toward domestic violence. The system responded by enacting presumptive and mandatory arrest policies in many jurisdictions, establishing prosecutorial "no drop" policies in some jurisdictions and designing treatment intervention programs (see Iovanni & Miller, 2001, for a discussion of these programs).

The empirical research findings pertaining to the efficacy of arrest are at best equivocal. The widely publicized pioneering Minneapolis Domestic Violence Experiment (Sherman & Berk, 1984a, 1984b) indicated that prevalence rates for subsequent offending were reduced by about half with arrest. Although this result was welcomed by victim advocates, the study's results were intensely criticized for many methodological problems (see Fagan, 1989). Replication experiments in six cities followed, but only two provided any direct support for the specific deterrent effect of arrest (Berk, Campbell, Klap, & Western, 1992; Pate & Hamilton, 1992). In contrast, the majority of the replication experiments found that arrest was no more effective as a deterrent than any other intervention (see Dunford, 1992; Hirschen &
Hutchinson, 1992) or that arrest might actually increase the occurrences of future offending (Dunford, 1992; Sherman et al., 1991). In addition to the problem of contradictory research results, the focus on police practice and specific deterrence led some scholars to attack the naive assumption that arrest alone will deter the complex behavior of domestic violence (Bowman, 1992; Zorza, 1994). Although mandating arrest communicates the seriousness of battering, conveying that this behavior will not be socially or legally tolerated, opponents of arrest policies such as Buzawa and Buzawa (1993) note that relieving victims of their decision-making power by mandating arrest is ultimately patronizing to battered women. Often, victims simply want the violence to stop in the given instance or fear the consequences that may accompany arrest, such as retaliation by their partner or loss of his income. Buzawa and Buzawa (1993) believed that true victim empowerment is achieved by giving victims control over the outcome of the police intervention and that a policy of victim preference is far preferable to mandatory arrest. Arrest may be effective only for employed suspects who would incur legitimate losses if arrested (such as loss of job or reputation) (Zorza, 1992). In addition, police often circumvent such policies due to the inconvenience of case processing, belief in stereotypes regarding battered women, and dissatisfaction with limits placed on their discretion (Ferraro, 1989).

Other scholars have called attention to the unique problems of lower class and minority women in dealing with battering (Rasche, 1995), as well as the fact that mandatory arrest policies can have unanticipated and negative consequences for these women (Miller, 1989, 2000). Women from lower socioeconomic and minority groups may be more likely to call the police to solve problems in the private sphere, and this situation could result in disproportionately higher arrests of men in these groups (Hutchinson, Hirschel, & Pesackis, 1992). On the other hand, some women of color and poor women might be reluctant to call the police. According to Rasche (1995), African American women may be reluctant to seek relief from a criminal justice system that they perceive as dealing more severely with non-White men, whereas Asian and Latina women may view expressing a preference for arrest as a betrayal of cultural norms that dictate privacy and deference to family authority. Poor women may also be
deterred from calling the police if it means the loss of an employed spouse’s income (Iovanni & Miller, 2001, p. 309).

At a minimum, arrest policies represent a better criminal justice system response than decades of nonintervention, despite the criticisms that mandatory arrest fails to empower battered women to make the best choices based on their own unique situations and that there is a potential for police bias when enforced against the poor and/or people of color (Miller, 2000; Zorza & Woods, 1994). However, as presumptive and mandatory arrest of domestic violence offenders has grown in popularity, a concomitant increase in women arrested for domestic violence offenses has resulted. There is evidence that following changes in arrest policies, women are increasingly arrested, either as part of a dual arrest (in which both victim and offender are arrested) or as the sole arrestee, and that these arrests occur even in jurisdictions where police have been instructed to arrest only the primary physical aggressor when they have probable cause to believe both parties have used violence (Zorza & Woods, 1994, p. 16).

Research demonstrates that following the implementation of mandatory arrest policies, dual arrests directly attributable to the policy change have dramatically increased (for example, in Connecticut, 18% of approximately 25,000 annual arrests are dual arrests, which represents a significant increase in the number of dual arrests) (Martin, 1997). Some jurisdictions have recognized this unintended consequence and have either enacted “primary aggressor” laws (Zorza, 1992) or instituted new police training policies. For instance, a 6% dual arrest rate reported in Dallas was reduced to 1% after instituting new training that taught police to arrest the person determined to be most culpable or most dangerous (Martin, 1997). Primary aggressor laws are very promising; for instance, following this kind of policy change, Los Angeles reduced the number of women arrested by one third using this new contextual training. However, detractors believe these policy changes stack the deck against men, that they reflect society’s reluctance to believe that women abuse their male partners, and that “militant” and “victim” feminists drop their support for mandatory arrest laws when they sweep up women (Blumner, 1999, p. 1). This antifeminist stance is strongly supported by men in men’s rights groups, the members of which are typically joined by their second wives (Hart, 1999). Nonetheless, battered women
are now ensnared in the policies of arrest, despite research that shows that men who batter women account for 95% of domestic violence incidents (Dobash et al., 1992; PageLOW, 1992). Nationwide statistics indicate that women who are prosecuted for domestic violence–related offenses represent 5% to 10% of domestic violence prosecutions, although this number is growing (Hooper, 1996). Following changes in arrest policies, the percentage of women arrested for domestic violence crimes in California jumped from 5 in 1987 to about 17 in 1999 (Blumner, 1999); in Concord, New Hampshire, the same category increased from 23% in 1993 to 35% in 1999 (Blumner, 1999). After mandatory arrest was implemented in a county in Minnesota, 13% of women were arrested the 1st year, which rose to 25% in the 2nd year (Saunders, 1995). Thus, both research and anecdotal materials from across the nation have raised concerns about a growing trend in arresting women as domestic violence offenders.

RESEARCH ON INTIMATE VIOLENCE

The arrest statistics considered above revive a long-standing debate: Do victims of abuse and batterers use violence for the same motivations and with equal frequency? Much research has explored this gendered phenomenon by examining the rates of and reasons for partner abuse. Although early national surveys using the Conflict Tactics Scale (CTS) as a measurement instrument found that women reported using violence against male partners at rates roughly equal to or slightly higher than the reverse (Straus & Gelles, 1986, 1990; Straus, Gelles, & Steinmetz, 1980) even though women received more severe injuries (Stets & Straus, 1990), most scholars remain firmly resolved that domestic violence is not an act of mutual battering. In fact, recent national survey results from the National Violence Against Women Survey (NVAW), jointly conducted by the National Institute of Justice and the Centers for Disease Control and Prevention, reveal that women are significantly more likely than men to be victimized by their intimate partners (Tjaden & Thoennes, 1998), which is consistent with other national data from the National Crime Victimization Survey (Bachman & Saltzman, 1995). Findings from other
studies that use the CTS and find support for mutual battering have been dismissed once context is taken into account, once pre-emptive aggressive action is distinguished from self-defensive action, and once injury is considered.4

