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In Dubious Battle: The Politics of Mandatory Arrest and Dominant Aggressor Laws

John Hamel, LCSW

Private Practice, San Rafael, California

A major component in the effort to reduce domestic violence in our communities has been a vigorous criminal justice response, one that holds perpetrators accountable for their actions and helps victims feel safe. In light of research finding higher rates of arrest per calls made to police and a corresponding decline in domestic violence crimes, mandatory arrest and pro-arrest laws were initially welcomed by advocates. When, however, it was apparent that these same laws led to a large number of dual arrests, and a proportionately greater increase in arrests of women compared to men, advocates started calling for *primary aggressor* or *dominant aggressor* laws. These laws, adopted in several states, including California, direct police officers to consider context and abuse history so that victims are not wrongfully arrested. A review of the relevant literature is conducted, as well as an examination of two law enforcement training programs, suggesting that primary aggressor and dominant aggressor laws, although written in gender-neutral language, are gender biased (mostly against men), are difficult to properly implement, and may, at times, be counterproductive in reducing domestic violence. Alternatives are then presented for consideration.

KEYWORDS: domestic violence; mandatory arrest; primary aggressor; dominant aggressor; predominant aggressor; gender bias

Somewhere between 600,000 and 6 million women, and between 100,000 and 6 million men, are victims of domestic violence, also known as *partner abuse* (Rennison, 2003; Straus & Gelles, 1990; Tjaden & Thoennes, 2000). Still, it was not until the 1970s that domestic violence was recognized as a significant social problem. Previously, police had either failed to respond to domestic violence calls, considering abuse a private matter between husbands and wives, or attempted to mediate the disputes rather

than arrest, leading to further violence against victims (Buzawa & Buzawa, 2002). Existing policies affected women unequally, putting them at higher risk for harm (women are injured and hospitalized from domestic assaults at rates two to three times that of men; Archer, 2000; Whitaker, Haileyesus, Swahn, & Saltzman, 2007), and violating their rights to due process (males are proportionately more victimized outside the home, where police have traditionally been more apt to respond).

MANDATORY ARREST LAWS

Because of the grassroots and lobbying efforts of victim advocates, laws and policies were enacted across the country to address the problem. A central component of these efforts, strengthened through enactment of the Violence Against Women Act in 1996, was a call for a vigorous law enforcement response. Statutes in numerous states directed police officers to undergo training on domestic violence and victim assistance and limited their discretion. Under the assumption that intimidated witnesses are reluctant to testify against their abuser, district attorneys began to adopt “no-drop” prosecution that circumvented victim cooperation. The 23 states that call for *mandatory arrest* allow the least amount of discretion, with statute language that ranges from vague, as in Colorado (“probable cause to believe a crime of domestic violence was committed”), to more specific, as in Washington where police can arrest when there is

probable cause to believe a person 16 years or older within A, B, C, D, E the previous 4 hours assaulted a family or household member and believes (1) felonious assault occurred, or (2) assault resulting in bodily injury occurred whether injury is visible or not, or (3) any physical action occurred which was intended to cause reasonable fear of imminent serious bodily injury or death. (Hirschel, 2008, pp. 19–20)

An example of a pro-arrest state is California, where “the written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed” (Hirschel, 2008, p. 21).

Hirschel and Buzawa (2002) have estimated that arrests for domestic violence, which had comprised about 7%–15% of all arrests, increased nearly fourfold, to make up approximately 30% of the total. According to national crime surveys, rates of assaults between dating and cohabiting partners dropped across the country, with California experiencing a decline from 5.8 incidents per thousand in 1993 to about 2.2 per thousand in 2005 (Catalano, 2006). Unfortunately, these positive developments were accompanied by unintended negative outcomes. Although more individuals are arrested in mandatory and pro-arrest states, less are prosecuted because these policies tend to confound mere conflict with actual battering (Davis, 2008) and because district attorneys are overwhelmed and lack resources to pursue weaker cases (Hirschel & Buzawa, 2002). Even when the incident is minor, the toll on families can be heavy, as when good fathers lose custody of a child in family court (Dutton, Hamel,

& Aaronson, 2010), or when children are needlessly removed from their mother by Child Protective Services for “failure protect” (Stark, 2002). When victims no longer have a choice on whether to prosecute, they are less likely to call domestic violence hotlines and report further offenses to the police; recidivism rates increase and victims feel revictimized by the criminal justice system (Hotaling & Buzawa, 2003; Mills, 2003). “A battered woman,” feminists have argued, “may not intend to invoke the whole system when she calls the police. She may want the beating to stop, but she may not want her abuser imprisoned, and she may not want social services or other agencies in her life . . .” (McMahon & Pence, 2003, p. 60.)

