



INDEPENDENT WOMEN'S FORUM
Position Paper

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Domestic Violence:

An In-Depth Analysis

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Historical Summary

There is a widespread belief that the justice system in the United States did not begin to address the problem of domestic violence until quite recently. In fact, the very first laws in colonial-era America forbade wife-beating. The "Body of Liberties" adopted by the Massachusetts Bay colonists in 1641 stated, "Every married woman shall be free from bodily correction or stripes by her husband, unless it be in his own defense upon her assault."¹ Wife-beaters could be punished with fines or whipping, and could also be subjected to public "shaming" in church or expelled from the congregation.¹

Much attention has been drawn to the fact that in the 19th century, rulings by two appellate courts in the U.S., one in Mississippi and two in North Carolina (the last of them in 1868), held that a husband was allowed to use force toward his wife "in moderation." However, even the judges who issued those opinions recognized that they were outside the mainstream of judicial opinion for their time, and by the mid-1870s these courts also agreed that "the husband has no right to chastise his wife." (However, the judges still expressed a preference for non-intervention when "no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband." The feminist historian Elizabeth Pleck found in her research that 19th-century municipal courts "invariably accepted a woman's claim of physical abuse and took some action," which could range from a reprimand to a stay in jail to monetary compensation for the victim. While there were no specific domestic violence laws, domestic assaults could be and were prosecuted under assault and battery statutes. At the turn of the century, state legislation in Maryland, Delaware, and Oregon introduced flogging as a penalty for wife abusers. A similar federal law was considered by the U.S. Congress (though ultimately rejected) in 1906 -- nearly nine decades before the passage of the first federal law dealing with domestic violence, the Violence Against Women Act.¹

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DOMESTIC VIOLENCE: AN IN-DEPTH ANALYSIS

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At the same time, there is no denying that the treatment of domestic violence by police and the courts for much of our history was very flawed. In many cases, district attorneys did not want to prosecute domestic violence cases because it was felt that putting the family wage-earner in jail would leave the wife and children destitute; as a result, the police were reluctant to arrest abusers as well.

Ironically, in the 1960s and 1970s, it was considered “progressive” to treat domestic violence as a family problem rather than a criminal matter; at the time, coercive law enforcements in general were unpopular and many offenses against the public order were decriminalized. Thus, a 1967 police manual said that “in dealing with family disputes, the power of arrest should be exercised only as a last resort.” The American Bar Association took this position as well; its 1973 guidelines recommended that at least in urban areas, “the resolution of conflict such as that which occurs between husband and wife” should be conducted by the police “without reliance upon criminal assault or disorderly conduct statutes.” Conflict mediation was regarded as the primary police function in what was then called domestic disputes.¹

Only a few years later, however, the rise of feminism and the battered women’s movement began to change prevailing attitudes toward domestic violence. The publication of landmark books such as *Battered Wives* by Del Martin drew attention to the plight of women in abusive marriages.¹ The first large-scale studies on family violence, such as the 1975 National Family Violence Survey conducted by psychologists Murray A. Straus of the University of New Hampshire and Richard Gelles of the University of Rhode Island, found that battering was not just a matter of a few drunken bums beating up their wives or girlfriends but a fairly widespread problem, occurring in as many as 16 percent of American families every year. Straus and Gelles reported that two million women every year were battered by their spouses or partners, or experienced “severe” violence (defined as anything more violent than pushing, grabbing, or slapping—anything from punching or kicking to hitting with an object, choking, or using a weapon). While the surveys found an equally high rate of spousal violence by women, these findings did not elicit similar concern; female violence toward men was generally seen as far less dangerous and was commonly presumed to involve self-defense.¹



In the 1970s, the first shelters and crisis hotlines for battered women opened in the United States. Around the same time, there was a shift toward a more law enforcement-oriented approach to domestic violence. As commentator Cara Feinberg wrote in *The American Prospect*, “feminist activists began to see the law not only as an important tool for protecting victims but as a way to define domestic violence as a legitimate social problem.”¹ Several class-action lawsuits were filed challenging the failure of police to protect victims of domestic violence. In 1984, the case of Tracey Thurman, a Connecticut woman who filed a lawsuit after the police failed to intervene while she was repeatedly stabbed by her husband, reached the U.S. Supreme Court; Thurman won \$2.3 million in compensatory damages. This award served as a wake-up call for many jurisdictions.¹

By that time, most states had already empowered police officers to make warrantless arrests in misdemeanor domestic assaults they had not witnessed themselves, even if the victim did not sign a complaint. This reform was applauded by most law enforcement personnel and family violence experts as an essential tool in combating domestic violence. In subsequent years, it was followed by a shift toward mandatory arrest upon probable cause to believe that domestic violence had occurred, and in many jurisdictions to the practice of prosecuting domestic violence cases even against the wishes of the victim.

Historically, legal protection for domestic violence victims in the United States has been uneven, varying greatly from place to place and from period to period. However, the best available research suggests that by the late 1980s men who assaulted their wives and girlfriends were not treated any more leniently than perpetrators in non-family assaults. Kathleen Ferraro, a women’s studies and criminology professor at Arizona State University who identifies herself as a “scholar/activist/survivor of male violence,” analyzed the handling of violent offenses in Maricopa County, Arizona in 1987-88, expecting to find preferential treatment for batterers. However, she actually discovered that most assaults of *any* kind were either not prosecuted or prosecuted as misdemeanors. Among felony cases, domestic assaults were *less* likely to be dismissed than non-domestic ones. Only 11 percent of the defendants received any prison time at all, but the victim-offender relationship had no effect on the length of the sentence. An earlier study in Ohio came to a similar conclusion.¹

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**DOMESTIC VIOLENCE:
AN IN-DEPTH ANALYSIS**

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Nonetheless, concerns about the level of domestic violence and the still-inadequate and uncoordinated response to the problem led to a push for federal legislation to address violence against women. In 1994, the murders of Nicole Brown Simpson and Ron Goldman, and the arrest of retired celebrity athlete and convicted wife abuser O.J. Simpson on murder charges, dramatically raised public awareness of domestic abuse. That year, Congress passed the Violence Against Women Act as part of an omnibus crime bill. VAWA was reauthorized and expanded in 2000. Meanwhile, both in response to VAWA and on their own initiative, most states and many jurisdictions across the U.S. strengthened their domestic violence legislation.

Whether these efforts are paying off is often difficult to determine, since studies on the prevalence of domestic violence are often complicated by different definitions and measurements. According to data from the Bureau of Justice Statistics, the rate of non-fatal intimate violence in the United States dropped by nearly half between 1993 and 2001. The rates of domestic murders, too, have declined, though for some demographic groups such as African-American women the rates of murder victimization by intimates have stabilized in recent years after dropping sharply in the late 1970s and 1980s.¹

Domestic violence remains a serious and tragic problem. In recent years, there has been some debate about its true scope and prevalence. Some critics have accused anti-domestic violence activists of using inflated figures and drastically overstating the problem; in turn, many feminists have accused these critics of colluding in a backlash against battered women. There is no doubt that some widely used statistics—e.g. claims that battering causes more injuries to women than automobile accidents, rapes, and muggings combined, or that up to a 35 percent of women's emergency room visits are due to domestic violence—are false (data from the Centers for Disease Control and the Bureau of Justice Statistics suggest that the real figure is less than 2 percent).¹ Nonetheless, the fact remains that serious, ongoing physical violence is estimated to exist in 2-3 percent of marriages in the United States. Every year, about 1,200 women and 500 men in this country die at the hand of a spouse or partner, and some 200,000 women and 40,000 men seek emergency room help due to domestic violence.¹ Critiques of inflated statistics are entirely appropriate, but they should never be used to minimize or trivialize the real issue.



In the meantime, on the other side of the coin, there have been charges of overzealous prosecution, abridgements of the civil rights of defendants, and an overburdening of the criminal justice system by trivial cases that would be best resolved through non-criminal means such as mediation. One criticism is that the legal and public policy response to domestic violence has focused too exclusively on the typical scenario of male batterer and female victim, to the detriment of male victims and victims in same-sex relationships (as well as female abusers who receive no assistance in overcoming their behavior problems). In the 2004 book, *Insult to Injury: Rethinking Our Responses to Intimate Abuse*, Linda G. Mills, a professor of law and social work at New York University, makes an argument for a more holistic and integrated approach that would emphasize violence prevention and helping couples overcome mutual destructive dynamics in their relationships. This does not preclude “conventional” legal intervention, but any one-size-fits-all policy in an area as complex and fraught with unintended consequences as family abuse is bound to fail some of its intended beneficiaries. Dr. Mills is one of a number of feminist advocates for battered women who, in recent years, have urged a new look at the issues involved in domestic violence, law, and public policy.¹

ANATOMY OF A MYTH

The pamphlets, brochures, and other literature distributed by battered women's advocacy groups commonly assert that:

- 20% to 35% of women who visit medical emergency rooms are there for injuries related to domestic violence;
- battering is "the leading cause of injury to American women," or to women 15 to 44;
- domestic abuse causes more injuries to women than rape, auto accidents, and muggings combined.

What are the facts?



DOMESTIC VIOLENCE: AN IN-DEPTH ANALYSIS

In 1997, the U.S. Department of Justice released a study, "Violence-Related Injuries Treated in Hospital Emergency Departments," showing that about 1.4 million violence-related injuries a year are treated in emergency rooms and about 37% of violence-related injuries to women are inflicted by spouses, ex-spouses, or boyfriends. The study estimated that 204,129 women and 38,790 men annually seek emergency room treatment from injuries related to domestic violence.

While these are disturbing numbers, they also show that the prevalence of domestic violence injuries has been significantly exaggerated.