Other research reveals that there are indeed differences in the context and quality of violence used by women and men. As A. D. Lyon (1999, p. 257) contended, looking at “who hit” only reveals one aspect of the incident, and to fully understand the complexity of the whole context, the “why” and the “how” need to be studied. Even Straus (1993) admitted that men “typically hit or threaten to hit to force some specific behavior on pain of injury,” whereas “a woman may typically slap a partner or pound on his chest as an expression of outrage or in frustration because of his having turned a deaf ear to repeated attempts to discuss some critical event” (p. 78; see also Mullender, 1996). Saunders (1986) found that most women in battered women’s shelters reported using minor violence at some point in relationships as a means of self-defense or fighting back. Cascardi, Vivian, and Meyer (1991) interviewed 36 married couples and found that 58% of women who used severe violence attributed their actions to self-defense, compared to only 5% of the men; 50% to 80% of men who used severe violence did so to control their partners. Using data collected from both partners from a sample of 199 military couples mandated for domestic violence treatment, Langhinrichsen-Rohling, Neidig, and Thom (1995) found that although both husbands and wives used violence in 83% of the cases, the husbands’ violence was more severe, the husbands were less likely to be injured, and the husbands were far less likely to report any fear of their wives (see also Jacobson et al., 1994). Hamberger, Lohr, and Bonge (1994) examined the motivations of violence with 75 women and 219 men who were arrested and court-referred participants in domestic violence counseling programs. They asked respondents, “What was the function, purpose or payoff of your violence?” Women’s answers revealed that they used violence as self-defense, as protection from or retaliation for prior physical violence and psychological battering, or to escape violence. In other words, when women used violence against their partners, it was almost always in response to the batterers’ violence. Men, on the other hand, used violence as a means of control and domination over their female partners. Sometimes, women may be the
first to use violence as a tactical strategy to avoid getting hit themselves (Bowker, 1983; Feld & Straus, 1989) or in response to perceived threats of physical or sexual violence directed against them (Browne, 1987; Hamner & Saunders, 1984). In one effort to address the situation typical of battered women who use violence, in a national study of Canadian dating violence, DeKeseredy, Saunders, Schwartz, and Alvi (1997) modified the CTS to include questions about the use of self-defense and protection, fighting back when the respondent is not the first to use violence, and using preemptive violence before the partner actually attacked or threatened to attack. Their findings indicate most women use violence in self-defense or in fighting back; consistent with the other studies above, their data offer no support for the sexual symmetry thesis (DeKeseredy et al., 1997).

Recent research also reveals that there may be racial or cultural differences in how women respond to their violent partners. For instance, African American women may more often use violence (such as threats, slaps, hitting, and throwing objects at partner) against their intimate male partners in response to experiencing severe physical and sexual aggression (such as choking or attempted rape) and psychological abuse (West & Rose, 2000). This may indicate that African American women have an overall greater risk of victimization due to their marginalized socioeconomic status; Black women in particular have a “long history of physical abuse and oppression, both within their homes and in the larger society, they had to be prepared to defend themselves” (West & Rose, 2000, p. 488). In a study comparing White and Black women, Black women were more likely to fight back when physically assaulted (Moss, Pitula, Campbell, & Halstead, 1997; see also Clark, Beckett, Wells, & Dungee-Anderson, 1994). However, Black women often minimize their victimization due to their investment in perceiving themselves as capable of self-defense (Ammons, 1995; Harrison & Esqueda, 1999). It may also be possible that people who live in disadvantaged neighborhoods and experience the stress of poverty and racism may use violence as a survival strategy for self-protective measures. Overall, what both these racial difference studies as well as the earlier studies reported demonstrate is that the motivation for women’s use of violence is typically reactive and/or protective, whereas men’s use of violence is consistent with power-control patterns of abuse.
This evidence notwithstanding, some commentators remain unpersuaded and maintain a gender-neutral stance, arguing that all violence and assaults, regardless of the context in which the violence is used, are criminal acts, independent of the assailant’s gender, and that policies that fail to hold women accountable for violence they perpetrate should not be endorsed (Straus, 1993, as cited in A. D. Lyon, 1999). However, as A. D. Lyon (1999) asserted, the danger that men face occurs when women “resort to violence when they are left (or believe they are left) with no alternative ways of escaping from the damage that male violence does to them” (p. 258). Clearly, these are not the same dangers faced by women.

**LAW ENFORCEMENT AT WHAT COST?**

Concerns about gender neutrality and law enforcement get to the heart of the dilemma: Does equality demand that the law should be applied uniformly, irrespective of gender? Like crimes should be treated in a like manner, but generally, a victim’s use of violence is not the same as a batterer’s use of violence. Therefore, due to this difference—and not because of gender—many feel that these cases should be handled differently. Similar to studies that explore why women use violence, additional studies that focus on arrested women reveal that these women are often battered women who are enmeshed in a pattern of violence that they typically did not initiate or do not control (Barnett & Thelen, 1992; Cascardi et al., 1991; Follingstad, Wright, Lloyd, & Sebastian, 1991; Hamberger, 1991a, 1991b; Hamberger & Potente, 1994; Marshall & Rose, 1990). If the context of women’s violence is distinct from men’s violence, as the data suggest, and if women’s motives are not equivalent to men’s motives, then a punitive criminal justice response that treats these women the same way as male batterers is entirely misdirected. This possibility of differing contexts and motivations introduces serious policy implications for how women are treated and what kinds of intervention strategies should be used. Policies clearly need to address circumstances unique to women and to acknowledge the asymmetry of power in heterosexual relationships and the gender differences in fear, injury, and available resources and alternatives. This entails an understanding of the long-held recognition that domestic
violence is a social problem rooted in social and structural inequity, which uses power-control dynamics to allow one individual to gain mastery over another individual and over a relationship.

Arrest and prosecution may also increase the danger for victims of domestic violence. Some probation officers recognize that a woman who is on probation following a domestic violence arrest may still be in danger or may be in greater danger if her partner is a batterer and she struck back in self-defense or in an attempt to stop the violence from escalating (Mullender, 1996). For instance, he might be mad that she fought back or he might have more power over her due to her arrest and upcoming prosecution, and thus she is more vulnerable to his further abuse.

At the same time, we should resist the temptation to idealize the female victim or offender. Not all victims are totally innocent or without culpability. It might be that another possible explanation behind increases in female arrests may be that women feel more liberated and that they are eager to discard “good girl” roles and stand up for themselves. However, whenever women step out of prescribed gender roles, they are often labeled as deviant and criminal (Schur, 1984). As early as 1895, for instance, a male criminologist declared that with women, there is “a small proportion whose criminal tendencies are more intense and more perverse than those of their male prototypes” (Lombroso & Ferrero, 1895, p. 147). It is important to know if police and prosecutors today embrace similar kinds of assumptions about women’s nature and if they are more likely to view women’s violence as unfeminine and therefore suspect or deviant but not to view it as self-defensive action. Whereas “normal” women are characterized as weak, passive, and fearful, a deviant woman is one who “acts like a man” by fighting back or refusing to back down during an altercation. Furthermore, these actions may exacerbate problems for Black women given the cultural stereotype of Black women as angry and violent and as deserving victims (Allard, 1991, p. 194). In general, research conducted about arrest and domestic violence has found that women who contradict female stereotypes have a greater risk of arrest for domestic violence, particularly Black and younger women.