Another consequence of mandatory and pro-arrest laws was an increase in dual arrests and in arrests of women. In California, men in 1987 were arrested at a rate of 247 per 100,000, whereas women were arrested at a rate of 74.8 per 100,000. By 1997, the rates had increased only 136% for men, or up to 338 arrests per 100,000, but as much as 500% for women (DeLeon-Granados, Wells, & Binsbacher, 2006). Feminists welcomed the rise in male arrests. However, despite evidence that “political and/or organizational pressure may discourage officers from arresting women as aggressors” (Hirschel & Buzawa, 2009, p. 5), they found the sharper spike in female arrests of concern—especially in light of some reports indicating that women assault intimate partners primarily in self-defense:

In a DAIP staff review of 75 arrest reports of women in Duluth, it was found that in 22 cases, officers failed to document sufficient facts to determine whether the arrested woman was acting in self-defense. In 16 of those cases, it appeared that the women arrested had a self-defense claim. In another 41 arrest reports out of the 75, the women admitted to using force that was not in response to an imminent threat but was in fact in response to their partners’ ongoing abuse of them or in response to a recent incident. These cases point to the urgent need for the criminal justice system to develop a better understanding of the gendered nature of domestic violence. . .” (McMahon & Pence, 2003, p. 65)

Research has not been clear regarding why women began to be arrested at higher rates than men are. Some have blamed this increase on a hostile patriarchy that is unwilling to relinquish power and is intent on punishing women for having asserted themselves (Chesney-Lind, 2002). San Diego prosecutor Gail Strack offers several possible reasons, but favors the general explanation that “male batterers are manipulating the system” (Strack, n.d., p.3). Others saw it in less ominous terms, as a bureaucratic issue, a well-intended but simplistic administering of justice:

Prosecutors pursue cases based on whether or not there is sufficient evidence to get a conviction for a particular offense. Like the police, they are incident-focused in their pursuit of justice. This is what leads to successful prosecution. Prosecutors are driven by the specifics of the assault case before them *and not the relationship behind the assault*. (McMahon & Pence, 2003, p. 52; italics added)

DOMINANT AGGRESSOR LAWS

Before long, feminists sought to change this state of affairs. Working closely with policy makers, advocates for battered women pushed for the implementation of the so-called primary aggressor or dominant aggressor (predominant aggressor) guidelines that would curb the arrest of victims by taking into account the “relationship behind the assault” (DeLeon-Granados, et al., 2006). As of 2000, 24 states had such laws on the books. Guidelines vary, but comparative extent of injuries and likelihood of future injuries, prior domestic violence history, and self-defense are the factors most commonly cited (Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007).

PROBLEMS WITH CRITERIA

California is one of several states that defines the dominant aggressor not as the first aggressor but rather the most “significant,” a sharp deviation from accepted police practice in responding to other crimes (Davis, 2008). Given the inherent vagueness of this term, law enforcement officers are given certain guidelines, as specified under state law and found in the domestic violence section of the Peace Officer Standards and Training (POST) manual (California Commission on POST, 2010), required as standard training at all police academies in California. When determining who is the dominant aggressor, officers are asked to consider the “intent of the law to protect victims of domestic violence from continued abuse,” “the threats creating fear of physical injury,” “the history of domestic violence between the persons involved,” and “whether either party acted in self-defense” (pp. 3–6). Officers are given 14 factors to consider:

- Age, weight, and height of the parties;
- Criminal history;
- Domestic violence history, including convictions and probation;
- Strength, special skills (e.g., martial arts, boxing);
- Use of weapons;
- Offensive and defensive injuries;
- Seriousness of injuries;
- Use of alcohol and drugs;
- Who called 911;
- Who is in fear;
- Presence of behaviors of power and control in the relationship;
- Detail of statement;
- Demeanor of the parties; and
- Existence of corroborating evidence (California Commission on POST, 2010, pp. 3–5, 3–6)

The manual cautions that “officers should be aware that no single factor will identify the dominant aggressor in every case,” but then asserts that “with a careful and

complete preliminary investigation, officers usually will be able to identify the dominant aggressor” (California Commission on POST, 2010, pp. 3–6).

To some, these factors may seem appropriate and reasonable, incorporating commonly known features of battering behavior. There are, however, inherent limits to how they are interpreted and used, and the promise that “officers usually will be able to identify the dominant aggressor” is far from certain. For instance, is the term “dominant aggressor” supposed to refer to who is dominant during the incident that the police responded to, or is it the person who tends to dominate in the relationship as a whole? The factors of “criminal history” and “domestic violence history” would suggest the latter. Assuming that officers are supposed to consider both present and past, no formula is given with which to weigh the relative importance of each, nor any particular factor or combination of factors, and no empirical research is provided to help in these considerations.

Again, many of these factors are vague, not easily interpreted and of dubious value. “Age, weight, and height of the parties,” and martial arts training are only relevant if the individual actually uses these advantages in an aggressive way. Men are usually bigger and stronger than women are, but most men do not abuse their partners, and there is no correlation in the general population between a person’s size and strength and the extent to which they abuse intimate partners, including among same-sex couples (Renzetti, 1992). When men are assaulted, they often refrain from striking back, both out of fear of being arrested and the code of chivalry. “While married,” writes Hines and her colleagues, “R was kicked in the groin, punched, stabbed and strangled. R states that for several years he ‘just took it’ because ‘that’s what we’re supposed to do . . .’” (Hines, Brown, & Dunning, 2007, p. 16). A man who is larger and stronger than his partner may have the *potential* of causing greater physical damage, but this factor is irrelevant unless he actually uses this to his advantage, just as the smaller woman has the *potential* to obtain a gun and kill him. The reader will notice that for weapons, officers are asked to consider their *use*, but not so with size and strength. In this respect, there is reason to suspect that the choice of criteria may be prejudicial to men (Sacks, 2010).