A 2001 Centers for Disease Control report, "National Estimates of Nonfatal Injuries Treated in Hospital Emergency Departments," shows that less than 5% of all injuries to women treated in emergency departments are due to any violence, domestic or not.

Leading sources of injuries to women:

Type	Number	Percentage of All Injuries
Accidental falls	3,696,934	28.0%
Motor vehicle and other transport-related accidents	2,386,488	18.1%
Accidentally struck by/against object	1,972,864	14.9%
Overexertion	1,461,168	11.1%
Accidental cuts	842,484	6.4%
Bite/sting	755,387	5.7%
Violence-related	647,396	4.9%

Understanding Domestic Violence: Research and Advocacy

Before analyzing domestic violence policies, it is important to review the state of our knowledge and understanding of domestic violence.

In the past three decades, the battered women's movement has played a key role in shaping public policy and media coverage of domestic violence. The movement has done admirable work to publicize the problem of domestic violence and to help the victims. In their many years of hard work, battered women's advocates have created support systems that enabled many women

INDEPENDENT WOMEN'S FORUM



to get out of abusive situations. They also deserve much of the credit for convincing law enforcement and the courts to take domestic violence seriously.

However, like many movements that have pursued worthwhile social goals, the battered women's movement has also had a more extreme side. Many activists have openly acknowledged that a radical political philosophy played an important role in shaping the movement and its worldview. In the 1982 book, *Women and Male Violence: The Visions and Struggles of the Battered Women's Movement*, the late Susan Schechter wrote that the battered women's movement was organized primarily by two groups: radical feminists, who saw women as an oppressed class in a society dominated by a male power structure, and socialist feminists, who "joined an analysis of male domination to one of class and race oppression."¹ Both of these groups were distinct from liberal "women's rights" feminists, who wanted simply to ensure equal treatment for women within the existing structure of society.

Schechter, a veteran activist who later served on the federal Advisory Council on Violence Against Women set up in 1995, herself embraced a radical socialist feminist vision. In her book, she wrote:

*Since male supremacy is the historical source of battering, and class domination perpetuates male privilege, a long-range plan to end abuse includes a total restructuring of society that is feminist, anti-racist, and socialist. While ending capitalism and building socialism will not stop male domination, they may be necessary steps in the process.*²

Thus, the dominant perspective in the battered women's movement from its inception held that domestic violence stems from sexism and patriarchal beliefs (specifically, men's belief that it is their entitlement to control women, and even a conscious male strategy to use violence to keep women "in their place"). According to this outlook, the abuse of women is not a social pathology but a pervasive behavior that enjoys tacit societal support and approval. This view has remained widespread in the battered women's movement. A federally funded pamphlet of the National Woman Abuse Prevention Project, published in 1993, stated that "society has accepted the use of violence by men to control women's behavior."³

As the battered women's movement gained widespread acceptance, it began to receive funding from government and charitable foundations and to work with social services professionals and mainstream community organizations. In the process, it became more open to moderate views.

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DOMESTIC VIOLENCE: AN IN-DEPTH ANALYSIS

However, in some cases the radical rhetoric was modified but not the underlying beliefs. In a 1981 paper, Schechter asserted that using moderate language was acceptable “since we do operate in several different worlds at once,” but added that “we at least need to be clear about our own political vision.”⁴

Today, the radical feminist ideology of the battered women’s movement is often reflected in the literature published both by domestic violence organizations and by federal, state, and local government agencies. This literature usually features “facts” and “myths” on domestic violence. Typically listed as “myths” are the statements that “alcohol abuse causes domestic violence,” that “domestic violence is an anger control issue,” and that domestic violence is often mutual or is a dynamic which involves all family members. The “facts” include the statements that abuse is a deliberate tactic used by batterers to maintain “power and control” over their victims, that the overwhelming majority of victims are women abused by men, and that abuse cuts across all socioeconomic, racial, and educational lines.⁵

But this one-sided statement of “facts and myths” ignores a great deal of evidence from social science as well as police and clinical practice. For instance:

Abusers’ motivations: “power and control,” patriarchy, anger control, and other factors. There is no single factor that accounts for domestic violence. Ellen Pence, a leading feminist battered women’s advocate and a founder of the Duluth, Minnesota, Domestic Abuse Intervention Project (DAIP), acknowledged the inadequacy of the standard feminist approach in a 1999 essay:

By determining that the need or desire for power was the motivating force behind battering, we created a conceptual framework that, in fact, did not fit the lived experience of many of the men and women we were working with. The DAIP staff ... remained undaunted by the difference in our theory and the actual experiences of those we were working with. ... It was the cases themselves that created the chink in each of our theoretical suits of armor. Speaking for myself, I found that many of the men I interviewed did not seem to articulate a desire for power over their partner. Although I relentlessly took every opportunity to point out to men in the groups that they were so motivated and merely in denial, the fact that few men ever articulated such a desire went unnoticed by me and many of my coworkers.



INDEPENDENT WOMEN'S FORUM

*Eventually, we realized that we were finding what we had already predetermined to find.*⁶

Research by psychologists Neil Jacobson and John Gottman of the University of Washington suggests that there are two distinct types of violent husbands, whom the researchers dubbed “cobras” and “pit bulls.” The “cobras” always remain in control; during marital arguments, their heart rate actually drops and they are calmer than in “normal” situations. Their abuse best fits the standard feminist description of the batterers deliberately using violence to gain total control in their marriages. (They are also highly likely to be violent outside the family.) The “pit bulls” tend to be highly insecure and impulsive, and during a quarrel their emotions build up in a “slow burn” until they explode in anger. Their violence is generally far less severe, and their wives are much less intimidated than those of the “cobras” and much more likely to leave the relationship.⁷

Donald Dutton, a psychologist at the University of British Columbia and a leading expert on family violence, concludes that the linkage of patriarchy and battering is a “fallacy.” A much stronger predictor of spousal violence, in his view, is mental illness: reviewing the research on the subject, Dutton reports that “about 80% of both court-referred and self-referred [abusive] men in these studies exhibited diagnosable psychopathology.... As violence becomes more severe and chronic, the likelihood of psychopathology in these men approaches 100%.”⁸

Family violence and socioeconomic status. While it is true that domestic abuse occurs in every class of society, it is not equally prevalent in all social groups. Numerous studies show that low income and low educational levels are major risk factors for domestic abuse. According to a major review of research literature by scholars at the State University of New York at Stony Brook, “the finding seems to be the same across studies: lower income is associated with increased risk for partner aggression.”⁹ In a 1988 study, 22 percent of couples experiencing domestic violence had family incomes below \$10,000 a year, compared to 2 percent of non-violent couples.¹⁰ A later study found that for every \$1000 increase in family income, the risk of severe marital violence was reduced by percent.¹¹

Domestic violence and substance abuse. Numerous studies demonstrate a strong correlation between domestic violence and alcohol or drug abuse. Indeed, an article by University of Illinois professor of social work Larry Bennett which argues *against* the view that battering is the result of substance abuse acknowledges that the correlation exists. Bennett cites a study which



DOMESTIC VIOLENCE: AN IN-DEPTH ANALYSIS

found that 2 percent of men who never got drunk had committed spousal assault in the past year; among those who get drunk frequently, 40 percent of male blue-collar workers and 9 percent of male white-collar workers had assaulted their wives. He also notes that “the incidence of substance abuse by batterers seen in criminal justice, mental health, or social service settings is well above 50 percent.”¹² Reviews of police data on domestic violence arrests show that about 40 percent of the offenders and 20 percent of the victims were intoxicated at the time of the violent incident.¹³

Female violence. The role of female aggression in intimate violence is documented by a vast body of research. Studies by Straus and Gelles, leading and pioneering domestic violence researchers, have found that approximately half of all couple violence is mutual (with women initiating violence as well as striking in self-defense); when only one partner is physically abusive, it is as likely to be the woman as the man. These findings are confirmed by dozens of others studies, including a review of over 200 studies by British psychologist John Archer (University of Central Lancashire).¹⁴

This does not mean that domestic violence is completely a two-way street. Because of differences in physical size and strength, women are at substantially higher risk for injury and death. Women are more than twice as likely as men to be killed by a spouse or partner, and Archer’s meta-analysis found that women account for about two-thirds of injuries from domestic violence. The 1996 National Violence Against Women Survey, which posed questions about assaults by intimates in the context of personal safety concerns, found that nationwide, about 1.5 million women and over 800,000 men are victims of domestic assaults every year. Women in the study were much more likely than men to report that at some point in their lives, they had been “beaten up” by an intimate partner (8.5 percent to 0.6 percent), though equal numbers of women and men (about 1 percent) reported having been attacked with a knife.¹⁵ To sum up: All available evidence suggests that women are in greater danger from domestic violence, but a sizable minority of those injured or killed are men.

Furthermore, researchers note that women’s role as aggressors needs to be taken seriously even if women are at greater risk of harm, since female aggression contributes to the escalation of violence that endangers women themselves.