In encounters with police officers, those female suspects who violate middle-class standards of traditional female characteristics
and behaviors (i.e., white, older, and submissive) are not afforded any chivalrous treatment during arrest decisions ... young, black or hostile women receive no preferential treatment, whereas older, white women who are calm and deferential toward police are granted leniency. (Visher, 1983, p. 23)

In addition, disrespectful and antagonistic citizens, as well as citizens under the influence of drugs or alcohol, are more likely to be arrested in a domestic violence encounter with the police (Smith, 1987; Worden & Pollitz, 1984). These findings have particular implications because often, by the time the police arrive on the scene, many men (having dispensed with their anger through a violent action) appear calm and better able to describe the situation to their advantage, whereas many women may still be experiencing emotional trauma, thus seeming less credible and more combative to the police.

Very few empirical studies to date have examined the questions raised here. To assess all of these issues, we need to look beyond arrest statistics and consider in depth how a range of criminal justice and social service professionals view domestic violence in all its forms: real abuse committed by women against men, the potential for revenge or backlash by men, and self-defense on the part of women. Using data collected from interviews with various criminal justice and social service professionals, the research presented here is an effort to empirically consider the issues and implications raised by arrests of women for domestic violence offenses.

**DELAWARE AS A CASE STUDY**

This present study explores these issues based on one state’s experience with dealing with women arrested for domestic violence. The results reported here are part of an ongoing, multisite research project comprising multiple jurisdictions. Delaware is a small state (total population in 1999: 760,691) with only three counties (New Castle County is the largest county with 491,407 inhabitants; Sussex County, 143,007; and Kent County, 126,277). The police departments do not follow mandatory arrest policies, but rather operate with pro-arrest policies reflecting considerable variation across state, county, city, and local police departments.
The state’s efforts to document domestic violence incidents came on the heels of several well-publicized domestic fatalities in which people believed that if the police had responded more quickly and seriously, some homicides or suicides might have been prevented. (For instance, in the southern part of the state, a police officer had responded to a domestic violence incident the night before but did not make an arrest, and the next day, the husband killed his wife and children and then himself.) Police were under scrutiny by advocates and the press to improve their responses and to follow the laws exactly or be subjected to disciplinary problems or lawsuits. Part of the consequence of this increased pressure to rectify past police inaction might be reflected by the increase in the number of domestic violence arrests of women.

METHOD AND SAMPLE

To better explore the issue of victims of violence arrested for committing domestic violence, interviews were conducted with 37 criminal justice professionals and social service providers. The research team interviewed all of the major players in the state that had experience with this issue and had worked with domestic arrests, particularly if they encountered women who had been arrested for domestic violence. New Castle County, the largest and most populated county, was oversampled because it experienced much larger domestic violence caseloads and had more criminal justice professionals and resources devoted to responding to domestic violence. The respondents included 2 directors of battered women’s shelters, 4 case workers in shelters, 7 victim services workers who are affiliated with police departments (city, county, and state; 4 are social workers, and 3 are police officers), 3 treatment providers who run counseling groups for arrested women, 5 probation officers, 5 prosecutors and social workers, 5 public defenders (lawyers and social workers), and 6 family court advocates. The interviews with the 37 respondents lasted between 1 hour and 3 hours; reinterviews occurred when new issues were raised and clarification was sought. The remainder of this article explores how criminal justice professionals and social service providers respond to women in domestic violence incidents and what role, if any, their actions play in the imple-
mentation of criminal justice policy. Using grounded theory methods, three major themes emerged from the interviews with criminal justice professionals and social service providers.\(^8\) The first theme addresses women’s violence by focusing on whether respondents felt that women’s violence against their partners was increasing and, if so, if this change accounts for the increase in the number of women arrested.

**THEME ONE: WOMEN’S VIOLENCE**

Without exception, none of the respondents (e.g., treatment providers, counselors, shelter directors and workers, prosecutors, police, defense attorneys, public defenders, probation officers) believed that women’s violence was increasing. Rather, they indicated there were other reasons that could explain why women were expressing themselves violently, such as extreme frustration and use of self-defense. Most respondents were aware of the 1994 shift in police response and the emphasis on a pro-arrest policy stimulated by fear of civil lawsuits. Both probation officers and shelter workers asserted that all of their clients had histories of victimization, but the police are now directed to make arrests. Rather than ignoring women’s behavior as they had in the past, the police focus on the violence itself and not the context in which it occurs. As one probation officer said, “The guy might hammer her three times and maybe even get charged and convicted; and she hammers him once in response and gets charged during the fourth incident.” In fact, often if a woman is on probation for relationship violence, the probation department also has her male partner on the caseload. Victim services personnel said that they often received calls from women who were arrested—women they knew from earlier episodes in which the women were victims. A social worker in the prosecutor’s office also talked about these women:

A lot of our female victims have had a long victimization history. I think that a lot of our female “victims” just reach a point, even if it is just verbal abuse, where they can’t take it anymore and then they lash out and it’s true, they are getting a criminal charge and that criminal charge can be sustained. But there is usually a history that goes with that as to why they’re here.
As a prosecutor stated,

I think in a lot of these situations . . . they’re both verbally abusive . . . and they both get in each other’s face and I think sometimes she gets arrested. But I still think that he’s the dominant figure . . . he controls everything . . . He’s still the man and he’s still the head of the household and that’s probably where half the problems come in—when you challenge that authority figure that he is, or you want to go against him or do something he doesn’t want you to do. (Deputy attorney general)

Interestingly, what these statements show is that members of the prosecutor’s office (prosecutors and social workers), whose job it is to prosecute the women as offenders, view them as and call them victims, not offenders.

Overwhelmingly, the respondents dismissed the idea of mutual combat or equivalent danger and instead talked about the reasons why women used violence:

most of the time it is to tell him to “stay away” and then as he approaches, sometimes he gets stabbed. (Treatment provider, southern Delaware)

Women typically say that “he was assaulting me and I was trying to get away from him.” The women are more likely to admit what they did, like they’ll say, “Yeah, I stabbed him, but this is why.” The men a lot of times will not even admit that they struck her unless you say, “Well then, how did she end up with a broken nose?” Even then, the men still sometimes don’t admit it, even when you have the facts right there. (Probation officer, county domestic violence unit)

What also was consistent across respondents was that they believed that the police are being overly cautious.

If they see any mark, any scratch at all, police will charge, regardless if it was due to fighting back or inflicted because of being the initial aggressor. I think police are far more free or willing to charge both parties these days than they used to be. (Shelter worker, southern Delaware)

The respondents stated repeatedly that women’s motives differed from men’s motives, in particular, that women’s use of violence was not part of the power-control dynamic associated with
battering. According to probation officers, women often seemed "at the end of their rope." The probation officers raised the issue of self-medication: Women take drugs and alcohol to cope or because they do not feel strong enough to leave. Police officers echoed this belief; as one male police officer said, "Women use substances as a momentary escape because of the hell that she may be in."

The arrested women were often charged with misdemeanors (except those using knives or guns) and typically caused little damage to the men. As one county victim services worker claimed,

Most of the time, they are arrested for offensive touching—occasionally, assault, but more typically it's for a scratch or something. . . . we don't have a man who's beaten to a pulp or anyone with a black eye or bruises all over the body and broken bones.

