Responding to Domestic Violence

5 Edition
To the millions who endure and survive and to those who protect and support.
Responding to Domestic Violence

The Integration of Criminal Justice and Human Services

5 Edition

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Brief Contents

1. Acknowledgments
2. Chapter 1 Introduction: The Role and Context of Agency Responses to Domestic Violence
3. PART I. What Is Domestic Violence?
   1. Chapter 2 The Nature and Extent of Domestic Violence
   2. Chapter 3 Matters of History, Faith, and Society
   3. Chapter 4 Theoretical Explanations for Domestic Violence
4. PART II. The Criminal Justice Response
   1. Chapter 5 Selective Screening: Barriers to Intervention
   2. Chapter 6 The Impetus for Change
   3. Chapter 7 Policing Domestic Violence
   4. Chapter 8 Prosecuting Domestic Violence: The Journey From a Roadblock to a Change Agent
   5. Chapter 9 The Role of Restraining Orders
   6. Chapter 10 The Judicial Response
5. PART III. The Societal Response
   1. Chapter 11 Mandated Institutional Change
   2. Chapter 12 Community-Based and Court-Sponsored Diversions
   3. Chapter 13 Domestic Violence, Health, and the Health System Response
   5. Chapter 15 Conclusion: Toward the Prevention of Domestic Violence: Challenges and Opportunities
6. References
7. Index
8. About the Authors
Detailed Contents

Acknowledgments
Chapter 1 Introduction: The Role and Context of Agency Responses to Domestic Violence
   Chapter Overview
   The Domestic Violence Revolution: Taking Stock
   Is the Domestic Violence Revolution a Success?
   The Challenges Before Us
   Challenges to a Criminal Justice Approach
       Should Criminal Justice Intervention Be Victim-Centered?
   The Evolution of This Text
   Organization of This Edition
   Conclusion

PART I. What Is Domestic Violence?
Chapter 2 The Nature and Extent of Domestic Violence
   Chapter Overview
   The Nature and Extent of Domestic Violence
       Official Domestic Violence Data Sources
       Unofficial Survey Data
   Controversies Over Definitions
       Statutorily Defined Relationships
   Domestic Violence Offenses
       Stalking as Coercive Control
   Who Are the Victims?
       The Role of Gender
       Same-Sex Domestic Violence
       Age
       Marital Status
       Socioeconomic Status
       Racial and Ethnic Variations
   The Impact of Domestic Violence
       Injuries
       Psychological and Quality-of-Life Effects on Victims
       Monetary Costs
       Domestic Violence in the Workplace
Who Is Most at Risk of Battering?

Biology and Abuse: Are Some Batterers “Pre-Wired” for Abuse?

A Question of the Mind?

Biological- and Psychological-Based Fear and Anxiety

Can Psychology Explain Domestic Abuse?

Personality Disorders and Mental Illness

Anger Control and the Failure to Communicate

Low Self-Esteem

Conflict Resolution Capabilities and the Failure to Communicate

“Immature” Personality

Is Substance Abuse the Linkage Among Sociobiological, Psychological, and Sociological Theories?

Are Certain Families Violent?

Social Control—Exchange of Violence

Family-Based Theories

The Violent Family

Learning Theory

Is Domestic Violence an Intergenerational Problem?

Sociodemographic Correlates of Violence and Underserved Populations

Poverty and Unemployment

Ethnicity and Domestic Violence

Domestic Violence in the African American Community

Native Americans

Coercive Control

The Limits of Equating Partner Abuse With Domestic Violence

The Theory of Coercive Control

The Technology of Coercive Control

Coercion

Violence

The Continuum of Sexual Coercion

Intimidation

Surveillance

Degradation
Control
Isolation
The Materiality of Control
Coercive Control and Risk of Fatality
Implications of Coercive Control for Changing Policy and Practice
Summary
Discussion Questions