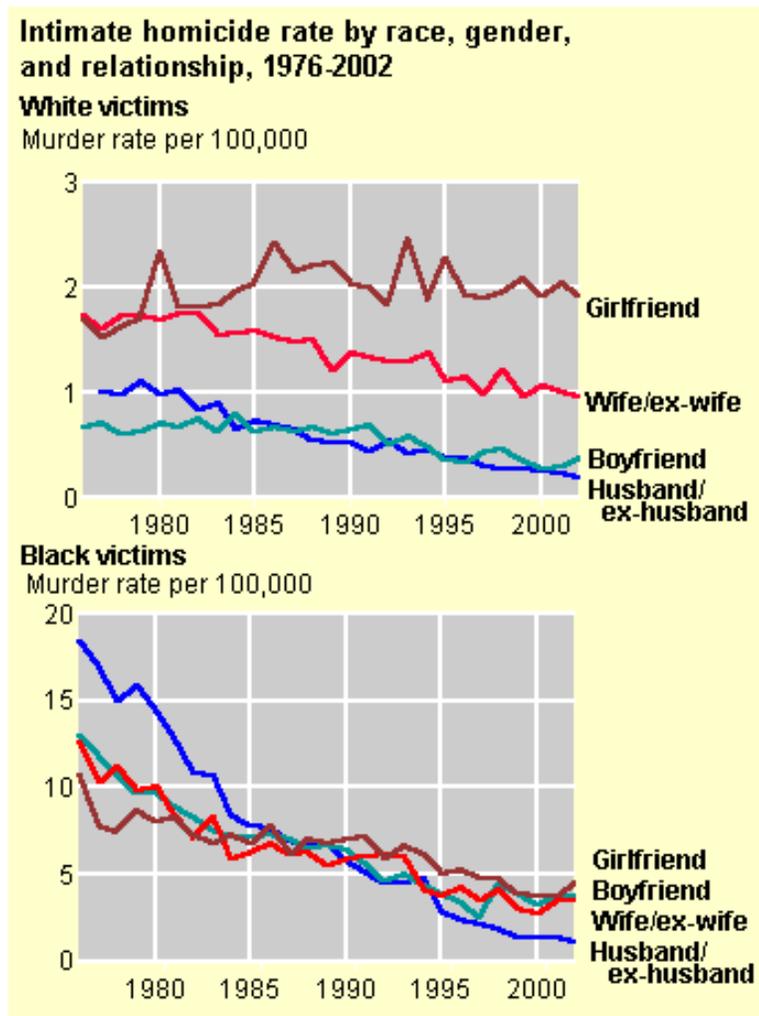


INDEPENDENT WOMEN'S FORUM

Linda Mills sums up:

Years of research, which mainstream feminism has glossed over or ignored, shows that when it comes to intimate abuse, women are far from powerless and seldom, if ever, just victims. Women are not merely passive prisoners of violent intimate dynamics. Like men, women are frequently aggressive in intimate settings... What is appallingly apparent is that we have refused to address the role of women in the dynamic of intimate violence.¹⁶

Chart: Intimate homicide patterns in the U.S.



Source: Bureau of Justice Statistics



DOMESTIC VIOLENCE:
AN IN-DEPTH ANALYSIS

Anecdotal evidence, including media coverage of domestic violence that is not intended specifically to single out female aggression, confirms this picture. Thus, a 1993 article in *The Miami Herald* profiled a battered women's advocate working with a domestic violence crisis intervention team in Ft. Lauderdale, Florida. In one incident chronicled by the reporter, the team responded to a fight between a habitually brawling couple to find the man "cut above the eye with an ashtray."¹⁷ Cara Feinberg's aforementioned article in *The American Prospect*, which analyzes domestic violence from a conventional feminist point of view as "an issue that embarrasses traditionalists," ends with a description of a scene from the documentary *Domestic Violence* by Frederick Wiseman:

*In a tableau that echoes the opening scene of Domestic Violence, Wiseman returns at the end of his documentary to police officers responding to a call. ... The call was placed not by a battered woman but by a potential batterer seeking intervention—a last-ditch effort to stave off the violence brewing in his household. But when the police arrive, the couple refuses to listen to their suggestions or take any steps to change the situation. When neither the man nor the woman agrees to leave the premises, the police ultimately return to their squad car shaking their heads, leaving behind only words of advice and a volatile couple "afraid of what they might do." It is an ominous ending to a celebration of progress—an eerie mirror of the problem we continue to face.*¹⁸

Maybe one reason for the lack of greater progress is that mainstream discourse on domestic violence does not recognize major aspects of the problem—such as the mutual dynamic of abuse that, in this case, is staring Feinberg in the face. (One must wonder if the spouse making the call to the police is labeled the "potential batterer" simply because he is the male.)

This is some of the knowledge that must be incorporated into our understanding of domestic violence. Otherwise, public policies dealing with this issue are bound to remain inadequate.



MYTHS AND FACTS ABOUT DOMESTIC VIOLENCE

MYTH: The abuse of women is extremely common in American culture. One of out three women will be battered in their lifetime.

FACT: As many as one in four couples experience at least one incident of minor and usually mutual violence such as pushing or grabbing. While such low-level violence should not be condoned, it is distinct from the problem of battered women. Studies show that battering (hitting, punching, or more severe assaults) occurs repeatedly in about 3 percent of couples, and once in another 7 or 8 percent.

MYTH: Our society has long condoned violence against women and viewed it as an acceptable method of male control over women.

FACT: Wife-beating was widely condemned in American culture going back to colonial times. While the justice system often paid too little attention to spousal abuse (and other kinds of interpersonal violence), the social stigma against wife-beating was quite strong long before the rise of the modern women's movement.

MYTH: The primary reason for domestic abuse is patriarchy, sexism, and the oppression of women.

FACT: Research has found little correlation between sexist attitudes and domestic violence. Many studies show that domestic violence is no less common in gay and lesbian couples than in heterosexual ones. Most wife-beaters do not regard abuse as acceptable but instead try to deny or minimize it.

MYTH: Domestic violence has nothing to do with mental illness or substance abuse.

FACT: Numerous studies demonstrate a strong correlation between domestic violence and alcohol or drug abuse, and between domestic violence and diagnosable psychopathology.

MYTH: Domestic violence cuts equally across socioeconomic lines.

FACT: While domestic violence occurs in every class of society, low income and low educational levels are major risk factors for abuse.

MYTH: Domestic violence is perpetrated almost exclusively by men against women.

FACT: While women are at far greater risk of serious injury due to domestic violence due to their lesser size and strength, female aggression against both male and female partners is well-documented.



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Arrest and Prosecution

At present, mandatory or presumptive arrest when there is probable cause to believe that domestic violence has occurred is the law in more than half of all states. The Violence Against Women Act takes a strongly pro-arrest stance; VAWA 2000 authorized \$65 million a year through 2005 for “grants to develop and strengthen programs and policies that mandate and encourage police officers to arrest abusers who commit acts of violence or violate protection orders.” Nonetheless, this policy remains the subject of some controversy.

In the 1980s, pro-arrest policies got a boost from an experimental study conducted in Minneapolis which suggested that arrest reduced the risk of further battering. Despite the fact that the study’s authors, criminologists Lawrence Sherman and Richard Berk, did not recommend mandatory arrest, the results were widely used to justify such policies. However, subsequent research by Sherman and Berk found that in some communities, particularly among unemployed minority men, arrests could lead to an escalation of violence. This has led them to advise strongly, though without success, that mandatory arrest laws be repealed.¹⁹

A more recent study conducted under the joint auspices of the National Institutes for Justice by Michigan State University professor Christopher D. Maxwell, Joel H. Garner of the Joint Center for Justice Studies, and Jeffrey A. Fagan, director of the Center for Violence Research and Prevention at Columbia University, and based on large data samples from five sites, comes to somewhat more optimistic conclusions about the effect of arrest. Maxwell, Garner, and Fagan found “good evidence of a consistent and direct, though modest, deterrent effect of arrest on aggression by males against their female intimate partners.”²⁰ In other words, men who were the subject of a domestic violence complaint were somewhat less likely to re-offend if they were arrested, and in no group did the researchers find that arrest led to a higher rate of subsequent assaults. However, they expressed concern over a different aspect of mandatory arrest policies. The majority of the men in the study—about 60 percent according to the victims’ reports, 70 percent according to police records—did not assault their wives or girlfriends again during the six month follow-up period, regardless of whether they were arrested or not. However, about 8 percent of the men engaged in chronic domestic violence; they accounted for about 82 percent of the subsequent assaults reported by victims during the follow-up period, and for about 28 percent of the subsequent domestic violence incidents recorded by the police within that



INDEPENDENT WOMEN'S FORUM

sample. These chronically aggressive batterers did not seem to be deterred by arrest.

Maxwell, Garner, and Fagan sum up their findings thusly:

Future research needs to build on preliminary efforts to accurately predict high-rate repeat offenders and to find methods of helping their victims before they are victimized further.

[Also], our research showed that a majority of suspects discontinued their aggressive behaviors even without an arrest. This suggests that policies requiring arrest for all suspects may unnecessarily take a community's resources away from identifying and responding to the worst offenders and victims most at risk.

.....

Although there may be other benefits from policies requiring arrest that this research has not measured (including general deterrence), there are also likely costs of using arrest every time the police respond to an incident of intimate partner violence. Future research in this area needs to assess the benefits and costs of arresting all suspects before there can be a systematic conclusion of preferred or mandatory arrest policies.²¹

Indeed, a number of police officers and prosecutors have complained about being overwhelmed by often dubious "domestic" cases in the wake of mandatory arrest laws. A 2000 article in the *Long Island Newsday* explored the consequences of a presumptive arrest policy which caused domestic violence arrests to triple in five months.²² "The problem for prosecutors is twofold," the paper reported. "First, staff resources have been taxed by the huge jump in cases. Second, prosecutors said that many of the cases are coming to them incomplete, without victim statements, interviews with neighbors, photographs of damaged property, copies of 911 tapes or notations about admissions made at the scene, all evidence that could be required to prove a case." Some police officers, too, complained about being forced to take action in cases that they believed did not warrant an arrest. A female patrol officer was quoted as saying, "If we don't make the arrest, even if it's against our instincts, if something should happen, or if somebody else is reading the case and disagrees, you could be jammed up big-time."