Criminal history, domestic violence history, and seriousness and type of injuries are better indicators of ongoing aggression and have empirically been correlated with recidivism (Gondolf, 1996; Johnson, 2008). However, the POST guidelines do not specify whether domestic violence history should include prior convictions or any calls made to the police, regardless of whether they resulted in an arrest or conviction; alternatively, there may have been a history of previous assaults not reported to the police, perpetrated by either the alleged perpetrator, victim, or both. In addition, physical injuries may not be so clearly differentiated between defensive and offensive, as the manual suggests. “Injuries to the bottom of feet from kicking at the assailant” (California Commission on POST, 2010, pp. 3–8) are assumed to be defensive, and “scratch marks on the aggressor’s face, back and chest,” or “bite marks on the aggressor’s hands and arms” (pp. 3–7) are presumed evidence of an aggressor who has been injured by a

victim acting in self-defense. However, kicking someone can also be an offensive act; likewise, the infliction of scratches and bite marks may be an abuser's preferred means of punishing his or her victim (e.g., for previous infidelity), or committed in an incident of mutual aggression (e.g., while wrestling over an important document, one party bites the other in an attempt to extract the document from his or her hand). Consider the following, from an interview of a male victim conducted by Cook (2009):

When she gets drunk, she just takes off with the baby . . . I got her home, and sure enough, she took the baby and started to take off. I got the baby away from her, and she ran up from behind and bit me on the shoulder and once in the chest. I could have dropped the baby because of what she was doing. (pp. 47–48)

There is no exclusive correlation between alcohol abuse and domestic violence perpetration; alcohol and drug abusers may be victims or perpetrators (Collins & Spencer, 1999). With respect to “who called 911,” feminist scholars have documented instances in which a male abuser, having learned how to “work the system,” calls the police as a way to exert power and control over his partner (Klein, 2004; Osthoff, 2002). Many male victims have also reported that their female partners called the police for the same reasons (Cook, 2009; Hines et al., 2007). It is possible, therefore, that some female abusers who call the police (whether they are the dominant aggressor or a participant in mutual abuse) may experience fear through the defense mechanism of projection, expecting a retaliatory response from their partner because they would retaliate themselves if the situation was reversed.

The training manual does not specify how an officer is supposed to know “who is in fear.” Even if one assumes that officers favor behavioral evidence over mere verbalization, fear is a subjective emotion and not necessarily related to the degree of threat. Men, for example, are socially conditioned not to express vulnerable feelings such as fear, even when they are, and individuals may be in fear for reasons other than facing an actual threat (e.g., they have anxious temperaments or have been abused by others in the past and read into their current partner's behavior a degree of danger that does not exist). In addition, the criterion “who is in fear” begs the question, “in fear of *what*?” Police officers may assume fear of physical violence, but victims, both males and females at similar rates, are far more emotionally affected by psychological abuse than physical violence (Lawrence, Yoon, Langer, & Ro, 2009; Taft et al., 2006). A man's behavior, for instance, may be inhibited out of fear of emotional terrorism by a wife prone to call him a “loser” in front of his children or persistently scream at him throughout the night.

Related to fear and also problematic are “presence of behaviors of power and control in the relationship” and “demeanor of the parties.” Unless specifically defined, the terms *power* and *control* are essentially meaningless. There are power and control *tactics*, as presented in the ubiquitous “power and control wheel” (Pence & Paymar, 1993), and there is the power that comes from one having a stronger, more dominant personality, making most of the decisions, earning the higher income, having greater social status, and so forth. Assuming that police ought to only be concerned with the

particular tactics—*which* tactics? The phrase “in the relationship” suggests that the officer on the scene take into account not only current behaviors but history as well, and should include duration and frequency. Given that specific tactics have varying effects depending on who is victimized, ought not the police also consider their relative impact? Should police consider yelling a form of power and control? What if the person who is yelling had been abused for years and now, feeling a sense of safety in the presence of the police, allows himself or herself to express pent-up anger? Women, as a whole, are more expressive than men, and it has been pointed out how female victims can be arrested because their demeanor is considered “aggressive” by police because of stereotypical expectations of battered women as passive (Russell, 2010). At the same time, antisocial male batterers can sometimes present a calm, reasonable demeanor, leading police to discount their potential for violence.

The usefulness of these criteria depends to some extent on the veracity of the complainant, which cannot be taken at face value. In one Arizona study, more officers said they agree than disagree with the proposition, “DV victims often exaggerate the amount of violence involved” (Toon & Hart, 2005, p. 15). Complainants may exaggerate for varying reasons, including the desire to get back at their partner, or to deflect attention from their own use of violence. There is no reason to believe that a complainant is any more eager to be arrested than his or her partner is, or that he or she is any less capable of denial. There is an assumption that perpetrators minimize their behavior and that “victims never lie,” but these are tautological arguments, presupposing a priori the identities of “victims” and “perpetrators.”