PART II. The Criminal Justice Response
Chapter 5 Selective Screening: Barriers to Intervention
Chapter Overview
Victim Case Screening
The Failure to Report Crime
Who Reports and Who Does Not
Why Has Victim Reporting Increased?
Does Social Class Affect the Decision to Report?
Bystander Screening
The Police Response
Police Screening
Why Police Did Not Historically Consider Domestic Abuse “Real” Policing
Organizational Disincentives
Are Domestic Violence Calls Extraordinarily Dangerous to the Police?
Structural Impediments to Police Action
The Classical Bias Against Arrest
Prosecutorial Screening Prior to Adjudication
Traditional Patterns of Nonintervention by Prosecutors
Prosecutorial Autonomy
The Reality of Budgetary Pressures
Prioritizing Prosecutorial Efforts to Targeted Offenses
The Impact of These Constraints on the Prosecutorial Response
Unique Factors Limiting Prosecutorial Effectiveness
Screening as a Result of Organizational Incentives
Case Attrition by Victims: Self-Doubts and the Complexity of Motivation
Felony
Who Called the Police?
Presence of Weapons
Incident Injuries
Presence of Children
Existence of a Formal Marital Relationship
Perceived Mitigating Circumstances

Victim-Specific Variables in the Arrest Decision

Victim Preferences
Victim Behavior and Demeanor
Victim Lifestyle
Police Perception of Violence as Part of Victim’s Lifestyle
Sex of the Victim and Offender: A Changing Story?
Increased Female Arrests

Offender-Specific Variables in the Decision to Arrest

Criminal History
Offender Behavior and Demeanor

Variations Within Police Departments

Gender Differences
Officer Age and Arrest
Officer Race
Organizational Priorities
Dedicated Domestic Violence Units and Arrests

Community Characteristics

Urban–Rural Variations

The Controversy Over Mandatory Arrest

Advantages for Victims
Societal Reasons Favoring Mandatory Arrest Practices
Controversies Regarding Mandatory Arrest
Have Increased Arrests Suppressed Domestic Violence?
The Costs and Unintended Consequences of Arrest
The “Widening Net” of Domestic Violence Arrest Practices
Unanticipated Costs of Arrest to the Victim
Arrests and Minority Populations: A Special Case?

The Role of Victim Satisfaction in Reporting Revictimization
Chapter 8 Prosecuting Domestic Violence: The Journey From a Roadblock to a Change Agent

Chapter Overview

The Varied Reasons for Case Attrition
  Case Attrition by Victims
  Self-Doubts and the Complexity of Motivation: Changes in Victim Attitudes During the Life Course of a Violent Relationship
  Traditional Agency Attitudes Toward Prosecution and Case Screening
  The Role of Victim Behavior and Motivation in the Decision to Prosecute
  Prosecutorial Assessment of Offender Likely to Recidivate
  Organizational Factors Within Prosecutor’s Offices That Affect Prosecution Decisions
  Imposing Procedural Barriers: Why the System Encouraged Victims to Abandon Prosecution
  How Did Prosecutor Offices Initially Respond to New Pro-Arrest Policies?

The Changing Prosecutorial Response
  Have Prosecution Rates Actually Increased?
  Victim Advocates
  Potential Limits of Victim Advocates

The Impact of No-Drop Policies
  Description of No-Drop Policies
  Current Use of No-Drop Policies
Is There a Best Practice for Obtaining and Enforcing Restraining Orders?

More Potential Enhancements to Restraining Orders

Summary

Discussion Questions

Chapter 10 The Judicial Response

Chapter Overview

The Process of Measuring Judicial Change

The Judicial Role in Sentencing

Case Disposition at Trial: Variability in Judicial Sentencing Patterns

Why Does Such Variation Exist?

Sentencing Patterns for Domestic Compared With Non–Domestic Violence Offenders

Domestic Violence Courts: The Focus on Victim Needs and Offender Accountability

The Variety of Domestic Violence Courts

Types of Domestic Violence Courts

The Structure and Content of Domestic Violence Courts

The Goals of Domestic Violence Courts

What Factors Contribute to a Successful Domestic Violence Court?

Domestic Violence Courts: A Long-Term Solution?

Can a Family Court Be Effective as a Domestic Violence Court?