DOMESTIC VIOLENCE:
AN IN-DEPTH ANALYSIS

In a 1997 interview with the author, Christopher Pagan, an attorney who until recently had been a prosecutor in Hamilton County, Ohio, estimated that after the passage of a 1994 state law requiring police to make an arrest on a domestic call or file a report explaining why no arrest was made, “domestics” went from 10 percent to 40 percent of his docket. He was convinced, however, that it was not a case of more real battering coming to his attention: “We started getting a lot of push-and-shoves, or even yelling matches. In the past the officers would intervene or separate the parties to let them cool off. Now those cases end up in criminal courts. It’s exacerbating tensions between the parties, and it’s turning law-abiding citizens into criminals.”²³

The effects of the mandatory arrest policy in Virginia was examined in two *Washington Post Magazine* articles by staff writer Liza Mundy in 1997 and 1999.²⁴ The picture Mundy painted was one of a stream of trivial cases—pushing, hair-pulling, grabbing, throwing an empty water bottle during an argument—flooding the courts alongside real cases of battering. Mundy quoted Judith Mueller of the Vienna, Virginia-based Women’s Center, one of the activists who had lobbied for the mandatory arrest law, as saying, “I am stunned, quite frankly, because that was not the intention of the law. It was to protect people from predictable violent assaults, where a history occurred, and the victim was unable for whatever reason to press charges... It’s disheartening to think that it could be used punitively and frivolously.”²⁵

One ironic unintended consequence of mandatory arrest law was a sharp increase in the arrests of women. In many jurisdictions, the proportion of women offenders in domestic violence arrests went from fewer than 10 percent of the total to as much as 25 percent.²⁶ “Dual arrests” of both spouses or partners rose sharply as well. While many of these cases reflected the reality of often-ignored female violence in the home, others illustrated the frivolity of the cases that were now ending up in the legal system. Mundy describes the case of a female minister in Virginia who was arrested after grabbing her husband during an argument.²⁷ Lawrence Sherman notes that in Milwaukee, two months after the passage of Wisconsin’s mandatory arrest law in 1989, a mother was arrested for slapping her 18-year-old son after he insulted her and made an obscene gesture during an argument; the woman was hospitalized with chest pains shortly after the arrest.²⁸

In response to the increasingly common arrests of women, battered women’s advocates have claimed that women are being punished for fighting back against abusers. While this may sometimes be the case, such a blanket generalization is based on the ideological assumption (unsupported by

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research or other evidence) that female violence in the home is nearly always in self-defense. In response to pressure from the activists, many states and jurisdictions have begun to specifically require the arrest of the “primary aggressor” only. But the application of these clauses raises serious questions of gender bias.

Sherman reports witnessing a case in which a husband was arrested after his wife had hit him, because he had shouted at her first.²⁹ Among the cases witnessed by Lisa Mundy in a Virginia court was that of a man arrested for allegedly pushing his girlfriend down the stairs even though he claimed that she had pushed him, and he was the one who had the broken arm.³⁰ Police guidelines often direct officers to determine who the primary aggressor is on the basis of such subjective judgments as “who appears to be in control.” A Massachusetts police training manual notes that “injury alone doesn’t determine who is the abuser” and warns against falling for such “excuses” as, “She hit me first.”³¹ The pro-arrest provisions of VAWA require grant-eligible states and local governments to “demonstrate that their laws, policies, or practices and their training programs discourage dual arrest of the offender and the victim”³² (which, in practice, often means all dual arrests of men and women).

Gender-biased application of mandatory arrest laws raises serious civil rights issues. But it can also send dangerous signals to both men and women in mutually violent relationships. Women may feel exonerated of all accountability for their actions and may not get the counseling they need for their behavioral problems. Men may become alienated from and hostile to the system in the conviction that it is stacked against them and unjustly favors women.

Another common critique is that mandatory arrests may paradoxically disempower victims by taking the decision-making out of their hands. The same criticism has been made of no-drop prosecution policies, in which domestic assault cases are prosecuted even if the victim does not want to press charges.

Uncooperative victims are a major problem for prosecutors in spousal abuse cases. In Kathleen Ferraro’s study in Arizona, almost 40 percent of victims in domestic assault cases, compared to about 6 percent in non-domestic ones, wanted the charges dismissed (even at the time of the study, in the late 1980s, the request was usually denied).³³ This issue was brought into the spotlight by the 1996 trial of football star Warren Moon, whose wife,

Another common critique is that mandatory arrests may paradoxically disempower victims by taking the decision-making out of their hands.



DOMESTIC VIOLENCE: AN IN-DEPTH ANALYSIS

Felicia, was forced to take the stand against him and testified that she started the fight by throwing a candlestick at her husband. Moon was acquitted.³⁴

It is commonly assumed that women who recant or refuse to press charges do so out of fear or psychological dependency on the batterer. In some cases, this is undoubtedly true. A study conducted in Indianapolis in the 1980s found that women who initiated a prosecution but then had the charges dropped were at greater risk of subsequent domestic assault than women in a no-drop prosecution category. (However, the women at lowest risk of re-abuse were ones who had the option of not prosecuting but chose to press charges.) In some cases, no-drop prosecution relying on such innovative methods as contemporaneous photographs of injuries or records of the victim's initial statement at the time of the assault may be an effective strategy to combat domestic violence.³⁵

But, as always, the reality of domestic violence is highly complex. Some battered women believe, rightly or wrongly, that they are able to resolve their own problems in the relationship. Sometimes, the incident may be genuinely trivial. Sometimes, the accusation is false, made in anger, and later regretted. Sometimes the "reluctant victim" may truthfully insist that *she* was the aggressor.

The strangest case of this kind unfolded in St. Paul, Minnesota, in 1994. Jeanne Chacon, an attorney, called the police and accused her fiancé, law professor Peter Erlinder, of assaulting her. Several days later, she told the authorities a very different story: she explained that she had been prone to violent outbursts since her childhood (Chacon had been a victim of child abuse), and that she had lashed out at Erlinder who had merely tried to restrain her, using a holding technique her own therapists had suggested. This was confirmed by the therapists. Chacon tried not only to get the charges dropped but to represent Erlinder in court. Before the case went to trial, she attacked Erlinder so violently that he had to seek medical attention. Erlinder was acquitted. Chacon later told a reporter that she felt "battered by the prosecution."³⁶

In 1993, James Dolan, first justice of the Dorchester District Court in Massachusetts, warned that "the system itself may be engaged in a subtle form of abuse by denying women the right to continue a relationship without submitting to the authority of the court." Some victims may be so clearly in danger and so obviously irrational in their desire to continue in the abusive relationship that it may be appropriate for the system to "save them from

INDEPENDENT WOMEN'S FORUM



themselves.” However, Judge Dolan expressed the view that except for such extreme cases, the women’s wishes should be respected.³⁷

Linda Mills reports that while speaking at a 1998 conference on gender and the law, Assistance U.S. Attorney Robert Spagnoletti, chief of the Domestic Violence Unit for the District of Columbia, stated that after interviewing “tens of thousands of victims” he realized that he could not tell what the victim really wanted:

Because he could not tell which victims were intimidated and which victims made “an informed, voluntary and knowing” decision not to pursue prosecution, he concluded that a no-drop policy that did not “make any differentiation between domestic violence and any other crime” made the most sense.³⁸

However, Mills believes that such a blanket approach ignores the complex dynamics of not only violence but family life:

Unconscious of their “impulse to play God,” professionals such as police officers and prosecutors, and the mainstream feminists who promote these policies, arrogate the woman’s decision making. Paradoxically, as we have seen, mandating a response may rob a woman of the most important resource she has to counteract the violence: her personal power.³⁹

Talk of personal power may seem abstract; but taking all decision-making out of women’s hands may backfire in specific and practical ways as well.

The town of Quincy, Massachusetts, has long been regarded as a model site for domestic violence policies because of its proactive and comprehensive domestic violence programs; the U.S. Department of Justice has held it up as a model jurisdiction to be emulated by others in the implementation of VAWA. Yet a 2003 study prepared for the Justice Department by criminologists Eve Buzawa and the late Gerald Hotaling of the University of Massachusetts-Lowell identified a troubling pattern.⁴⁰ Of the women who had been victims in domestic violence cases processed by the Quincy District Court over a seven-month period, half were abused again by the same offender within the next year. However, 55 percent of the women who were re-victimized never reported the abuse to the police, prosecutors, or the courts. Women were especially likely not to report the new violent incidents if, in the original case, they had not wanted the defendant to be



DOMESTIC VIOLENCE: AN IN-DEPTH ANALYSIS

prosecuted, if they believed that the justice system should take a “more therapeutic” approach toward offenders, and if they felt that victims had no rights and no say in the criminal justice system.

Type of Victimization	Percentage		Number ^a	
	Women (n=8,000)	Men (n=8,000)	Women (100,697,000)	Men (92,748,000)
Total rape^b	17.6	3.0	17,722,672	2,782,440
Completed ^b	14.8	2.1	14,903,156	1,947,708
Attempted only ^b	2.8	0.9	2,819,516	834,732
Total physical assault^b	51.9	66.4	52,261,743	61,584,672
Threw something ^b	14.0	22.4	14,097,580	20,775,552
Pushed, grabbed, shoved ^b	30.6	43.5	30,813,282	40,345,380
Pulled hair	19.0	17.9	19,132,430	16,601,892
Slapped, hit ^b	43.0	53.7	43,299,710	49,805,676
Kicked, bit ^b	8.9	15.2	8,962,033	14,097,696
Choked, tried to drown ^b	7.7	3.9	7,753,669	3,617,172
Hit with object ^b	21.2	34.7	21,347,764	32,183,556
Beat up ^c	14.1	15.5	14,198,277	14,375,940
Threatened with gun ^b	6.2	13.1	6,243,214	12,149,988
Threatened with knife ^b	5.8	16.1	5,840,426	14,932,428
Used gun ^b	2.6	5.1	2,618,122	4,730,148
Used knife ^b	3.5	9.6	3,524,395	8,903,808
Rape and/or physical assault^b	55.0	66.8	55,383,350	61,955,664
Stalking^b	8.1	2.2	8,156,457	2,040,456
Any of the above^b	55.9	66.9	56,289,623	62,048,412

^aBased on estimates of women and men age 18 and older, U.S. Population: Wetrogan, Signe I., *Projections of the Population of States by Age, Sex, and Race: 1988 to 2010*, Current Population Reports, P25-1017, Washington, DC: U.S. Census Bureau, 1988.
^bDifferences between women and men are statistically significant: χ^2 , p -value $\leq .001$.
^cDifferences between women and men are statistically significant: χ^2 , p -value $\leq .01$.