Overwhelmingly, the respondents believed that the women did not have the same kind of power over men that men possess in relationships. The men were not in fear of their lives (unless the woman had a weapon, but even so, men's fear would be temporary; men rarely live in fear as many battered women do), and if the men wanted to defend themselves, they could easily do so. The women also did not control the men's autonomy, that is, who they can call on the phone, whom they can socialize with, what clothing they can wear, whether they can visit with family members, or whether they have a curfew. Even so, a few respondents (typically, the police members of domestic violence units and members of victim services units that were closely affiliated with police departments) stated that if women did commit a crime, "they should be arrested the same as a man. We shouldn't differentiate just because she's a female" (victim services worker, county unit). If there were inconsistencies, they believed the prosecutors should resolve them. What distinguished the two scenarios (of arrested men and arrested women) was that "you don't see the same kind of power and control structure with women; it's probably a situation where she just lost it" (head of domestic violence police unit, state).

Thus, not a single respondent in the sample believed that women were getting more violent. Rather, they believed that the increase in women arrested for domestic violence reflected
changes in police policy, in that police were trained to make an arrest on any domestic violence call rather than to use their discretion to handle the situation in alternative ways. The respondents strongly asserted that women and men have different motivations for using violence, with women being frustrated or defending themselves. A number of respondents believed that women should be punished for criminal acts as long as context was taken into account and aggressive violence was differentiated from self-defensive action.

THEME TWO: MEN AND BACKLASH

A second theme that emerged from the interviews relates to the ways in which the criminal justice system could be manipulated by offenders who are familiar with the process. Respondents indicated that more men today seem willing to call the police to report violence committed against them by their women partners or ex-partners. Although this could indicate an increase in the number of women using violence against their male partners, national data as well as the data from Delaware indicate that the increase in arrests may be more accurately attributed to men’s greater awareness of how to use the criminal justice system to their advantage. In fact, national survey results from the 1973 through 1982 National Crime Survey reveal that men are not shy about calling the police: Men assaulted by their wives call police more often than women assaulted by their male partners (Schwartz, 1987).

The respondents in this sample were adamantly clear about the ways that men manipulated the women and/or the criminal justice system. The respondents either directly observed these deceptive behaviors or heard about them from victims. These behaviors included men challenging a woman’s right to trial (rather than accepting a guilty plea) by claiming that the woman would lose her children if she lost at trial and went to jail, men self-inflicting wounds so that police would view the woman as assaultive and dangerous, men being the first ones to call 911 to proactively define the situation, and men capitalizing on the outward calm they display once police arrive (his serenity highlights the hysterical woman). As one detective explained,
He’s calm because he was all pissed off before we [the police] got there and he beat the crap out of her. So now, of course he’s calm, and of course she is hysterical because she just got beaten up! But we did not realize that years ago. (Detective, head of domestic violence unit, county)

According to one supervisor from a family court–based advocacy program, the program averaged three or four calls a month from women who the advocates considered to be victims but whose partners called 911. This supervisor noticed that more women who have a history of victimization were fighting back, and the battered women told the advocates that they were sick of the violence.

What we’re seeing is dual arrests where they’re both being arrested. And we have victims who will say to us “he’s threatening to have me arrested” because maybe he’s done it before, or he’s called the police. . . . I actually have one who said that he took a knife and made little marks because she had been arrested for scratching him, but this was after he had initiated it so what he did was took a knife and made little scratches and said, “Go ahead, call the police, because you’re just gonna get arrested because they’ll think that these are scratches!” (Supervisor, domestic violent project, family court)

All of the treatment providers said that one of the most common statements they heard in batterer treatment groups for men was, “Get to the phone first.” Relatedly, male batterers use the pending case as another mechanism of control. For example, a woman might not be aware that when a case is dismissed without prejudice, it is rarely reopened, but a batterer may tell her that he can get the prosecutor to reopen the case at any time; this way, he holds it over her head indefinitely.

The men aren’t dumb about how the process works, and unfortunately, they are going to use that to their advantage whenever possible. They will threaten the women with it—if they are still in the relationship, they will use it against her: “I’m going to call 911; I’m gonna call your probation officer; so you better do what I say” or “if you don’t do what I say, say good-bye to your kids.” (Director of treatment facility, southern Delaware)
We’ve had guys wound themselves, cut themselves, and say “she did it!” and know that she is going to get in trouble and often these are guys who have been perpetrators for some time. And they’ve learned to do that through their experience with the system. (Shelter worker, northern Delaware)

The shelter directors and workers believed that as the legislation aged, men who had been through the system more than once knew how it worked, and they manipulated it. In one instance, a woman called a shelter in hysterics; her husband had beaten and choked her, but the bruises would not appear for a few hours. Her husband heard her call the police, and he calmed down and lay in bed, pretending to sleep. The police did not make an arrest in this case. This lack of protection from the police angers and confuses women, who feel they have no redress because they are novices in negotiating the system.

Respondents also believed that the police did not take the time to thoroughly investigate incidents but rather granted greater credibility to the citizen who made the 911 call. But when officers did question ambiguous or wacky situations, a clearer story emerged. One police officer from a county domestic violence unit described several incidents in which they questioned the initial story they received when dispatched because they knew the men from previous domestic violence incidents as the offenders, and this time the men called and identified themselves as the victims: “We sneaked up on one of them, looked through his windows and saw him punch himself in the face, probably thinking, ‘I got the injury now, so the police will lock her up—hey, it’s a little payback.’”

Overall, the interview data reveal that respondents seemed troubled by incidents that smacked of backlash. The respondents shared several beliefs: Men have become savvy and know the ins and outs of the criminal justice system; men manipulate women with threats, particularly over children and custody issues; and men self-inflict wounds. These findings demonstrate the need for police to thoroughly investigate the context of the situation, not just rely on he said/she said commentary from the combatants or automatically accord greater credibility to the authoritative voice of men.
THEME THREE: EXPERIENCES WITH
THE CRIMINAL JUSTICE SYSTEM

Respondents raised many concerns about police behavior and legal decision making and case processing. The main police issues revolved around dual arrests, displaced frustration with bureaucratic paperwork, overenforcement of pro-arrest laws, and victim-offender ambiguity. Respondents in all three counties found that changes in police policy, such as movement toward mandatory- or pro-arrest policies, have resulted in dual arrests. Many of the respondents raised this issue, seeing it as troublesome, even before being asked about it. Overall, respondents felt that they were seeing an increase in the number of dual arrests, which was discouraging because it meant that the police were not thoroughly investigating the context of the incident to determine the primary aggressor. Respondents felt that police took the easy way out by arresting both parties, which left charging decisions up to the attorney general’s office.

One of the common explanations respondents gave was that police felt overburdened with excessive paperwork requirements, causing them to be less attuned to the intricacies of domestic violence situations.