Innovations in New York State

Implications of the New York State Innovations

Integrated Domestic Violence Courts and Their Impact on Convictions

Summary

Discussion Questions

PART III. The Societal Response

Chapter 11 Mandated Institutional Change

Chapter Overview

State Domestic Violence–Related Laws

Early Changes in Laws

More Recent Statutory Amendments
Statutes and Policies Mandating or Preferring Arrest
Rationale for Mandating Police Arrest
Variations in Police Use of Mandatory Arrest
State Anti-Stalking and Cyberstalking Legislation
Initial Statutes
The Model Code Provisions and the Second Wave of Anti-Stalking Statutes
Recent Trends in Stalking Laws
Are Anti-Stalking Statutes Constitutional?
Gaps in Current Laws
The Federal Legislative Response
Initial Efforts
The Violence Against Women Act of 1994
The VAWA Reauthorization Act of 2000
The VAWA Reauthorization Act of 2005
The VAWA Reauthorization Act of 2013
Federal Efforts to Combat Stalking
The Affordable Care Act
Future Legislation
International Legal Reform and Human Rights
The Context for a Broader Response to Woman Abuse
Coercive Control in Europe
Broadening the Application of Human Rights Doctrine
Local Activism: Opuz v. Turkey
Addressing the Normative Gap
Turkey: An Example of Trickle-Down Reform
Reform in the UK: England and Wales
Do Organizational Policies Mediate the Impact of Mandatory and Presumptive Arrest Statutes?
Impact of Policies
The Importance of Training
Current Training
Summary
Discussion Questions
Chapter 12 Community-Based and Court-Sponsored Diversions
Chapter Overview
Restorative Justice Approaches
Domestic Violence Mediation Programs
Advantages of Mediation
Does Mediation Actually Reduce Violence?
Limits of Mediation
When and How Should Pretrial Mediation Occur?
Family Group Conferencing and Peacemaking Circles
Batterer Intervention Programs
The Role of Batterer Intervention Programs in a Divergent Offender Group
Program Characteristics
Alternatives to the Duluth Model
Advantages of Batterer Intervention Programs
Do Batterer Intervention Programs Work?
Program Completion as a Marker for Successful Outcomes
When Should Batterer Intervention Programs Be Used?
Summary
Discussion Questions
Chapter 13 Domestic Violence, Health, and the Health System Response
Chapter Overview
The Role of Health Services
The Need for and Use of Health Services by Battered Women
The Significance of Abuse for Female Trauma
The Importance of Primary Care
The Minor Nature of the Injuries Caused by Abuse
The Markers of Partner Violence in the Health System
The Frequency of Abusive Assaults
The Duration of Abuse
The Sexual Nature of Partner Violence and Coercion
The Continuum of Sexual Coercion
The Secondary Consequences of Abuse
Medical Problems
Behavioral Problems
Mental Health Problems
Battered Woman Syndrome
Post-Traumatic Stress Disorder
Explaining the Secondary Health Problems Associated With Partner Abuse

Populations at Special Risk
- Pregnant Women and Reproductive Coercion
- Women With Disabilities

Defining Woman Battering in the Health Setting
Measuring Partner Abuse: Prevalence and Incidence
Medical Neglect
Reforming the Health System
The Major Challenges Ahead: Screening and Clinical Violence Intervention

Barriers to Identification
Screening
Mandatory Reporting
Clinical Violence Intervention

Summary
Discussion Questions

Chapter 14 Domestic Violence, Children, and the Institutional Response

Chapter Overview
What About the Children?
Domestic Violence and Children’s Well-Being
- Child Abuse
- Child Sexual Abuse
- Witnessing
- Developmental Age: Special Risks to Infants and Preschool Children
- Adverse Childhood Experiences: Domestic Violence and the Developing Brain

Indirect Effects of Exposure to Domestic Violence on Children
- Separation
- Diminished Capacity for Caretaking
- Changes in Parenting
- Changes in the Victimized Parent
- Mothering Through Domestic Violence
- Perpetrator’s Use of the Child as a Tool
Acknowledgments

We would like to thank Brittany Hayes, Ph.D, Assistant Professor, College of Criminal Justice, Sam Houston State University, for providing background research on health and domestic violence.