Type of Victimization	Percentage		Number ^a	
	Women (n=8,000)	Men (n=8,000)	Women (100,697,000)	Men (92,748,000)
Rape	0.3	0.1 ^d	302,091	92,748 ^d
Physical assault ^b	1.9	3.4	1,913,243	3,153,432
Rape and/or physical assault ^b	2.1	3.5	2,114,637	3,246,180
Stalking ^b	1.0	0.4	1,006,970	370,992
Any of the above ^c	3.0	3.9	3,020,910	3,617,172

^aBased on estimates of women and men age 18 and older, U.S. Population: Wetrogan, Signe I., *Projections of the Population of States by Age, Sex, and Race: 1988 to 2010*, Current Population Reports, P25-1017, Washington, DC: U.S. Census Bureau, 1988.
^bDifferences between women and men are statistically significant: χ^2 , p -value $\leq .001$.
^cDifferences between women and men are statistically significant: χ^2 , p -value $\leq .01$.
^dRelative standard error exceeds 30 percent; statistical tests not performed.

**Findings of the National Violence Against Women Survey
U.S. Department of Justice Programs, National Institute of Justice, (Nov. 1998)**



Restraining Orders

Restraining orders or orders of protection, which typically prohibit not only harassment or abuse against the victim/plaintiff but any contact (including by mail, telephone, or through a third party), are another popular weapon against domestic violence. Laws making such orders easily available against current or former spouses or cohabitants date back to the 1970s. Most recently, many states have streamlined the process of getting an order, extended eligibility to people who had been in a relationship but had not lived together, and introduced harsh measures against violators such as warrantless arrest, pretrial detention, and stiff jail sentences. The Violence Against Women Act sought to further strengthen this safety net by requiring states to recognize and enforce protection orders issued in other jurisdictions.

A number of legal professionals and civil libertarians have argued that the current restraining order system can often result in serious violations of defendants' civil rights. In a 1993 article pointedly titled "Speaking the Unspeakable," Elaine Epstein, past president of the Massachusetts Bar Association and of the Massachusetts Women's Bar Association, wrote that the pendulum had swung too far:

The facts have become irrelevant. Everyone knows that restraining orders and orders to vacate are granted to virtually all who apply, lest anyone be blamed for an unfortunate result ... In many [divorce] cases, allegations of abuse are now used for tactical advantage.⁴¹

A temporary (emergency) restraining order can be issued *ex parte*, i.e., without the defendant being present or even notified, much less informed of the specific allegations against him or her. Within a few days, a hearing must be held on issuing a permanent restraining order (which typically lasts for a year). At this hearing, the defendant can present his or her side of the story. However, Boston attorney Miriam Altman has written that in practice, the deck is stacked heavily against him: cross-examination may be limited, normally inadmissible evidence such as hearsay may be allowed, and "the mere allegation of domestic abuse ... may shift the burden of proof to the defendant."⁴² In September 2004, the Massachusetts Supreme Judicial Court struck down a restraining order partly on the grounds that the defendant was not allowed to cross-examine the complainant or to call witnesses on his behalf.⁴³ While this ruling may affect future practices, what happened in that case was, according to many attorneys, typical of the handling of restraining orders in Massachusetts (which boasts some of the toughest domestic violence policies in the U.S.). It is noteworthy that, according to an official study,

A number of legal professionals and civil libertarians have argued that the current restraining order system can often result in serious violations of defendants' civil rights.



DOMESTIC VIOLENCE:
AN IN-DEPTH ANALYSIS

fewer than half of the restraining orders issued in the state every year involve even an *allegation* of physical abuse, and in many cases there are no accusations of verbal threats but only of verbal abuse.⁴⁴

The facts have become irrelevant. Everyone knows that restraining orders and orders to vacate are granted to virtually all who apply, lest anyone be blamed for an unfortunate result ... In many [divorce] cases, allegations of abuse are now used for tactical advantage.
-- Elaine Epstein, former President, Massachusetts Bar Association, 1993

Once the restraining order is in place, a vast range of ordinarily legal behavior... is criminalized. A defendant can be prosecuted even if the complainant agreed to meet with him, or even initiated contact.

Once the restraining order is in place, a vast range of ordinarily legal behavior, such as all contact with a former spouse or children, is criminalized. A defendant can be prosecuted even if the complainant agreed to meet with him, or even initiated contact.

These cases can be particularly wrenching when they involve divorced couples with children. In one documented case, a father of three who was never criminally charged with domestic violence but had a restraining order issued against him based on uncorroborated claims of abuse was arrested and ordered into a batterers program because he got out of his car to pet the family dogs while picking up his kids for a visit. (The restraining order required him to stay inside his car when picking up the children for visitation.) On another occasion, he violated the restraining order by returning a telephone call from his son, and was fined \$600.⁴⁵

In another case that became a *cause célèbre* for fathers' groups in Massachusetts, Harry Stewart, a lay minister in Weymouth, Mass., and a divorced father of two, was convicted of a crime because, when dropping his then-five-year-old son off after visitation, he went out of his car to open the front door of his former wife's apartment building so that the boy could come into the lobby. The restraining order against Stewart (who had no police record of assaulting his ex-wife) forbade him to exit the car near her home. In June 1999, Stewart was convicted of violating the restraining order. He got a suspended sentence conditional on completing a batterers treatment program, in which participants must sign a statement taking responsibility for their violence. That was something Stewart refused to do. On August 18, he appeared in Quincy District Court and again declared that he was not a batterer and would not enroll in any program that required him to admit to being one. He served a six-month term in the Norfolk House of Corrections.⁴⁶

INDEPENDENT WOMEN'S FORUM



In a 1999 interview, Sheara Friend, a Needham, Mass., attorney who testified before the Massachusetts Legislature in May of that year about this issue, told the author, "I don't think there's a lawyer in domestic relations in this state who doesn't feel there has been abuse of restraining orders. It's not politically correct—lawyers don't want to be pegged as being anti-abused women, but privately they agree."⁴⁷

It is difficult to tell what percentage of restraining orders are based on frivolous charges or manipulation of the system. Supporters of the existing law in Massachusetts, for instance, claim that it's only about 5 percent.⁴⁸ But even that adds up to more than 1,500 a year in Massachusetts alone. That's hardly a trifle when it's a question of people being evicted from their homes, cut off from contact with their children, sometimes jailed and acquiring the equivalent of a criminal record (their names are entered in a statewide domestic violence registry) without the safeguards of a criminal trial.

The situation in Massachusetts is not unique. In a 1996 column in *Family Advocate*, the journal of the family law section of the American Bar Association, Connecticut attorney Arnold Rutkin charged that many judges in his state approach protection orders as "a rubber-stamping exercise" and that the due process hearings held later "are usually a sham."⁴⁹

In Missouri, a survey of attorneys and judges for the Task Force on Gender and Justice in the early 1990s found many complaints that the "adult abuse" law was resulting in blatant disregard for due process and was commonly misused for "litigation strategy" and "harassment."⁵⁰

There also is some evidence to support the claims of fathers groups that courts show little regard for the civil rights of defendants when allegations of domestic abuse are involved. At a 1995 seminar for municipal judges, Judge Richard Russell of Ocean City, N.J., was caught on tape giving some startling advice:

*Your job is not to become concerned about the constitutional rights of the man that you're violating as you grant a restraining order. Throw him out on the street, give him the clothes on his back and tell him, see ya around ... The woman needs this protection because the statute granted her that protection ... They have declared domestic violence to be an evil in our society. So we don't have to worry about the rights.*⁵¹



Judge Russell's comments, printed in the *New Jersey Law Journal*, earned him only a mild reprimand from the state's Administrative Office of the Courts.⁵²

The typical response to complaints about restraining order abuse is that protecting women must be the top priority. Jean Haertl, executive director of the Massachusetts Governor's Commission on Domestic Violence, told *The Boston Herald* in 1999, "Given the number of women killed in domestic abuse cases, we have a crisis on our hands."⁵³

Balancing the rights of the accused against the safety of potential victims is always a difficult task in a free society. Yet do restraining orders actually protect women from domestic homicides? A man who is ready to kill a woman and face a murder charge (or take his own life, as often happens in such cases) is unlikely to be deterred by a charge of violating a court order. In case after case, tragically, women have been slain after taking out a restraining order, sometimes with a copy of the order of protection in their pocketbook.

A study published in 1984, by Janice Grau, Jeffrey Fagan, and Sandra Wexler, sought to evaluate the effectiveness of restraining orders in Pennsylvania. According to the study abstract, "Interviews with recipients of restraining orders suggest that the orders are generally ineffective in reducing the rate of abuse of violence. However, they were effective in reducing abuse for women with less serious histories of family violence or where the assailant was less violent in general. They were ineffective in stopping physical violence."⁵⁴

Similar results were obtained by Urban Institute scholars Adele Harrell and Barbara Smith in a study published in the 1996 book, *Do Arrests and Restraining Orders Work?* edited by Carl and Eve Buzawa. According to the authors, "Having a permanent order did not appear to deter most types of abuse. Statistical tests showed no significant differences in the three most serious types of abuse—severe violence, other forms of physical violence, and threats of property damage—between the 212 women who had a permanent restraining order and the 143 women who did not have a permanent order. The existence of a permanent order did significantly reduce the likelihood of acts of psychological abuse."⁵⁵

Considering that "psychological abuse" is often defined very broadly to include verbal putdowns and frequent criticism, these findings seem to indicate that offering restraining orders as a remedy to women in serious

Balancing the rights of the accused against the safety of potential victims is always a difficult task in a free society. Yet do restraining orders actually protect women from domestic homicides?



danger of violence or even homicide by a current or former partner is highly inadequate, and may even lull women into a false sense of security. There are also concerns that a restraining order may actually escalate the tensions in a violent relationship.