TRAINING BIAS

Over the past 18 years, while conducting various batterer intervention programs in the greater San Francisco Bay area, primarily for male perpetrators, the author has heard numerous reports from clients who felt they had unjustly been arrested after an incident they described as involving mutual violence with no corporal injuries. A common refrain of police justifying the arrest with the statement, “if we get called, we have to take somebody in,” has been strikingly similar across age, socioeconomic status, and other demographic variables. The author has heard similar stories from other batterer intervention providers and, seeking the other side’s point of view, has privately brought up these reports to local police. Responses have varied from vague and dismissive to outright acknowledgment. “If we arrive at the scene,” according to one male police officer at a recent countywide domestic violence council meeting, “and it’s a he-said/she-said situation with no injuries, we arrest the guy.” Long intrigued by the persistence of these anecdotal accounts, the author conducted an Internet search of domestic violence training for law enforcement. This search, along with information provided from an attorney during a case consultation, led to more substantial evidence of possible gender bias in the implementation of dominant aggressor laws, in the form of two official police training manuals, including the POST manual cited earlier (California Commission on POST, 2010).

The POST manual contains sections that define domestic violence that discuss its impact on victims and instruct officers in a detailed manner on response and arrest procedures and the protection of victims. Brief case scenarios are presented for the purpose of illustration and to facilitate learning. In Chapter 1 of the manual, the following examples are given regarding California PC 13700(a), which defines the term *abuse*:

Example: A man who hit his girlfriend across the face and gave her a black eye committed abuse (pp. 1–5).

Chapter 3, which specifies how officers should respond to a domestic violence call, gives several examples on how to determine the dominant aggressor. The following is one of the examples:

Example: A husband and wife appeared calm when the officers arrived. The wife had a bloody nose and the husband had scratches on his arm. The wife told the officers that when she tried to leave for work she pushed past her husband with her purse, scratching him. The husband became enraged and punched her several times in the nose. Although the husband was struck first, he is the dominant aggressor because his use of force on the wife was much greater and his action was deliberate and unreasonable. (pp. 3–10)

The manual generously offers 50 such examples, in which one party abuses or otherwise acts aggressively toward the other. The examples cover physical abuse, rape, criminal threats and stalking, and malicious destruction of telephone lines. They are, for the most part, well written, clear, and relevant to the statute or procedure being discussed, and would appear to be highly useful in guiding new officers on how to properly and fairly enforce the law. Except that of the 50 examples, *not a single one* depicts unilateral abuse by a female upon a male (see Table 1). There are 34 examples of male on female abuse, 1 example of abuse between lesbians, and 1 example of mutual abuse. A previous edition of the manual had included 2 examples of a woman physically harming a man by accident, but these were removed. Despite the rigorously gender-neutral language used elsewhere throughout the manual, which infers that perpetrators and victims can be of either gender, the examples send out a clear message to law enforcement in California, the largest state with more than 10% of the U.S. population: Officers should concern themselves only with male-perpetrated violence.

The Maine training program, *Identifying Predominant Aggressors in Domestic Violence Cases (Train-the-Trainer)*, is a 2- to 4-hour presentation consisting of lectures, video scenarios, and group discussions from the Maine Criminal Justice Academy, the organization that conducts trainings for all law enforcement and corrections agencies in the state of Maine (Rogers & Faragher-Houghton, 2008, p. 3). More so than the POST training, the Maine curriculum focuses right from the start, in its definition of domestic violence, on the exclusive needs of female victims. Following an exposition on the evolution of the criminal justice response, trainees are presented

TABLE 1. Examples of Domestic Abuse from POST Training (2010)

Type of Abuse	Example Number and Page
Male aggressor/female victim	pp. 1–4, ex. 1; pp. 1–4, ex. 2; pp. 1–5, ex. 1; pp. 1–5, ex. 2; pp. 1–10, ex. 1; pp. 1–10, ex. 2; pp. 1–12, ex. 2; pp. 1–16, ex. 1; pp. 1–16, ex. 2; pp. 1–19, ex. 1; pp. 1–23, ex. 1; pp. 1–23, ex. 2; pp. 1–25, ex. 1; pp. 1–25, ex. 2; pp. 1–26, ex. 1; pp. 1–26, ex. 2; pp. 1–36, ex. 1; pp. 1–36, ex. 2; pp. 1–37, ex. 1; pp. 2–15, ex. 1; pp. 3–18, ex. 1; pp. 3–22, ex. 1; pp. 3–28, ex. 1; pp. 4–17, ex. 1; pp. 4–19, ex. 1; pp. 4–21, ex. 1; pp. 4–21, ex. 2; pp. 5–11, ex. 1; pp. 5–12, ex. 1; p. s-11, ex. 1 Total: 30
Female aggressor/male victim	Total: 0
Unknown aggressor/male victim	pp. 1–19, ex. 2 Total: 1
Male aggressor/unknown victim	pp. 3–17, ex. 1 Total: 1
Female aggressor/female victim	pp. 1–4, ex. 3 Total: 1
Unknown aggressor/female victim	Total: 0
Neutral-gender not identified	pp. 1–12, ex. 1; pp. 1–21, ex. 1; pp. 1–21, ex. 2; pp. 3–21, ex. 1; pp. 4–22, ex. 1 Total: 5
Male dominant aggressor/ female victim	pp. 3–9, ex. 1; pp. 3–10, ex. 1; pp. 3–10, ex. 2; pp. 3–27, ex. 1 Total: 4
Female dominant aggressor/ male victim	Total: 0
Mutual aggression	pp. 3–11, ex. 1 Total: 1
Mutual possible aggression	pp. 1–8, ex. 1; pp. 1–35, ex. 1; pp. 3–19, ex. 1; pp. 4–17, ex. 2 Total: 4
Male on female possible aggression	pp. 1–8, ex. 2; pp. 3–19, ex. 2; pp. 4–20, ex. 1 Total: 3

eight examples (one involving a public disturbance; the others depicting a domestic violence incident between a man and a woman) and asked to decide which party is the predominant aggressor based on the state's legal criteria (similar to California's), and who to arrest. Trainees are then informed that in seven of those cases, it is the man who should be arrested. In the other case, there is no specific recommendation to arrest either the man or the woman, but the clear implication is that the man is the dominant aggressor. The following is one of the examples:

Predominant Aggressor #2 (Man and Woman Fight on the Street)

Woman said:

- He banged her head on the concrete.
- She got mad and they were raising hell.
- She said she did slap him first.