The authors and SAGE also would like thank following reviewers:

Susan Calhoun-Stuber, Colorado State University–Pueblo
Laurie Drapela, Washington State University Vancouver
Cathy Harris, SUNY Oneonta
Jana L. Jasinski, University of Central Florida
Richarne Parkes White, MA, LPC, HSBCP
Dr. Rochelle Rowley, Emporia State University
J. J. Spurlin, Missouri Southern State University
1 Introduction The Role and Context of Agency Responses to Domestic Violence
Chapter Overview

The movement to end domestic violence in the United States began more than a century ago. In 1885, volunteers working with a coalition of women’s organizations in Chicago started a “court watch” project designed to monitor proceedings that involved female and child victims of abuse and rape. In addition to providing legal aid and personal assistance, they also sent abused women to a shelter run by the Women’s Club of Chicago, the first shelter of its kind. The Chicago initiative was short-lived, however, and the idea of using emergency housing as a first-line protection did not take hold until a May afternoon in 1972 when the first call to a shelter was made to Women’s Advocates in St. Paul, Minnesota. As recalled by Sharon Vaughan (2009), a founder of the St. Paul program and a pioneer in the battered women’s movement:

The call was . . . from Emergency Social Services. A worker said a woman was at the St. Paul Greyhound bus station with a two-year-old child. To get a job, she had traveled 150 miles from Superior, Wisconsin, with two dollars in her pocket. What were we expected to do? Where would they stay after two days at the Grand Hotel? One of the advocates borrowed a high chair and stroller and we took them to the apartment that was our office. These were the first residents we sheltered. The two-year-old destroyed the office in one night because all the papers were tacked on low shelves held up by bricks. His mother didn’t talk about being battered; she said she wanted to go to secretarial school to make a life for her and her son. She tried to get a place to live, but no one would rent to her without a deposit, which she didn’t have. . . . After a couple of weeks, she went back to Superior, and every Christmas for several years sent a card thanking Women’s Advocates for being there and enclosed $2.00, the amount she had when she came to town. (p. 3)

During the next 3 decades, the use of shelters for women escaping abusive partners became widespread in the United States and in dozens of other
countries. The shelter movement helped to stimulate a revolution in the societal response to domestic violence victims and offenders that has circled the globe, stirring women from all walks of life; of all races, religions, and ages; and in thousands of neighborhoods, to challenge men’s age-old prerogative to hurt, demean, or otherwise subjugate their female partners virtually at will. In addition to the proliferation of community-based services for victims, the revolution consists of the three other major components that are the focus of this text: (a) the criminalization of domestic violence; (b) the mobilization of a range of legal, health, and social service resources to protect abused women and their children and to arrest, sanction, and/or counsel perpetrators; and (c) the development of a vast base of knowledge describing virtually every facet of abuse and the societal response. By 2010, police in the United States were arresting more than a million offenders for domestic violence crimes annually, and shelters and related programs for battered women in more than 2,000 communities were serving more than 3 million women and children. Most of those arrested for domestic violence are male, although a large number of women also are arrested for abusing male or female partners and both partners are arrested in many cases. So-called dual arrests are a controversial practice that has stimulated much debate.
The Domestic Violence Revolution: Taking Stock

At the heart of public reforms is an ambitious conceit: that violence in intimate relationships can be significantly reduced or even ended if it is treated as criminal behavior and punished accordingly. Given this goal, it is not surprising that the societal response has rested so heavily on reforming criminal justice and legal intervention with offenders and victims. From the start, it was assumed that the primary responsibility for supporting individual victims would be borne by domestic violence organizations and other community-based services and that the role of public agencies like the police and the courts was to provide the legal framework for this support and to manage offenders through some combination of arrest, prosecution, punishment, rehabilitation, and monitoring (i.e., much in the way that other criminal populations are managed). An unfortunate side effect of the focus on individual offenders and victims is that relatively little attention has been paid to identifying and modifying the structural and cultural sources of abusive behavior. Mapping the societal response to domestic violence requires that we place the criminal justice and legal systems center stage. But it also means recognizing the limits of addressing a major societal problem like abuse with a criminal justice approach to individual wrongdoing.