They are getting flooded with paperwork, to the extent that they are getting desensitized to the proper way to deal with intimate partners. They are having to deal with minor offenses, such as where it is a brother-sister fighting over a remote control. And they are having to do that long form because that is what is required for a domestic. And one of those minors is going to be identified as the perpetrator and that is going to be recorded as an offender in a domestic. But it is not intimate domestic violence. (Victim services worker, northern Delaware)

Part of the problem is that the police are required to document every domestic call, which covers a range of victim-offender combinations (see Note 3). By the time officers finished writing up a domestic violence call that involved intimate partners, they were frustrated from the excessive paperwork and just wanted to complete it and not think about its meaning. As one respondent explained,
It used to be that when police responded to a domestic they calmed the people down and they would try to get one to leave and they would write that up as a disturbance, like you were rescuing a kitten from a tree. So that was not adequate; that was clearly not adequate. But they have gone from that to this extreme—it takes 8 hours if there is an arrest made. . . . So what we’ve got is these police officers who come aboard wanting to do the right thing, but they are frustrated. (Director of a shelter, southern Delaware)

Overwhelmingly, the respondents believed the police may be overenforcing, or at least not taking the time to make the wisest decisions. As the director of the treatment facility in southern Delaware says, the police are following the letter of the law, which is that if someone has an injury, if there are allegations made against the other party, then that party must be arrested. . . . So it is almost as though they are doing too good a job.

Police officers’ fear of liability was also apparent:

They don’t want to be the officer coming back the next day hearing that they have gone out for a domestic and then didn’t arrest someone and then there is a major incident; the police are concerned about this and they will tell you that.

As the head of the county domestic violence police unit said, “Victims do not wake up police departments; lawsuits do.” Several respondents also suggested that the police were weary of being seen as the problem in providing adequate responses to domestic violence. Respondents believed this resentment emerged in hostile ways: “If men are going to be held accountable, so will women and despite the fact that the dynamics are very different, police are going to make that arrest” (treatment provider, southern Delaware). In fact, a treatment provider in northern Delaware said that it has become a common refrain to hear a police officer tell the couple, “According to police policy, I have to arrest both of you.” The head of the county domestic violence police unit framed the issue in terms of providing protection for the victim:

If they are both injured and we have reason to believe that both broke the law, they may both be arrested, and at least they’ll get that time-off, that cooling off period. . . . It is not always that
clear-cut, but we’re gonna make sure we take some action to pro-
tect them that night.

Several respondents mentioned that police have indicated to
a woman victim that they regretted making the arrest because
she did not fit the stereotypical image of a violent, out-of-control
woman, saying things like, "We’re sorry, you don’t look like
somebody who is a batterer, but I have no choice but to arrest you”
treatment provider, northern Delaware). Remorse from the
police sometimes consoled a victim and made her more compli-
ant. A city victim services worker believed that some officers have
empathy for the women, yet they still have to arrest her because of
the policy requirement. Yet, many victims ended up feeling as this
victim did, telling her counselor,

I just can’t believe that I’m being arrested! Even though there’s a
knife wound, but I’m the victim! I called the police five times
because there were black eyes, broken shoulders, and here I’m get-
ting hauled off when I was just trying to keep him off of me!

One respondent speculated that police action might be altruist-
tically motivated so that the victim would get some help:

The police really want to see anyone arrested who is in any way
violent, even if they know it is the victim and they are fully aware
that the victim is also violent; they want her involved in the system
so she can have some options and a record of the abuse.

Although only one respondent mentioned this in the interviews,
several women in treatment groups also raised this as something
positive (see Miller & Meloy, 2001). When the attorney general’s
office inherited a dual arrest made by police, the prosecutors fo-
cused on the criminal or victimization histories of the parties.
Prosecutors provided a typical scenario they encountered: A
woman scratched her boyfriend or husband, which constitutes
the misdemeanor charge of offensive touching, and they have a
long history of domestic violence between them; she finally says,
“Enough is enough” and hits him rather than call the police as she
may have done in the past.

We see cross-charging quite a bit, where the police can’t determine
who the aggressor is. You know, he says that she scratched him and
she says, "Well, he hit me first and that’s why I scratched him." And the police may cross-charge because they can’t make a determination, which is real difficult for our office because then we have to mesh out who was the aggressor. And to tell you the truth, we can’t always tell. A lot of time with cross-charges, we’ll nolle prosse both of them because if we can’t go into court and sustain a charge, figure out who the aggressor was, who the first person was who did it, then we really can’t go forth on the charges. But we do see a lot of the scratching and a lot of slapping in the face [by women] and those are all true charges that can be brought against a person and we really have to look at whether we are going to pursue them or not. (Social worker, prosecutor’s office)  

Another problem identified by the prosecutors was that when both parties were arrested, often the male perpetrator had the ability to make bail, but the woman would be held. The perpetrator would not necessarily go and bail her out, thinking that this was a way to teach her a lesson. However, it could take 4 or 5 days until arraignment, so she may actually stay in jail.

The issues raised by respondents concerning the court experience included women’s unfamiliarity with the court process, women’s limited knowledge of their options, and women’s powerlessness in the process. Women’s legal problems were compounded once they arrived at court. Many respondents advised women who acted in self-defense to hold out for a trial. However, the process was not that simple: Most women were not accustomed to being charged as an offender, and they were mystified about the criminal justice process. Women were eager to get the case over with and return home, so they accepted a guilty plea without full appraisal of the potential consequences of having a record. These consequences could include being barred from certain employment opportunities, denial or loss of public housing, denial or loss of welfare benefits, immigration status issues, and issues related to custody hearings—all things that disproportionately harm women because they tend to be the primary caregivers in relationships ("Double-Time," 1998). Women found the court process intimidating and stigmatizing, according to our respondents:

Women have an awful lot of pressure put on them when they get to the courts to just plead guilty. But the women don’t seem to understand that there are reasons why they might not be guilty, even
though they did scratch his face. I have even had clients whose partners were on top of them and they were pushing his face away and they broke his glasses and got scratches on his face and the next day the woman gets arrested. (Family court advocate)

Public defenders and prosecutors acted less as adversaries than as a friendly courtroom workgroup, ensuring the efficiency of case processing:

The public defenders are so accustomed to working with the Attorney Generals in negotiating the plea bargaining that they will really encourage the victim to go ahead and plead—it’s just easier. It’s faster and the victim will be taking a big chance in going into court and then if found guilty and then how about having a record.

Women were encouraged to plead guilty in exchange for getting the First Offender’s program, which placed them under probation supervision and mandated their attendance at a 12-week treatment program.

I think a lot of people get screwed in that way, since they are really encouraged to plead guilty then they have it on their record or they get this first-offenders program through family court so that it won’t end up on their record in the long run except for being arrested. It won’t show up as a conviction, so it won’t affect their employment or if they were going to be found guilty then that’s a good deal too, because then they are not going to have a conviction so that could affect them later. The whole thing is a big mess—who needs a record?—and they don’t know what is going to happen so they don’t know if they should take the pleas. (Director of shelter, northern Delaware)

The respondents (with the exception of the public defenders and prosecutors) seemed to feel that both public defenders and prosecutors took advantage of the women’s confusion and manipulated them into decisions that benefited their own positions or the system’s need to dispose of cases quickly.