Man said:

- She slapped my face.
- "My lips are busted."
- He hit the witness once because "He got in my face."
- "I lost it."

Witness said:

- He hit her 2–3 times.

Who would you arrest? Man or Woman—MAN: Possible Crimes: Assault, Criminal Threatening. Remember who is predominant aggressor.

What about Assault on the Witness? Woman—NO because she was not the predominant aggressor.

- Remember the power and control.
- What about prior arrest?
- What about prior incidents or protection orders?
- What about the witness?
- Remember it is not a crime to be intoxicated. (Rogers & Faragher-Houghton, 2008, pp. 10–11)

In the preceding scenario, the woman hits the man first, hard enough to bust his lips open, but he is arrested as the predominant aggressor. The vignette does not specify exactly why, but it can be inferred that it was because of his having hit the woman more than once, and to his additional assault on the witness. Is this enough to warrant arresting the man? Perhaps, but the vignette leaves out any discussion of other possible criteria and how they might have been used to arrive at a more conclusive decision. For instance, what if the man had previously experienced a history of emotional abuse and control and physical violence at the hands of the woman? Could his violence not be regarded as finally "fighting back" upon having his lips

busted open? He may also have been in fear, but possibility is not discussed, nor do we know anything about the witness' behavior, who may have been acting in an abusive and threatening manner, possibly acting to save what he mistakenly thought was a "damsel in distress." One could also take issue with the reasoning behind some of the other vignettes (e.g., Sacks, 2010), but even granted that the conclusions were overall reasonably sound, the extent to which they made sense was *based on the facts presented*. As with the POST materials, the problem is not with the vignettes selected, but rather the alternative vignettes that were *not* selected.

The gender bias found in both the California and Maine trainings is blatant, indeed. However, considering the process by which dominant aggressor laws were put on the books, one should hardly be surprised. Laws protecting victims from domestic abuse were enacted not by abused men or men's rights groups or disinterested bureaucrats, but through the efforts of battered women's advocates, some of whom had previously been victimized in their own lives, and by feminists concerned broadly with the oppression of women (Mills, 2003). It was feminists who fought for the creation of dominant aggressor guidelines, and they did so explicitly to stem the rising tide of female arrests, on the grounds that domestic violence is a *gendered* problem. This view, based on a feminist analysis of patriarchy and sometimes referred to as the *gender paradigm* (Dutton & Corvo, 2007; Dutton & Nicholls, 2005), has had a profound influence on policy and intervention.

The existence of training bias and political activism only suggest—and do not prove—that police officers actually carry out arrests in a gender-biased manner, and clearly much more research is needed. However, there is evidence elsewhere in the criminal justice response to domestic violence of a clear political agenda, as evidenced by the tendency of police to dually arrest significantly more often when the male is the victim, compared to the female (Hirschel & Buzawa, 2009); the preferential granting of restraining orders to women relative to men in response to similar complaints (Muller, Desmarais, & Hamel, 2009); the failure of law enforcement to adequately inform male victims regarding community resources (Buzawa & Hotaling, 2006); and the proliferation of intervention programs based on a patriarchal theory (Dobash & Dobash, 1979; Pence & Paymar, 1993). In addition, telling is the official domestic violence training offered by the U.S. Victims of Crime office, whose training manual gives 11 examples of physical domestic violence and various power and control tactics. Of these 11 examples, 8 involve male-on-female battering, 2 involve female-on-female lesbian abuse, and 1 involves a male perpetrator and a victim whose gender is not specified (Office of Justice Programs, 2010). Once again, trainers are not able to imagine any scenario whatsoever in which the perpetrator is a woman and her victim is a man.

RESEARCH ON DOMESTIC VIOLENCE OFFENDERS

Of course, none of these outcomes should be of concern if the patriarchal paradigm were supported by the body of empirical research. As shown by the McMahon and

Pence (2003) article cited earlier, there is evidence that victimized women can be wrongly arrested for domestic violence. Much of the evidence, however, is anecdotal, or based on selected samples of women who have sought shelter services. These ought not to be entirely discounted, any more than the reports of abused men to the Domestic Abuse Helpline for Men and Women (Hines et al., 2007), detailing their own stories of wrongful arrest. However, neither should they be depended upon.