Since the opening and diffusion of shelters, the policies, programs, and legal landscape affecting victims and perpetrators of partner abuse have changed dramatically. Reforms run the gamut from those designed to facilitate victim access to services or to strengthen the criminal justice response to those aimed at preventing future violence by rehabilitating offenders. A range of new protections is available for victims from civil or criminal courts. Conversely, a distinct domestic violence function has been identified in numerous justice agencies and is increasingly being carried out by specialized personnel. Examples include dedicated domestic violence prosecutors, domestic violence courts, and domestic violence police units. Complementary reforms have attempted to enhance the predictability and consistency of the justice response by restricting discretion in decisions about whether to arrest or prosecute offenders, making domestic violence a factor in decisions regarding custody or divorce, integrating the criminal and family court response to domestic violence by creating “consolidated” courts, and
constructing “one-stop” models of service delivery for victims. In hundreds of communities, once perpetrators are arrested, they are offered counseling as an alternative to jail through batterer intervention programs (BIPs). Several thousand localities now host collaborative efforts to reduce or prevent abuse in which community-based services such as shelters join with courts, law enforcement, local businesses, child protection agencies, and a range of health and other service organizations. The rationale for these reforms in the United States is straightforward: Under the Equal Protection Clause of the Fourteenth Amendment to the Constitution, women assaulted by present or former partners are entitled to the same protections as persons assaulted by strangers.

At the basis of these reforms is the hope that they will make the societal response to domestic violence more effective. But the efficacy of new laws, practices, or programs is hard to measure directly. Moreover, there is only a tenuous link between whether a program is effective and whether it receives institutional support. Legal and criminal justice agencies have a variety of interests in new policies, programs, or practices other than whether they meet the goals of protection and accountability. To win acceptance by the criminal justice or legal systems, institutional reforms must meet a variety of internal or system needs as well as satisfy public demands. These needs include facilitating an agency’s capacity to attract resources or to add personnel or to achieve greater public visibility and political support. Conversely, police and other public agencies may continue to promote programs or policies that meet these needs long after they have been proved ineffective. Understanding why the police and other justice agencies respond to domestic violence as they do means appreciating how the given practice converges with the agency’s norms, values, and system needs as well as how it is received by the public or affects the problem at hand.

This point is illustrated by the propensity for courts, police, or prosecution to develop specialized functions when confronted with high-demand problems like domestic violence. Examples of specialization in the domestic violence field include consolidated domestic violence courts as well as police teams or prosecutorial units dedicated to misdemeanor domestic violence cases. In theory, these reforms benefit victims by standardizing and streamlining arrest, processing, and case disposition. The assumption is that better
outcomes will result from case handling by more knowledgeable and experienced agents. Regardless of whether this assumption is supported by evaluation research, specialization is appealing because it serves the system maintenance functions described earlier. For example, specialization helps ration scarce resources by making expenditures on a problem predictable, attracts new resources, adds status to routine functions by reframing them as special, and helps protect other elements of the system from being overwhelmed. In the past, the large proportion of police calls involving domestic violence posed little threat to routine policing because these cases could be dismissed as “just domestics.” If they reached the courts, they received the lowest priority and were routinely dismissed. But as public pressure raised the profile of this class of criminal behaviors and agencies were held accountable for intervention, it became increasingly difficult to respond appropriately while maintaining business as usual with respect to other types of crime. Specialization has helped criminal justice and law enforcement manage this problem, albeit with added costs for administration and training. Thirty years ago, few justice officials would have openly identified themselves with domestic violence cases. Today, being an expert in this area has become an important route to promotion and professional recognition.

A major limit of services for domestic violence victims is that they are delivered piecemeal, forcing victims to negotiate for needed resources at multiple and often distal sites. Moreover, the lack of dialogue or coordination among service providers often means that systems respond in very different and even contradictory ways to victims and offenders. Common examples are cases where the child welfare system threatens to place children in foster care whose mothers continue contact with an abusive father while the custody court threatens them with contempt if they deny the father access. Furthermore, there is a growing appreciation that things can be made worse if one element of the system improves its response, but others do not. For instance, a victim’s risk of being seriously injured or killed may increase if she is encouraged to seek a protection order but police and the court fail to enforce it.