It’s very dehumanizing. The women already feel stigmatized by having been arrested, they don’t understand the process . . . and I’m not gonna tell you it’s all that different for men, the process often takes place in a waiting room, you are told what can happen if you choose to plead not-guilty and are found guilty, and then they are told what they can do if they plead guilty . . . so a lot of women
are buying into it because it seems like the simplest thing to do... they're afraid of going to jail. (Treatment provider, southern Delaware)

Respondents also felt that the attorneys strong-armed the women into accepting a guilty plea in exchange for what was presented as an ideal opportunity:

The women hear about this wonderful offender's program where you go to treatment and you are on probation for a year and then your charges will be expunged off your record, so they agree to the program, but they just don't have a clear understanding of what they are agreeing to. (Victim services worker, northern Delaware)

Shelter workers, victim services personnel, and treatment providers believed that the women would be better off going to court with self-defense justifications: "At least three quarters of the time if they had taken it on to trial, they could have gotten out of the charge and been found not guilty" (shelter director, northern Delaware). However, social service providers and other domestic violence advocates typically were not involved in the case at the arraignment stage because the women were not yet identified as victims. Consequently, the women did not receive any alternative information or encouragement to plead innocent. The arrested women were also very concerned about the time and money the process took; the First Offender's program offered an attractive option just at the point when the women were most vulnerable. The treatment provider in northern Delaware believed there was a problem with the way options were presented and that women gravitated toward life preservers thrown at them: "You're told that you have a choice of going to jail or staying with your family, and maybe that language is what makes the difference." Women easily capitulated once they were threatened with having a criminal record and that their kids might be taken away from them. "And for all practical purposes, you deem the women powerless and they believe themselves to be powerless. So consequently, if there's the remote chance that they are going to be convicted and they could lose their kids, they'll plead."12
There was tremendous pressure on the attorney general’s office to resolve cases with guilty pleas because there would be a guarantee:

If a case goes into a court hearing, it’s 50-50 that the judge could find them guilty or not guilty. If there is more than one charge they could find them guilty of one, you know, split-the-baby where you find them guilty of one and not the other. But with a guilty plea, the person is definitely saying that he or she did something—not always that charge, but at least it is a guarantee. With a guilty plea, you don’t have the appeal issue, because in family court there is actually a twofold appeal. If you go in front of a commissioner, that charge can be appealed to a judge and then appealed to superior court. So it’s like three times that it could be appealed. (Social worker, attorney general’s office)

Because cases handled in family court can be appealed to superior court for a jury trial, the attorney general’s office acknowledged that this could result in a long, frustrating process and that the process itself wore people down. In reality, very few cases are appealed to superior court or end up actually going to trial. One social worker, who had been in her position for 9 years, thought only three or four cases took this route.

The interview data reveal that the respondents were very cognizant of the layers of confusion that surrounded the handling of women arrested for domestic violence. Police were under pressure to make arrests, yet respondents felt that the police did not spend the time necessary to distinguish between victim and offender behavior, which often resulted in a dual arrest. This victim-offender ambiguity was resolved to some extent by the prosecutor’s office, but other issues emerged. In particular, women felt abandoned by their attorneys and threatened by the potential consequences if they did not accept a plea bargain, and their confusion was exacerbated by their lack of familiarity with the court process.

DISCUSSION

Although it seems clear that actual or threatened abuse may play a causal role in women’s behavior and that the women are
responsible for their choices, it also seems clear that these choices have been constrained. Abusive relationships are characterized by asymmetric power, and women typically have fewer options and resources than do men.

Despite the fact that none of the respondents believed women’s violence was increasing, two factors seemed to be related to increased arrests of women, regardless of the universal acknowledgment that women resorted to violence for reasons that markedly differed from men’s reasons: changes in police policies to favor arrest and officers’ fear of being named in a civil lawsuit. In particular, respondents did not view women’s violence as occurring within the power-control dynamic that is typical of domestic violence.

Eliminating much police discretion through pro- and mandatory-arrest laws can be consequential: It can increase the number of dual arrests because police will feel they need to arrest anyone involved due to fear of lawsuits (Martin, 1997). In turn, dual arrests could deter women from calling the police again (Buzawa & Buzawa, 1990; Martin, 1997). After mandatory arrest was implemented in Duluth, Minnesota, for example, calls to the police were reduced by 47%, with similar reductions reported in Detroit, Michigan (Martin, 1997). When women have few options—especially if they become reluctant to call police for help following enactment of these new policies—the emotional ramifications are costly: Isolation is reinforced, as are their beliefs that there are no resources and/or that they are to blame. When women are themselves arrested, they do not call police during future abusive episodes, putting the women at greater risk (Abel & Suh, 1987; Stafne, 1989). In A. D. Lyon’s (1999) analysis of two jurisdictions in Michigan, it was found that officers who learned that women had suffered prior abuse were less likely to arrest them. However, it was also found that if a woman had called the police before for help, she was more likely to be arrested, suggesting “either conscious or unconscious retaliation by the police against women for staying in an abusive situation.” A. D. Lyon (1999) contended that this retaliation may occur due to police officers’ feelings of not being trusted when policies take away their discretion.

The propensity to arrest is exacerbated if police have little sympathy for women victims to begin with (E. Lyon & Mace, 1991; Stafne, 1989). In particular, Saunders (1995) found that when
police have negative attitudes about victims, especially women, and they believe domestic violence is justified in some cases and that some stereotypes about why battered women stay with their partners are true, the police will be more likely to make arrests (see also Ford, 1987). Police who possess more rigid sex-role beliefs and find more justifications for domestic violence in marriages have also been found to be associated with increased tendency to arrest (Stith, 1990). Arrest propensity is compounded when women are viewed as stepping out of traditional feminine roles. Rasche (1986) contended that some people view violent women as the "epitome of unrestrained female aggression" because they discard socially ascribed roles of submissiveness and subservience. At the same time, however, if a woman becomes violent to protect her children, Rasche believed that rather than label her as a violent woman, it would be more accurate to describe her as a "woman against violence," who defended her children from a greater harm. This shows how imperative it is to examine the situational origins and context of domestic violence. It is also possible that women may not view themselves as helpless, so they may not perceive their own violence as self-defensive (Hooper, 1996).

Inability or unwillingness by police to distinguish between a primary aggressor and self-defensive action is an enormous problem. The many examples in this research of this dichotomy highlight the importance of police training that teaches officers how to distinguish between aggressive and defensive action and how to ask a range of questions to help determine this finding. For instance, self-defensive actions, such as blocking blows, may be missed by the police, because bruising occurs underneath the victim's arms. If officers stayed longer at the crime scene, bruises would show up after approximately 45 minutes on a light-skinned individual; however, this would not be the case for darker-skinned individuals. In addition, due to men's larger size and greater strength, women often grab an object that is handy to effectively fight back. Thus, women often get charged with a felony because of their use of a deadly weapon—typically, a kitchen knife is used because it is most handy—whereas men are charged with a misdemeanor. The result is that a man may have a more visible and serious wound, although the woman's intent may have been defensive, not malicious. Furthermore, if men are indeed
using the criminal justice system as another tool with which to manipulate women, as many of the respondents expressed, police must be cognizant of this and strive to look beyond who called 911 or who appears calmer to address victim-offender ambiguity. A. D. Lyon (1999) suggested that prosecutors may want to form review teams that would evaluate if the “right” person was arrested and that would look at the history of domestic violence in the relationship.