Some research with women offenders has found greater numbers of dominant aggressors among the male partners (Henning & Feder, 2004; Swan & Snow, 2002). All of these, however, are methodologically flawed by, for example, measuring power control with instruments designed for men and relying exclusively on the women's reports and records of previous domestic violence calls to the police, which are far more often made by women and do not necessarily indicate who is the actual victim. In one well-designed study, researchers asked 87 female offenders to select among 29 items indicating all of their reasons for assaulting their partners. There was no male offender comparison group. Self-defense was endorsed by 39% of the respondents, and 25.8% said they wanted to "get away" from their partner. Items indicating an expressive motive were more frequently endorsed: For example, 39% of the respondents said they wanted "to show anger." Three similar items were endorsed at comparable rates. None of the individual items that could be classified as "coercive" were endorsed by more than 25% of the respondents; however, there were far more such items listed overall (e.g., "to get control over partner," 22%; "to get partner to do something or stop doing something," 22%). In addition, 25% of the violent women endorsed the item, "to get your partner's attention," and 18% endorsed "because you were afraid your partner was going to leave you," items that could certainly be interpreted as examples of coercive motivation (Stuart et al., 2006).

With very few exceptions (Busch & Rosenberg, 2004; Hamberger, 2005), studies using samples of both male and female perpetrators have found comparable rates of self-defense and use of emotional abuse and control—important factors in determining who is the dominant aggressor. Self-reports from a Southern California study of 125 men and women enrolled in a batterer treatment program revealed no significant differences across gender in frequency of self-defense as a motive for the violence (Kernsmith, 2005). In Tennessee, 59.0% of male and 65.4% of female perpetrators ($N = 1,267$) arrested and mandated to treatment indicated that their offense was committed in self-defense (Henning, Jones, & Holdford, 2003). As the authors suggested, these rates probably reflected denial and minimization by both genders, because in community and general population samples, the self-reported rates of self-defense are no more than 20% for both genders (Follingstad, Wright, Lloyd, & Sebastian, 1991; Sommer, 1994). In the United Kingdom (Carrado, George, Loxam, Jones, & Templar, 1996), 21% of the women and 27% of the men who had been violent reported that their motive was "getting back at him or her for some physical action he or she had used against me," indicating possible self-defense but more probably retaliation, with which it is often confused. In South Carolina, Carney and Buttell (2004) administered the Propensity to Abuse Scale (PAS), a measure of an individual's likelihood of engaging

in repeat verbal and physical aggression, to 50 female offenders court-ordered to batterer intervention, and 137 male batterers drawn from the same program (Buttell & Carney, 2002). There was no significant difference between the groups.

In another of their Tennessee studies, Feder and Henning (2005) investigated 317 couples dually arrested for domestic violence and found similar levels of psychological aggression, with the women somewhat more likely to verbally abuse, and the men to engage in isolation behaviors.

In California, 208 male and 174 female offenders in 15 batterer intervention programs across the state completed the Controlling and Abusive Tactics Questionnaire (CAT), containing 50 items measuring the degree to which an offender has exhibited toward his or her victim threats and intimidation, isolation and jealousy, economic abuse, diminishment of self-esteem, general control, obsessive relational intrusion (including stalking), passive aggressiveness and withdrawal, using children, legal system abuse, and sexual coercion. Results indicated that women offenders engage in similar levels of power and control overall (Hamel, Graham-Kevan, & Próspero, 2008).

A study of male offenders mandated to treatment in Texas and their female partners found physical violence initiation rates of about 33% by the women. It found higher rates of victimization on the 13-item CSR Abuse Index for the women in comparison to the men, but the differences were not, however, nearly as great as predicted, given that the men were identified as the “batterers” and their partners as the “victims.” For example, “deny freedom of activities” was cited by 71% of men and 72% of women; “deny access to friends” was cited by 57% of men and 63% of women, and “censor phone calls” was reported by 53% of men and 60% of women. On four of the items (“deny rights to privacy,” “deny access to family,” “withdraw emotions to punish,” and “withhold sex to punish”), the men experienced higher levels of abuse than did the women (Stacey, Hazelwood, & Shupe, 1994).

Finally, a cohort of young men in Oregon Youth Study (Capaldi et al., 2009) who had been followed from age 9 were studied again in their late 20s, with a focus on the 160 men who were involved in an intimate relationship. The men and their female partners were administered instruments, such as the Conflict Tactics Scale (CTS), to measure physical and psychological abuse over the course of their relationship, and were also videotaped while engaged in a problem-solving task; and court records were searched for evidence of criminality. For the 23 couples in which one party had been arrested for partner violence, additional information was gathered from police reports about the incident. The authors found that:

Although men were more likely to be arrested in the context of the official IPV, nonofficial data indicated that the men in the group experiencing an official IPV incident were not significantly higher than were their women partners in physical and psychological aggression or in mean levels of more severe physical aggression. In fact, the women were more likely to show higher levels of overall physical and psychological aggression (although not of severe physical aggression) in the context of nonofficial aggression toward a partner. (Capaldi et al., 2009, p. 515)

What do we find when we compare the abuse histories of adjudicated women offenders and women seeking victim services? Eileen Abel (2001) compared 67 women participants in a batterer intervention program to 51 women who sought treatment for having been abused by their partner, on several measures of victimization, and did find that about a third of the offenders had previously used either a hotline, outreach services, or a shelter. However, those women seeking victim assistance exhibited significantly higher trauma symptoms, as measured on the Trauma Symptom Checklist. Simmons, Lehmann, and Collier-Tenison (2008) compared 77 female offenders enrolled in a batterer intervention program in Texas to data provided by 2,135 women who had sought refuge in a domestic violence shelter. Most of the shelter women reported that their partners “occasionally” used physical intimate partner violence (IPV) and “very frequently” used psychological abuse and control, whereas most of the offenders reported that their partners “rarely” perpetrated physical abuse on them and only “occasionally” engaged in psychological abuse and control. This study finds clear differences between the two populations, challenging the assumption that female offenders are actually victims. Although the partners of female offenders are often abusive themselves, they are far less so than the partners of women in shelters are.