One particularly troublesome finding is contained in a 2001 report by Laura Dugan, Daniel Nagin, and Richard Rosenfeld prepared for the National Institute for Justice under a Violence Against Women Act grant, "Exposure Reduction or Backlash? The Effect of Domestic Violence Resources on Intimate Partner Homicide." After examining domestic violence policies and homicide trends in various jurisdictions, the authors note, "Increases in the willingness of prosecutors' offices to take cases of protection order violation are associated with increases in the homicide of white married intimates, black unmarried intimates, and white unmarried females."⁵⁶

Domestic homicide is a fairly rare occurrence. However, as with mandatory arrests, the restraining order system sometimes backfires against female defendants. (At present, 15 to 20 percent of restraining orders are issued against women.) One example of this occurred in a New Jersey case that prompted the appellate courts to place some curbs on the issuance of restraining order in the absence of violence or threats of violence. The defendant had a restraining order taken out against her because she vocally disapproved of her estranged husband's cohabitation with a girlfriend. She violated the order by berating him during a visitation exchange for bringing "that slut" to a birthday party for one of the children. For this offense, she was sentenced to six months probation and a term of community service.⁵⁷

Finally, in some cases, abusive men have obtained restraining orders against their victims as a form of harassment. In 1995 in Sommerville, Mass., Stephen Gruning broke into the apartment of his former girlfriend Rhonda Stuart and fatally shot her, her brother, and her new boyfriend in a jealous rage. Shortly after the tragedy it was revealed that Gruning had previously obtained two temporary restraining orders against Stuart after accusing her of harassment and abuse. Ironically, on that occasion, battered women's advocates pointed out that temporary restraining orders were very easy to get "regardless of the facts," and could be easily used as a "coercive tool."⁵⁸

Batterer Intervention and Victim Counseling

In addition to the punitive response to domestic violence, recent proactive policies have emphasized batterer treatment. Such treatment

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programs first appeared in the 1970s; a model program, the Duluth Domestic Abuse Intervention Project (DAIP), was set up in Duluth, Minnesota, in 1980 and served as a model for many subsequent programs that proliferated in the 1980s. In a large percentage of domestic violence cases (whether assaults or restraining order violations), batterer treatment is now used as an alternative to incarceration and is made a condition of probation.

At least in theory, this policy is commendable. Researchers, advocates, and professionals who work with abuse victims typically note that the majority of women do not want the relationship to end; rather, they want the abuse to stop. Thus, effective treatment for batterers, preferably coupled with counseling for the victims, would seem like a salutary approach. Nonetheless, the efficacy of these programs has been repeatedly called into question. Some of the findings on the subject are reviewed by Katherine van Wormer, professor of social work at the University of Northern Iowa, and clinical social worker Susan G. Bednar in a 2002 article in *Families in Society: The Journal of Contemporary Human Services*. Van Wormer and Bednar report that a 1987 evaluation found significant reductions in abuse in the first three months of the abuser's participation in the program, and some reductions over a one-year period. A later study which reviewed the records of 100 former program participants over a five-year period found a 40 percent recidivism rate. It is worth noting that at least one study cited above found that 60 to 70 percent of domestic violence offenders did not re-offend regardless of criminal justice intervention.⁵⁹

Van Wormer and Bednar also cite a 1991 survey of 76 shelters for battered women on the effects of batterers' programs. While 55 percent of shelter workers responding to the survey believed that there had been a drop in violence due to these programs, 42 percent said that they had noticed no change, and 4 percent actually reported higher levels of violence. The findings on emotional abuse were even more startling: only 12 percent of the respondents reported a decrease in emotional abuse toward the women following the men's participation in batterers' programs, while 46 percent saw no impact in this area and 42 percent reported an increase in such behavior. A more recent survey of battered women themselves likewise yielded mixed results in their assessment of batterers' treatment, with a small minority (nearly 10 percent) feeling that their abusive partner's participation in such a program had been harmful and the rest divided equally between those who believed it had been helpful and those who felt it had had no effect.

Like the battered women's advocacy groups to which they have close ties, the batterers' treatment programs are rooted in feminist ideology.



Typically, they embrace the feminist model which regards battering as a pattern of “coercive control” and of male domination of women, postulating that, as the founder of one such program states, “Battering is the natural outgrowth of patriarchal values.”⁶⁰ In such programs, other factors that contribute to violence, from psychological, mental, and emotional disorders to drug and alcohol abuse to a dysfunctional family dynamic involving both partners, are at best relegated to the back burner and at worst unmentionable. The focus is on “education” that challenges male power and male privilege. Summarizing reports from proponents of the Duluth mode, Van Wormer and Bednar write:

Although it is acknowledged that men enter the program with differing backgrounds, problems, and circumstances, and therefore differing accounts of their battering, it is presumed that the central issue is always the use of abusive tactics to gain power and control. The facilitators are expected to avoid getting sidetracked by discussion of participants' personal problems, and to maintain a continuous focus on power and control tactics, and methods for changing them. The intent to control is presumed to be present in all participants, and denial and minimization are expected behaviors. The facilitators must therefore be prepared to engage in frequent and possibly almost continuous confrontation.⁶¹

The focus on “power and control” and even on male privilege may be the right approach for some abusive men. Yet, as we have seen, the reality of domestic violence is far more varied and complex. Indeed, in recent years, some people who have worked within Duluth-style programs for years, and even some people who helped design this model, have rather candidly admitted the limitations of this approach.

Ellen Pence, one of the creators of the Duluth program, wrote in 1999:

By determining that the need or desire for power was the motivating force behind battering, we created a conceptual framework that, in fact, did not fit the lived experience of many of the men and women we were working with. The DAIP staff ... remained undaunted by the difference in our theory and the actual experiences of those we were working with.

... It was the cases themselves that created the chink in each of our theoretical suits of armor. Speaking for myself, I found that many of the men I interviewed did not seem to articulate a desire for power

Like the battered women's advocacy groups to which they have close ties, the batterers' treatment programs are rooted in feminist orthodoxy.



DOMESTIC VIOLENCE: AN IN-DEPTH ANALYSIS

over their partner. Although I relentlessly took every opportunity to point out to men in the groups that they were so motivated and merely in denial, the fact that few men ever articulated such a desire went unnoticed by me and many of my coworkers. Eventually, we realized that we were finding what we had already predetermined to find. ... [W]e had to start explaining women's violence toward their partners, lesbian violence, and the violence of men who did not like what they were doing.⁶²

Similar themes about the conflict between ideology and reality were echoed by Susan Bednar, who wrote about her experience of running a group for men court-ordered into batterers' treatment:

The men felt victimized in a multitude of ways. From their perspective: Their partners had been violent or emotionally abusive; the police had been brutal and the system corrupt; being arrested and jailed was humiliating and the label of "batterer" a personal affront. These men didn't see themselves as dominating others, but wanted to be able to control their own lives. Everything and everybody around them seemed determined to take that control away from them. Often this process seemed to start in their own childhoods, when they themselves were abused, or when they witnessed their fathers abuse their mothers. No one protected them then, and they learned to protect themselves. The only feeling states they described besides "angry" were things like "kind of OK," or "all right, I guess." Nearly all had a history of substance abuse, and many perceived this as part of their problem.⁶³

The critique of the ideological limitations of the pro-feminist approach to batterers' treatment has been echoed by Fernando Mederos, a prominent domestic violence consultant who has been working with abusive men since 1980 and was the co-founder and first director of EMERGE, a batterers' program in Massachusetts. In a 1999 essay, Mederos—who himself shares many of the political and philosophical assumptions of the feminist groups—asserts that “[c]arefully-thought out concurrent treatment for substance abuse is a rarity rather than the rule in the batterer intervention establishment.” According to him, “programs are structured with the assumption that all offenders are similar psychologically or that psychological differences between physically abusive men are not significant when it comes to appropriate intervention,” and that a dismissive attitude prevails toward group mental health work.⁶⁴

INDEPENDENT WOMEN'S FORUM



Another flaw identified by critics is that the pro-feminist groups tend to take an extremely negative view of all traditional masculinity, regarding it as inherently oppressive and patriarchal. Mederos notes, “Few programs have explored men's ideals of manhood and masculinity to help them develop new, nonabusive models of manhood.”⁶⁵

Despite these critiques from within the movement, there is little evidence that batterers' treatment programs are moving away from feminist orthodoxy. While many programs incorporate some elements of other models such as cognitive therapy, an emphasis on the analysis of battering as a pattern of “coercive control” and on reforming sexist attitudes remains central. What's more, the dominance of the feminist model in the treatment field is enshrined in many states through government policies. The majority of states today have guidelines on the certification of programs into which the courts may direct domestic violence offenders. In at least 20 states and many smaller jurisdictions, the certification requirements explicitly and specifically include compliance with the feminist model (a 1998 review of 31 sets of standards currently in use in the U.S. found that “patriarchy is often cited causing and/or maintaining men's violence against women) or more specifically with the Duluth model.⁶⁶ Often, the guidelines also require that the programs be monitored and evaluated by battered women's advocates. Methods that are considered ideologically suspect by the advocates, such as joint counseling for couples in violent relationships, are rejected outright while other approaches such as substance abuse treatment is de-emphasized.