For many of the women, the court process is more foreign to them than it is to their male partners. Interviews with the various criminal justice professionals and social service providers indicated that there were many times that the women made important case decisions, such as accepting a plea bargain versus pleading not guilty, that had little to do with guilt or innocence but had much more to do with their fear of jail or of losing custody of their children. The lack of legal advice available to the women was astonishing. Further training of the defense bar is needed to raise awareness of these dilemmas. Moreover, cronyism between the defense attorneys and the prosecutors may reinforce women’s feelings of powerlessness and women’s beliefs that case efficiency is valued more highly than truth. Ostensibly, the First Offender’s program offered a win-win situation both for the court and also for the women, but the downside was that the context of women’s violence was often left unexamined. Given that acceptance into the First Offender’s program includes probation status, women are at risk for violations, which are often orchestrated by vindictive batterers. Thus, probation violations could result in harsher penalties when it comes to custody issues or jail time or if threats of jeopardizing probation status are used by abusers to intimidate their victims.

The trend in Delaware and elsewhere across the country appears to support treatment programs for women arrested on domestic violence charges. However, if courts are going to mandate treatment for female offenders arrested for domestic violence, treatment programs must take into account some of the unique situations faced by women. One advantage of these kinds of programs (available in Delaware and other states) might be that due to their philosophy that women are victims who committed an illegal act, not batterers, and that they made bad choices. The programs connect with a population that has had very little access
to and few encounters with battered women’s shelters or advocates (see Hamberger & Potente, 1994). The information the women receive about the cycle of violence; the dynamics of power and control; emotional, sexual, and physical abuse; and the criminal justice system may be material that they may not otherwise encounter. For many women, being in a group setting with other women, sharing their experiences, shows them that they are not alone, that they did not deserve the abuse, and that they can make changes in their lives. Women typically receive other advice and information from the treatment group facilitators regarding social service referrals (i.e., medical care for children, how to handle ongoing disputes with partners, civil protection order information, networking, “time out” strategies, and other anger management techniques). This distribution of helpful information may not be the norm for all facilitators or all female offender groups, but it was well received by the women in the treatment groups in Delaware (see Miller & Meloy, 2001). Admittedly, there still remains a coercive element to these kinds of programs: The women must attend and participate in the group discussions and homework assignments or their probationary status is rescinded, and jail time could be a realistic outcome.

Perhaps for some women, the trade-off is worth it. Positive assessments of programs by victims should not obscure the issues of early identification of primary aggressor, context, and better police and prosecutorial training. When so few women actively engage in the kind of violent behavior that typifies battering, the development of female offender treatment groups continues to raise questions of legitimacy and appropriateness. Should female offenders be treated in programs similar to those used for male offenders, given that the context and nature of women’s violence is qualitatively different from men’s violence, especially given that the reasons the majority of women use violence bear little resemblance to the reasons men batter women? These issues demand continued exploration with other female offenders’ treatment groups throughout the state and across the country.

CONCLUSION

Women’s violence is usually different from men’s violence. Women are often “acting in response to their partner’s violence or
re-acting as a result of their relative powerlessness in the relationship” (Hooper, 1996, p. 173). Although the police and the rest of the criminal justice system have—at least from a policy standpoint—answered the call to take battering more seriously, the tough-on-crime stance is not effective if it penalizes women when issues of self-defense or gendered power dynamics are not taken into account. The consequences can be costly: Women will have convictions, women will be less employable and even more powerless in relationships, and perhaps women may be more likely to resort to more violence in the future and less likely to rely on police for help (Hooper, 1996). The last policy we should endorse is one that essentially punishes a woman twice: the original abuse she endured and then the victimization by a system that does not understand her circumstances.

A contextual understanding of an abusive situation would, it is hoped, result in more just law enforcement and court action. The data analyzed in this article suggest that the vast majority of the criminal justice professionals and social service providers believe that women who are charged with domestic violence offenses cannot be treated with the same paradigm used for male batterers. Women's actions are typically self-defensive or protective and the social and economic factors that influence women's violence operate in ways that vary greatly from the ways they operate in men's lives. Women do not typically use violence to exert power or control over partners. Instead, women are often responding to a loss of power resulting from abuse inflicted on them, and their violent response may not have been immediately precipitated by an attack. Women are further disadvantaged by their savvy batterers, whose greater familiarity with the criminal justice system facilitates manipulation of their victims and operates to their advantage against their female partners as yet another tactic of domination. It would be helpful for victim advocates to become involved with the cases at an earlier stage in the process so that the obfuscation can be addressed before the system is in high gear.

Nationally, some research indicates that women have received harsher sentences than male batterers, particularly women of color and poor women, due to fewer resources, language barriers, and racism. Poor women are also more likely to live in danger-
rious areas where gangs are active, where gun and knife violence is not uncommon, and where the risk of violence outside the home is great” (Hooper, 1996, p. 179). Racism by the criminal justice system compounds the issue. Fighting back may be seen by some women as a more available and desirable alternative than being trapped in a battering relationship, especially when calling the police means an encounter with a system that is likely to blame them for the violence. Both police and prosecutors need to be more cognizant of cultural nuances that shape women’s responses to battering.

The criminal justice system is obligated to recognize that the same standards cannot be applied to evaluate battered victims’ use of violence in relationships vis-à-vis abusers. When advocates for battered women demanded an end to discrimination in law enforcement between female and male victims of violence, the intention was that female victims of violence (more often assaulted by intimate partners in the home) should be accorded the same protections as male victims (more often assaulted by strangers or acquaintances rather than intimate partners). Instead, rather than victims of violence being treated the same regardless of gender, female victims are again subject to discrimination. An arrest policy intended to protect battered women as victims is being misapplied and used against them. Battered women have become female offenders. Although the symmetrical application of arrest policy pays lip service to the equality tenet inherent in liberal feminism, the differences between violence committed by women and men are being masked. While changes in police arrest practices may be expedient and seemingly gender neutral, unreflective enforcement of pro- and mandatory-arrest statutes promises to result in inappropriate arrests of women. The incorporation of primary aggressor laws that distinguish between preemptive and defensive violence as well as a contextual understanding of the violent relationship would greatly assist in clarifying the proper role of arrest. Only when the entire gamut of women’s experiences is considered will the ambiguous continuum of victim and offender be better understood.
NOTES

1. The terminology surrounding what to call the arrested women raises both a semantics and also a conceptual debate: To use gender-neutral terms, it is possible to substitute battered women for victims of abuse or violence. An advantage is that the latter term is more inclusive; for instance, it acknowledges that violence also exists in same-sex relationships in which similar power-control dynamics operate. By distinguishing between victims of abuse and batterers without gender designation, both heterosexual and homosexual patterns of battering can emerge. A disadvantage of using these gender-neutral terms is that the approach is too euphemistic, because the majority of domestic violence is committed by men against their current or former female partners. In addition, for the purposes of this article, the social service providers and victim advocates interviewed were vehemently opposed to any gender-neutral semantic substitution because they felt it depoliticized the issue of domestic violence and it was untrue to the gendered dynamics of battering. Thus, to reflect the wishes of the professionals who work most closely with the battered women, the decision was made to use primarily the term battered women rather than victims of violence in this article.