GENERAL POPULATION STUDIES

Overall, research with adjudicated offenders indicates that although a number of women may also be victims, many of the men may be as well. Likewise, dating and community surveys have consistently found high levels of symmetry across gender, not only in who initiates physical assaults, but also in the number of perpetrators who combine physical violence with power and control tactics—a common definition of *battering* or *intimate terrorism*—and, indeed, *dominant aggressor* (see Hamel, 2009, for a review). According to the largest dating survey ever undertaken, sampling 13,601 university students in 32 countries (Straus, 2006), dominance among young adults is equal across gender (based on responses to such items as, “my partner needs to remember that I am in charge”), and dominance by either partner—not gender—increases the probability of severe violence.

The three major conclusions drawn from Felson and Outlaw’s (2007) analysis of data originally obtained through the National Violence Against Women Survey (NVAWS; $N = 15,000$) were the following: (a) Women are just as controlling and jealous toward their male partners as the other way around; (2) the relationship between the use of control/jealousy and physical violence exists equally for both male and female respondents; and (3) “intimate terrorists” can be either male or female. In Canada, Laroche (2005) analyzed data from a large-scale population survey ($N = 25,876$). Respondents were asked about the extent to which in the past 5 years they had been victims of severe intimate terrorism, having experienced severe physically assaulted and subjected to various power and control tactics (“limits your contact with family or friends,” “puts you down or calls you names to make you feel bad,” “is jealous and doesn’t want you to talk to other men/women,” “harms or threatens to harm someone close to you,” “demands

to know who you are with and where you are at all times,” “damages or destroys your possessions or property,” and “prevents you from knowing about or having access to the family income, even if you ask.”) Men accounted for about 40% of severe intimate terrorism victims, and fit Ehrensaft, Moffitt, and Caspi’s (2004) “clinical abuse cases” from injuries sustained, fear expressed, and use of police and other services (Dutton, 2006).

There is, then, simply no support for the proposition that most women arrested for domestic violence are victims. The data also suggest that a large proportion of domestic violence offenders are involved in mutually abusive relationships. “There are times,” the POST (2010) training manual declares, “when both parties are equally assaultive and batter one another. At other times, even after a careful and thorough investigation, it is impossible to identify the dominant aggressor. In domestic violence situations such instances should be rare” (pp. 3–9). In fact, they should be far more common. Mutual arrests are discouraged not because the data suggest otherwise, but because of political decisions with little basis in fact. Violence between partners is a systemic problem, correlated with mutual, escalating relationship dynamics (e.g., negative reciprocity), family stress, and insecure patterns of attachment on the part of both parties (see Hamel, 2008; Hamel & Nicholls, 2007). The POST training manual refers to only one cycle of abuse, the famous three-phase model (Walker, 1983), and ignores all others. In their new book, Bartholomew and Cobb (2010) write:

Feminist perspectives view men’s IPV as part of a general strategy to maintain men’s control over women, and IPV is associated with acting in a controlling way toward a partner (Graham-Kevan, 2007b). However, there is little evidence that even severe IPV typically reflects a general pattern of one partner controlling the other across relational domains (cf. Felson & Outlaw, 2007). Rather, IPV perpetration may be associated with having *less* power across domains than one’s partner (at least for men) (e.g., Babcock et al., 1993), as might be expected if IPV stems from a failure to meet interpersonal goals. Moreover, there is a strong *positive* association between the degree to which partners attempt to control one another (O’Leary & Smith Slep, 2003; Winstok, 2006b), *suggesting a dyadic struggle for influence rather than the unilateral control of one partner by the other* (italics added).

Escalating hostility and IPV are most likely when both partners actively seek to fulfill conflicting goals and resort to coercion when other means have failed. In relationships where a general pattern of dominance does exist, where one partner consistently accedes to the preferences and demands of the other, the conditions for escalating conflict and IPV as a coercive tactic are absent. Presumably, dominant partners are able to meet their goals, and dominated partners, though likely dissatisfied, are putting their desire for relational harmony (or avoidance of conflict) above other personal goals. This analysis is consistent with various findings we have reviewed, notably, that severe IPV is most likely when IPV is mutual, that both partners’ negative reciprocity predicts IPV, and that victims of severe IPV rarely accede to their partners’ demands. (pp. 319–320)

REVISITING CURRENT POLICIES

The limitations of mandatory arrest and dominant aggressor guidelines reflect more than an institutional bias against men. Female victims may sometimes be arrested, and therefore revictimized when, for example, their “demeanor” does not fit the accepted view of women as docile and nonthreatening. Despite a criminal justice response that is more vigorous and responsive than ever before, the large majority of domestic violence is never reported. Victims continue to be abused and killed, with women more likely to be on the receiving end of the most severe types of assaults, and batterer intervention programs are only marginally effective in reducing recidivism among offenders (Murphy & Ting, 2010). Beyond its civil rights implications, the bias against men is symptomatic of a system that has been seriously derailed and in dire need of getting back on track, and toward evidence-based policies and practice.