For instance, the Massachusetts guidelines state:

While the following methods may, from time to time, be incorporated into an intervention model that focuses on power and control in relationships, they are inadequate and inappropriate for batterer intervention if they stand alone as the focus of intervention:

- A. Psychodynamic individual or group therapy which centers causality of the violence in the past;*
- B. Communication enhancement or anger management techniques which lay primary causality on anger;*
- C. Systems theory approaches which treat the violence as a mutually circular process, blaming the victim;*

Another flaw identified by critics is that the pro-feminist groups tend to take an extremely negative view of all traditional masculinity, regarding it as inherently oppressive and patriarchal.



DOMESTIC VIOLENCE:
AN IN-DEPTH ANALYSIS

D. Addiction counseling models which identify the violence as an addiction and the victim and children as enabling or co-dependent in the violent drama;

E. Family therapy or counseling which places the responsibility for adult behavior on the children;

F. Gradual containment and de-escalation of violence;

G. Theories or techniques which identify poor impulse control as the primary cause of the violence;

H. Methods which identify psychopathology on either parties' part as a primary cause of violence;

I. Fair fighting techniques, getting in touch with emotions or alternatives to violence.⁶⁷

The guidelines also reject outright the idea of couples counseling as a component of batterers' intervention and state that joint counseling should not be permitted until there has been no violence for a minimum of nine months.

While there is little solid research on the comparative effectiveness of different types of domestic violence intervention (and in some areas such as joint counseling, research is inhibited by political orthodoxy), many mental health and social work professionals believe that ideological dogmatism in batterer intervention is harmful to all involved. A 1998 National Institute for Justice study on batterer intervention notes that "restrictions on couples therapy and individual psychotherapy for battering are a point of contention between feminist-oriented batterer intervention providers and mental health providers in many communities."⁶⁸

In 1997, an article in the Silicon Valley weekly, *Metro*, explored the change in local domestic violence programs in Santa Clara County as a result of pressure from the feminist establishment. Author Amy Chen Mills concluded that "legislators have heeded the call of battered women's advocates and are enforcing this newly emerging [feminist] model on a public which knows little, if anything, about it." Mills described several programs which had been decertified for non-compliance with the county guidelines, such as "A Men's Group," a San Jose-based group run by therapist Pat Cibart which shut down several months after losing its certification in July 1997. Cibart described the certification process as "confusing and ideological." The

INDEPENDENT WOMEN'S FORUM



certification committee member who gave her a failing grade found fault with the following aspects of her program:

*Not much acknowledgment of gender role conditioning nor of male dominance. ... The talk on power seemed much more gender-neutral. Facilitator stated that women bring their own, different power/hierarchy or equal power over men based on gender. Also mentioned that power shifted back and forth between men and women rather than men holding constant power over their partners. ... Facilitators laughing and joking ... seemed to collude with lessening the seriousness of some of the discussion.*⁶⁹

In many cases, radical feminist ideology also pervades services for victims at battered women's shelters and in other programs for abused women. A nationwide survey of shelters in 1988 found that about half stressed feminist political activism over assisting women. That was probably a conservative estimate, since 40 percent of the survey forms were not returned, and the more radical organizations, wary of cooperating with researchers, may have been underrepresented among the respondents.⁷⁰

Virginia Goldner, a senior faculty member at the Ackerman Institute for Family Therapy in New York who sympathizes with the feminist struggle against "dominant patriarchal social norms," has nonetheless voiced concern that the orthodoxy of the battered women's movement, with its us-versus-them view of male violence and its denial of female aggression, may do damage to women. In a 1992 article, Goldner wrote that "conveying women as the guardians of goodness and men as the purveyors of badness" is bad for women, if only because no one quite knows what to do with "violent, angry and irresponsible women."⁷¹

Ellen Pence of the Duluth Domestic Abuse Intervention Project concedes that in their zeal to counter negative stereotypes of women, many battered women's advocates have fallen into the trap of a "women are saints" mentality: "In many ways, we turned a blind eye to many women's use of violence, their drug use and alcoholism, and their often harsh and violent treatment of their children."⁷² Abused lesbians have been the most obvious victims of the battered women's movement's reluctance to confront female violence, which has begun to change only in the past few years. Among heterosexual women, women who are abusive toward their spouses or children, or involved in mutually violent relationships, are unlikely to benefit from interventions that encourage them to see themselves solely as victims.

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In some cases, the tendency to see women as victims persists even when the criminal justice system classifies a woman as the offender.

In some cases, the tendency to see women as victims persists even when the criminal justice system classifies a woman as the offender. In one 1994 New Jersey case on file with the author, a woman who was ordered out of her house after being arrested for assaulting her estranged husband was able to move into a battered women's shelter. Later, two staffers of the Jersey Battered Women's Service wrote to her divorce attorney to confirm that she had been the abused partner. The letter quite accurately described the circumstances of the wife's arrest: during an argument, "Mrs. C. grabbed Mr. C. by his necktie [and] he pushed her away. Mrs. C. then punched his face and her nail cut his neck." This was described, however, as an instance of "physical abuse" by the husband.⁷³

Even non-violent women in abusive relationships may be ill-served by politicized counseling programs. Goldner tells the story of a client who had suffered violence at the hands of her husband. After a couples therapy (joint counseling) program, the violence ended. The woman, however, decided to join a support group at a battered women's shelter for "insurance" and companionship. When she came back several months later, she disclosed that her emotional state had worsened since joining the group, because "everyone was supposed to hate the men, and want to leave them." The woman was "confused and ashamed about not feeling that way." Those feelings were exacerbated by the fact that the group frowned on couples therapy, making the woman feel that her successful experience with it was a shameful secret.⁷⁴

In recent years, the domestic violence advocacy community has somewhat broadened its perspective to include "non-traditional" victims and perpetrators of domestic violence. Partly, this has happened thanks to the efforts of a few organizations that have promoted a better understanding of such issues as gay victimization, female violence, and gay and lesbian abuse without using polarizing anti-feminist rhetoric (as many "men's rights" groups have done) or attacking the positive gains of the battered women's movement. Foremost among these is SAFE (Stop Abuse for Everyone), a national group which includes social workers, psychologists, attorneys, academics, and victim services advocates, and which aims to serve all underserved victim populations. SAFE is now listed as a resource by the National Crime Prevention Council, and its brochure for abused men has been mentioned by the nationally syndicated advice columnist "Dear Abby." The Battered Men's Helpline in Maine has also received positive attention from the press.⁷⁵

One sign of change could be noted in Massachusetts in October 2002. For the first time, male victims were included in the vigil for domestic violence victims murdered in the state during the previous year, held as part of



INDEPENDENT WOMEN'S FORUM

Domestic Violence Awareness Month. (Three of the 15 victims commemorated at the vigil were male.)⁷⁶ At the same time in Portland, Maine, a photography exhibit by victim advocate Donna Galluzzo, "A Celebration of Surviving: Celebrating the Strength, Success and Diversity of Survivors of Domestic Violence," featured photographs not only of women battered by men but also of lesbians and gay men who had been abused by their partners.⁷⁷

On a more practical level, more domestic violence agencies have begun to provide services to male victims, such as support groups, legal aid and advice, and sometimes vouchers for hotels in lieu of shelter space. Many agencies and programs have also made an effort to include mention of abused men in their print and online literature. Jan Brown, co-founder of the Battered Men's Helpline, reports that while compiling a database of domestic violence programs that help men, she sent out queries to hundreds of agencies and received replies from about 110, of which only four said they provided no assistance to male victims. However, given the fairly low response rate, it's difficult to judge how representative her sample was (presumably, agencies providing no assistance to male victims may have been more reluctant to respond).⁷⁸

In recent years, a number of programs have changed their names to reflect this more inclusive approach. Thus, in October 2004 in South Kingstown, Rhode Island, the Women's Resource of South County became the Domestic Violence Resource Center of South County, to better reflect the range of services it provides. The center's executive director, Mary Roda, told *The Providence Journal* that the center's work had shifted from an exclusive focus on women to an understanding that family violence also affects teenagers, gay and lesbian couples, elders abused by adult caregivers, and men. According to Kim Stowell, director of public relations and community services for the center, men had accounted for about one-fifth of the victims served by the center in the preceding year.⁷⁹

Stanley Green, a victim services advocate who has worked to bring public attention to the plight of male victims of abuse, asserts that today, compared to a few years ago, "Overall, battered women's advocates are *much* more receptive to considering males as victims." In addition to a shift toward more gender-neutral agency names, Green notes that "major conferences, including that of the Family Violence and Sexual Assault Institute (which rejected proposals for papers addressing female aggression and male victimization as recently as 2001) are including more sessions on non-mainstream views on intimate partner violence."⁸⁰ Harry Crouch, an activist



DOMESTIC VIOLENCE: AN IN-DEPTH ANALYSIS

with the Los Angeles chapter of the National Coalition of Free Men, who became a member of the San Diego Domestic Violence Council in 2002, reports that he has been very successful in promoting gender-inclusive materials such as public service announcements, posters, and brochures. He has also been invited to conduct training on male victims and gender inclusiveness for the Los Angeles County Probation Office, for the San Diego Office of Crime Prevention, and for clergy working with abuse victims.⁸¹

Along with change, however, there has been resistance. Even as domestic violence activists in Massachusetts commemorated both male and female murder victims at the 2002 vigil, some of them also stressed that this did not represent an overall shift in perspective. Speaking to *The Boston Globe*, Nancy Scannell, legislative director of the domestic violence coalition Jane Doe Inc., cautioned that the recognition that men are sometimes victimized did not change the organization's basic outlook on the causes and nature of domestic violence: "It happens because of sexism and power and control of men over women in our society."⁸² In May 2003 in Cecil County, Maryland, Domestic Violence Rape Crisis Center coordinator Karen Dunne and four other staff members walked out of a meeting of the Family Violence Coordinating Council of Cecil County to protest the video presentation of an ABC 20/20 segment about women who abuse men, a material they termed "melodramatic" and "sensationalist."⁸³

In late 2004, the question of whether attitudes toward abused men were changing in the domestic violence community was raised on the SAFE mailing list (safe-newsviews@safe4all.org). The overall consensus was that a great deal of positive change has taken place in recent years, but there remains within the domestic violence community a great deal of skepticism and even hostility toward the recognition of abusive women and of male victims. A Santa Clara, California, woman wrote:

I can't speak to the situation 5 or 10 years ago as I have only been working in [domestic violence] for about a year and a half, but I do know that there is currently resistance. I recently started a support group for male survivors after having several individual male clients who had trouble finding services. They often were disbelieved by police and by domestic violence agencies they called looking for help.