2. Although most states now provide police with the option to arrest in misdemeanor domestic violence cases that they have not witnessed, police officers may still rely on advising, mediating, possibly separating the couple, or issuing a citation to the offender requiring him to appear in court to answer specific charges. In response to demands for more aggressive criminal justice action in domestic violence cases, mandatory- and presumptive-arrest statutes, which either limit or strongly guide police discretion, have become increasingly popular in current law enforcement efforts. These policies state that police officers have to (mandatory) or should (presumptive) arrest domestic violence perpetrators when probable cause for misdemeanor violence exists, even if the violence does not occur in the officer’s presence and even if the victim does not desire prosecution (Iovanni & Miller, 2001, p. 304). As of 1996, 15 states and the District of Columbia have enacted mandatory-arrest laws (Wanless, 1996). Many of these laws (along with presumptive-arrest laws) were constructed to avoid civil liability suits challenging that police did not respond appropriately to domestic violence calls for police service when crimes involved intimate partners rather than strangers (A. D. Lyon, 1999) by ignoring or delaying response, which violates the Equal Protection Clause of the 14th Amendment (see Thurman v. City of Torrington, 1994).

3. Numerical consistency and accuracy can be a problem in some states if multiple types of family disturbances are collapsed with intimate violence into a general domestic violence category. For example, in Delaware, based on statistics gathered from police departments by the state’s statistical center, the percentage of female domestic violence suspects comprised 32% of all domestic arrests in 1998. However, an initial inquiry revealed that the 32% reflects the way “domestic violence” is defined in the state because this statute includes people who are related to one another by blood, marriage, cohabitation, noncohabitating couples, or a third-party dispute that involves one of the intimate partners. Thus, under this classification scheme, a sister fighting with her brother would be classified as a domestic incident in the same way a woman arrested for assaulting her partner even in self-defense or otherwise would be counted. Once these cases are separated from intimate partner or ex-partner violence, the smaller percentages obtained are more consistent with national estimates.

4. Common problems with the Conflict Tactics Scale (CTS) include the following: It does not distinguish between intent and effect (i.e., a woman pushing a man in self-defense vs. a man pushing a woman down a flight of stairs); it equates one slap by a woman to 15 years of abuse by a man; it only interviews one partner; it excludes violence that
occurs after separation and divorce (Straton, 1994, p. 80); the CTS and the CTS2 (Revised Conflict Tactics Scale) do not include some specific types of abuse, such as scratches or burns that respondents may not voluntarily report; they incorrectly assume that psychological abuse is less harmful than physical violence; by situating violence and abuse in the context of settling arguments, they ignore a large number of control-instigated attacks that do not originate from disputes; and they miss attacks that occur spontaneously with no external reason or conflict to mediate (DeKeseredy & Schwartz, 1998, pp. 2-3). The same surveys by Straus and his colleagues that are cited for finding women almost as violent as men also find that women are 6 times more likely than men to end up injured, that the violent acts done by men cause more injury than if the same acts were done by women, and that men are more likely to commit the most serious and injurious abuse (Straus, 1993).

5. If female offenders are really victims who fought back, then batterer treatment programs modeled after protocol designed for male abusers would not be appropriate for battered women. Treatment protocol for women arrested for domestic violence would undoubtedly be different if women used violence to dominate and control. In that case, male-based offender treatment programs might be more appropriate, but this is not the pattern in the majority of female arrest cases mandated to treatment (Miller & Melay, 2001).

6. In 1994, the Delaware Code gave police the authority to arrest without a warrant for misdemeanor offenses committed outside the officer’s presence (DE Code, Title II, §1904). In 1988, the state’s police chief council adopted the Delaware’s Model Law Enforcement Domestic Violence Policy; individual departments were then free to adopt all or part of the protocol. The protocol allows police to retain discretion in misdemeanor cases as long as the decision not to arrest is fully documented. The protocol does not address the issue of primary aggressor guidelines. In Delaware, the state police have the most clearly articulated policy:

Although arrest should occur in misdemeanor incidents where probable cause exists, the discretion not to arrest in either type of misdemeanor incident remains with the officer. When an arrest is not made, the decision must be fully documented in the incident report and the potential for continuing violence must be addressed.

State police policy also instructs that “dual arrests are not favored” and that officers “are required to determine the predominant aggressor and to explore a potential self-defense claim” (DE Code, Title II-23-11, 1994). County, city, and local police departments do not have similarly articulated guidelines, thus making for fractured and inconsistent arrest policies across jurisdictions.

7. For 1998 (the most recent year statistics were gathered), domestic violence incident reports revealed the following numbers of incidents counted by police: New Castle County, 9,711; Kent, 3,067; Sussex, 3,252. Oversampling in New Castle County (NCC) was justified given that it handles 3 times the caseload of the other counties. NCC also has the largest number of criminal justice professionals and social service providers dealing with women arrested on domestic violence charges.

8. Following grounded theory methods, themes were used only if they were discussed at length by at least 3 respondents (Lofland & Lofland, 1995). The data were examined using coding techniques described by Strauss (1987). Each transcript was read exhaustively and analyzed into emergent conceptual categories. Once no new conceptual categories were unearthed, saturation was believed to have been achieved (Krueger, 1994).

9. There was some confusion about the policies of arrest for state, county, and city police departments, even among these respondents. For example, although there is no mandatory-arrest statute in this state, the head of the county domestic violence police unit said, “We have pro-arrest, but our pro-arrest is so strong it almost mirrors mandatory arrest.” Clearly, the confusion among police themselves about arrest policies contributes to law enforcement problems.
10. In fact, the detective said that "police attitudes haven't necessarily changed; what changes a lot are the lawsuits." He believed it reflected a training issue: "They don't have to get it, they just have to do it. They can go home and complain all they want, but if they fail to act—that's a big deal."

11. Social workers in the attorney general's office exercised enormous power. Typically, they were responsible for the background work, which essentially became the charging decision; deputy attorneys general rarely got involved until later in court. There had been a high turnover of deputy attorneys general in NCC, yet the unit's two social workers had been there for 4 and 9 years, respectively. As one social worker described (and she acknowledged that they are the key persons making the decisions),

We have a lot of input because we are the ones who talk to the victim... and we can say when we see "Jane Smith,"—well, "Joe Smith" has been here 20 times before, but that particular AG [attorney general] won't know it because he's only been in family court maybe 6 months to a year.

12. Victim services personnel believed that the attorney general's office was very reluctant to pursue dual arrests. Throughout the state, respondents mentioned that the turnover was high and retention was low in the attorney general's offices, leaving little continuity in policy and procedure and little institutional memory. There was a sense that the court personnel sought to dispose of most of the cases at arraignment. There was also the sense that only the most junior prosecutors had this job, and they were just biding their time until they could be promoted or transferred elsewhere, and nobody was watching them because it was only family court.

13. The "gender-neutral" enforcement of domestic violence that has resulted in increases in women arrested for domestic violence introduces implications for court-mandated treatment. For example, since mandatory arrest was instituted in the state of Wisconsin, the first 7 months after its implementation revealed that the rate of male referrals for perpetrator treatment more than doubled, whereas the rate for women increased 12-fold (Hamberger, 1990).

14. In fact, there may be enormous variation among treatment programs' philosophies across the country; for instance, not all facilitators will view arrested women as primarily victims who made bad choices.

15. Women who are determined to be the primary aggressors, particularly women of color, receive harsher sentences (Browne, 1987; Burrell, 1995, cited in Hooper, 1996, p. 178). In addition, women's violence is not binary (self-defense or primary aggressor); it is far more complicated. Women of color may not fit these models because men's violence models were modified to accommodate White women (Allard, 1991).

REFERENCES


DE Code, Title II, § 1904 (1994).


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