It should be assumed that police officers, on the whole, take pride in their work and want to do the right thing when being sent on a domestic violence call. However, they are given mixed messages. On the one hand, laws and procedures are gender neutral, and they have been trained in an incident-based manner to other crimes in which they are not asked to determine the “dominant aggressor” (Davis, 2008). On the other hand, officers are either mandated or encouraged to arrest, and they want to protect “victims” from “perpetrators,” but from their experience, they know that distinctions between the two are not often clear (Toon & Hart, 2005). In addition, they are given vague criteria with no precise formula with which to make accurate assessments and so are at risk of relying on personal prejudices or cognitive schemas and heuristics (e.g., availability and representativeness heuristics, confirmatory bias) that may lead to bad decisions (Nicholls, Desmarais, Douglas, & Kropp, 2007). Studies by Phillips and his colleagues (Phillips & Gillham, 2010; Phillips & Varano, 2008) find that officers, when feeling constrained by their arrest protocols, will sometimes express their choices by listing a less serious criminal charge or by listing multiple charges.

Is it time, therefore, to bring back discretionary arrest? Many officers would prefer to have greater input in making domestic violence arrests (Toon & Hart, 2005). An argument can be made that mandatory and pro-arrest policies, by overloading the court system and resulting in fewer prosecutions, put victims in danger. This is a debate that should be conducted among all those seriously interested in improving the criminal justice response to domestic violence. Determining context, however, would seem essential. “A single act of violence against a partner,” Osthoff (2002) cautions, “cannot be the sole criterion by which service providers, police officers, the courts, and others make the determination that someone is a batterer” (p. 1526). When the wrong party is arrested, regardless of his or her gender, the other party is emboldened to continue the abuse. Men are generally better able to protect themselves and suffer less physical injuries, but children are adversely affected when either parent abuses the other, and the cycle of violence continues (Hamel & Nicholls, 2007).

Everyone should agree that there is no justification for inadequate and gender-biased law enforcement training. Police ought to be given thorough and evidence-based

training not dictated by politics and ideology. To that end, it is proposed that states require all training programs to be based on an accurate understanding of prevalence rates, context, risk factors, and policy/intervention effectiveness, as found in scholarly, peer-reviewed journals, with input from advocacy organizations that address the needs of both male and female victims. Other reforms have been proposed to improve the criminal justice response. The author has spoken with several prosecutors in the San Francisco Bay area, who favor a diversion option for first-time misdemeanor incidents not involving a previous pattern of battering, whereby charges would be dismissed if the offender completed a suitable course of batterer intervention. Some feminists have also endorsed this idea (see McMahon & Pence, 2003).

As an alternative to simply arresting the bigger or more difficult party, police should be encouraged to mandate both parties to a thorough assessment by a court-appointed expert who has the knowledge, resources, and time to conduct a proper assessment—perhaps someone working in the office of the district attorney. This idea, recently suggested by the Marin County Civil Grand Jury (2010), after conducting an exhaustive review of the community response to domestic violence in one northern California county, has been advanced in greater detail by others (Young, Cook, Smith, Turteltaub, & Hazelwood, 2007):

In cases where child abuse is not alleged, where allegations of abuse are disputed (and the court has some doubt as to whether abuse has actually occurred), or where the accuser may be the actual perpetrator or in the case of mutual abuse, the court can follow a policy of ordering temporary mutual shared physical custody of minor children. The couple is then mandated to an assessment. If both parties fail to attend and comply with the assessment, the order is vacated. If only the complainant complies, the order stands. (p. 612)

The authors go on to say that, with properly trained assessors,

The court would have an unbiased, knowledge-based report in which to order a continuance of a restraining/protective order or to issue a mutual restraining/protective order and to decide whether one or both parties would retain temporary custody of minor children or whether only one party should have temporary custody pending the outcome of further litigation While it is desirable that licensed psychologists or other licensed mental health practitioners conduct assessments, they could play a supervisory role once the program is up and running. Highly trained and lower-cost personnel could conduct the majority of the assessments, preferably individuals with additional experience in the field of criminology. (pp. 612–613)

In addition to better training and alternatives to arrest and prosecution, there is a dire need for reform in current laws regulating batterer intervention programs. Training requirements for and oversight of providers are minimal; and if not all of

the programs strictly follow the Duluth feminist model, no states require evidence-based practice, with the possible exception of Colorado in which length of treatment is determined by a standard risk assessment instrument. In most states, the same-sex educational group format is the preferred or mandatory treatment, a one-size-fits-all approach that excludes couples counseling. Advocates, who remember when the problem of domestic violence was not properly understood and often minimized by mental health professionals, may have reason to be skeptical of such an alternative. However, given the high rates of mutual abuse in domestically violent relationships, the conclusive research evidence finding this modality safe and effective in most cases (Hamel & Nicholls, 2007), and the limited effectiveness of current batterer intervention programs, couples and family therapy should be a part of any thoughtful, empirically-based intervention policy.

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Correspondence regarding this article should be directed to John Hamel, LCSW, Private Practice, San Rafael, CA. E-mail: johnmhamel@comcast.net