I suppose the fact that we have a support group for males now shows a change in the attitude toward male victims here. The agency I work for has, as a majority, been supportive. However, I have been met with skepticism from several co-workers and others in the community



*in regards to the work I am doing. There is still a lot of work to be done in raising awareness and developing gender-neutral services.*⁸⁴

Another list member, a man who works with a domestic violence agency in the state of Washington, wrote that “things are definitely changing, but the fundamental change that needs to be made is still far away.” In his experience, the domestic violence community is growing more open to the idea of male victims and even to the use of gender-neutral language, but “most of that is surface change—there still is no serious outreach program for male victims, for example.” He suggests that real change will take place only when domestic violence programs are removed from the control of politicized feminist groups and turned over to health and human services agencies. In this man’s view, “We need a very serious, critical, outside review of the domestic violence industry and a lot of fundamental change.”⁸⁵

What’s more, greater acceptance and inclusion of male victims, gay and lesbian victims, and other “nontraditional” victims of domestic violence addresses only one of the limitations of the battered women’s movement. Other needed changes include the recognition of mutual abuse as a large part of the domestic violence problem, a better understanding of the role of substance abuse and psychopathology as contributing factors, and more alternatives to today’s law enforcement-oriented solutions.

Family Violence: New Visions, New Solutions

A great deal has been accomplished over the past 30 years in making domestic violence a national issue and bringing it to the forefront of America’s attention. This might well have been impossible without the feminist zeal of the battered women’s movement, whose militancy helped shatter the wall of secrecy and neglect that too often surrounded violence in the home. Virginia Goldner, the therapist whose misgivings about the orthodoxy of the battered women’s movement was cited above, also writes that for many women in severely abusive relationships, “the ideological purity and righteous indignation of the battered women’s movement is all that protects them from being pulled back in the swamp of abuse.”⁸⁶ Perhaps such ideological purity and righteous zeal were also necessary, early on, for American society to start pulling out of the swamp of apathy toward family violence. Given women’s greater risk for domestic violence victimization, and the sexist attitudes that were still prevalent when the battered women’s movement got off the ground, it was understandable that the initial focus of the effort to combat domestic violence would be on women as victims.

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Another troubling aspect of VAWA is that it creates a symbiotic relationship between the federal government and the battered women's advocacy movement, which is dominated or at least heavily influenced by radical feminist ideology..

The battered women's advocates' greatest triumph came in 1994 with the passage of the Violence Against Women Act. Co-sponsored by Sen. Joseph Biden (D-Delaware) and Sen. Orrin Hatch (R-Utah), the bill had broad bipartisan support when it was passed, and most of its backers undoubtedly saw it as a practical measure and a moral imperative rather than an ideological crusade. VAWA and its successor, the Violence Against Women Act of 2000, contained many positive practical measures in the area of victim services and criminal justice—for instance, making restraining orders issued in one state enforceable in another, or making it possible to bring federal charges against abusers who cross state lines to stalk or assault their victims. It also encouraged some solid research on domestic violence, sexual assault, victim services, and related issues.

However, VAWA has also helped enshrine the dogmatic and one-sided approach to domestic violence described in this report: the unrealistic assumption that in every domestic violence situation there is a clear-cut and usually gender-based distinction between abuser and victim, the almost exclusive reliance on criminal justice measures, the substitution of dogmatic feminist “reeducation” for interventions that address the specific problems of individuals and families. Another troubling aspect of VAWA is that it creates a symbiotic relationship between the federal government and the battered women's advocacy movement, which is dominated or at least heavily influenced by radical feminist ideology. (Such a nexus also exists on the state level.) The state coalitions against domestic violence, which formally require their member organizations to embrace the feminist analysis of abuse as sexist coercion, play a vital role in the allocation of VAWA grants and in overseeing the implementation of VAWA-based programs and policies. At a 1998 symposium on VAWA at the New York Bar Association, Andrea Williams, a staff attorney with the National Organization for Women Legal Defense and Education Fund, proudly declared that “VAWA is the advocates' bill.”⁸⁷

The evolving understanding of domestic violence, based on 30 years of research and policy experiments, should incorporate aspects of the feminist analysis but also embrace a broader and more nuanced view of the realities of family violence. This new vision is already being advanced by a growing number of women and men, from researchers to shelter workers, law enforcement representatives, and mental health or social work professionals who are moving beyond simplistic slogans and gender polarization. The orthodoxy of the battered women's movement is on its way to becoming outmoded—yet at the moment, much of it is entrenched in American public policy.



Here are some of the steps that could move us forward from this point.

- 1. Arrest and prosecution:** Appropriately, our society now views domestic violence as a crime, not a private matter. However, if in the past battering was often treated as a family squabble, current law often treats every family squabble as battering. Instead of a blanket one-size-fits-all approach, there needs to be more differentiation between serious and potentially dangerous cases, and one in which one spouse grabs the other's arm during an argument. More studies are needed on the enforcement and the consequences of mandatory or presumptive arrest policies. Anti-dual-arrest clauses, which often serve as vehicles for gender bias, should be repealed and it should be left to the discretion of the police officers (as it already is in stranger assault cases) to decide whether there is one primary aggressor, or both parties are at fault. Unless the victim is in danger or has suffered serious injury, her or his wishes not to prosecute should be respected.
- 2. Restraining orders/orders of protection:** Restraining orders seem to be of some use in protecting people from non-violent harassment. However, their issuance and enforcement has troubling implications for civil liberties, and more steps need to be taken to ensure that restraining orders are not used as a weapon in divorce/child custody cases. One solution would be an expedited evidentiary hearing soon after a restraining order is issued. Furthermore, domestic violence victims need to be educated about the fact that a restraining order is unlikely to stop a truly dangerous batterer. In extreme cases, criminologist Lawrence Sherman has suggested the equivalent of the "witness protection program"—state-subsidized relocation and resettlement under a new name—for victims who fear for their lives once the abuser is released from jail.⁸⁸ Another possibility that should be considered is civil detention for some abusers after they have served a jail or prison sentence (akin to the current practice of civil detention for dangerous sex offenders), if a review determines that they pose a danger to their victims. However, if such a remedy is introduced, it should be used very cautiously and sparingly because of obvious potential civil rights problems.
- 3. Batterer treatment and victim counseling.** A major review and overhaul of state guidelines for batterer treatment programs is in order. Political orthodoxy should not be allowed to dictate appropriate methods of counseling, nor can a single counseling model be appropriate for everyone. Thus, for some batterers, violent behavior



may well be an outgrowth of the patriarchal belief that a husband should not allow his wife to “get out of line”—but many others do not fit that profile. Court-certified abusers’ programs should rely on a variety of approaches including anger management, substance abuse and mental health treatments, couples counseling, and individual counseling that avoids the confrontational ideological approach of the strict feminist model. Advocacy groups should not have a central role in determining and enforcing the standards for batterers’ programs; instead, in trying to find the best approach, states should draw on a diverse community of scholars, mental health professionals, social workers, family counselors, and activists.

4. The relationship between the government and advocacy groups.

The close relationship between the federal government (and state governments) and state domestic violence coalitions and other politically militant advocacy groups raises troubling questions about the state subsidizing radical ideologies. The advocacy groups should obviously have a say in shaping domestic violence policy, but not an exclusive one. The next version of the Violence Against Women Act should direct each state to create a domestic violence board on which no more than a quarter or a third of the seats can be filled by members of battered women’s advocacy groups. The rest should be filled by scholars, mental health professionals, community activists, etc. These boards should take over the present functions of state domestic violence coalitions in adding their input to domestic violence programs.

Domestic violence may never be eradicated completely. However, good policies can reduce its incidence and mitigate its harm. Taking the plight of battered women seriously was a necessary first step. Taking a realistic and balanced view of the problem is the new challenge.

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**DOMESTIC VIOLENCE:
AN IN-DEPTH ANALYSIS**

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**DOMESTIC VIOLENCE:
AN IN-DEPTH ANALYSIS**

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⁸⁴ Post to safe-newsviews@safe4all.org, October 19, 2004.

⁸⁵ Post to safe-newsviews@safe4all.org, October 20, 2004.

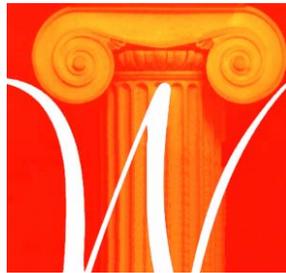
⁸⁶ Goldner, "Making Room for Both/And," p. 60.

⁸⁷ Author's notes.

⁸⁸ Sherman, *Policing Domestic Violence*, p. 244.

ABOUT IWF

The Independent Women's Forum, founded in 1992, is a nonprofit, nonpartisan, educational organization. IWF provides a voice for women who believe in individual freedom and personal responsibility, and who embrace common sense over divisive ideology.



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