A recent round of programs has attempted to address the fragmentation and lack of coordination of services in the field as well as the obvious obstacles to
access created when victims must traverse multiple portals to get the support they need to be safe. Since the late 1990s, several thousand localities have initiated a “coordinated community response,” where shelters and a range of local agencies meet regularly to plan the local response. Meanwhile, more than 60 communities have used federal funds to support “Family Justice Centers,” a one-stop model of service delivery originally developed in Alameda County, California. These centers bring crisis intervention together in one building with medical and mental health services, legal assistance, law enforcement, and often employment help as well. Prevention, too, has commanded increased attention. In 2002, the Centers for Disease Control and Prevention (CDC) funded 14 state coalitions to implement the Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA) program, which focuses on reducing first-time perpetration by addressing the risk factors associated with domestic violence and by enhancing protective factors. A secondary effect of this initiative has been to foster evidence-based strategic planning by the state coalitions as well as closer working relationships with researchers.

The success of these efforts at coordination and planning, like the durability of programmatic reform within agencies, depends on the larger political and economic context as well as on a substantive commitment to end domestic violence. In the current climate of austerity, an ideal response would involve economies of scale, where agencies sustain cooperative work by eliminating duplication, pooling resources, and sharing personnel. Far more often, however, austerity fosters a much more short-sighted strategy in which funders home in on sustaining traditional or basic services, local agencies return to a self-protective stance of competing for scarce resources against their erstwhile partners, and policymakers redraw their priorities in response to political pressure. In this climate, cooperation and coordination are put off as desirable in the long run, but unrealistic in the near future, and whatever benefits they may have provided for victim groups can erode quickly.
Is the Domestic Violence Revolution a Success?

Never before has such an array of resources and interventions been brought to bear on abuse in relationships or families. But are these interventions effective?

By most conventional standards, the domestic violence revolution has been an unqualified success. This is true whether we look at the amount of public money directed at the problem, the degree to which politicians across a broad spectrum have embraced its core imagery of male violence and female victimization, the vast knowledge base that has accumulated about abuse, or the degree to which law and criminal justice (and, to a lesser extent, health and child welfare) have moved the heretofore low-status crime of domestic violence to the top of their agenda. Indeed, it would be hard to find another criminal activity in these last decades that has commanded anything like the resources or manpower that have flowed to law enforcement on behalf of abuse victims.

A persuasive case also could be made that the revolution has shifted the normative climate, if ever so slightly, so that partner violence has become a litmus test for the integrity of relationships. Male violence against women (as well as against other men) continues to be a media staple, as the durability of the James Bond, Rambo, Halloween, and Scream franchises illustrate. Even when a slasher takes an equal-opportunity approach to his victims (as Freddie Kruger does occasionally in the Nightmare on Elm Street movies) or violence against women is treated ironically, as it was in the Scream trilogy or I Know What You Did Last Summer and its sequel, woman-killing tends to be protracted and sexualized in ways that the killing of men is not, pointing to the underlying stereotypes perpetuated by this work (Boyle, 2005). Moreover, rape and woman-killing remain key themes in other forms of mass culture, most notably in video games (Dill, 2009) and in the brand of rap known as “gangsta rap,” which peaked in the songs of Eminem (1999–2005; Armstrong, 2009).

But if violence continues to compete with sexual conquest as the ultimate test of manhood, male violence against women has increasingly had to share the
media stage with images of women as independent actors in their own right who are equally capable of using force and of abusive men as purposeful, obsessive, and cruel. Classic cinema depicted rape victims as viragos getting their just deserts or as helpless victims of brutes who themselves could only be punished by male heroes. Starting with Thelma & Louise (1991), however, a series of films pictured women as fully capable of exacting revenge on their assailants, usually by killing them. The idea that women can be both victimized and heroic was dramatically presented in Sleeping with the Enemy, a 1991 film in which the battered wife (Julia Roberts) is stalked by, but then kills, her husband. Arguably, television has taken the lead in its willingness to provide realistic portraits of abusive men and victimized women on everything from the daytime soaps to evening dramas about hospitals (like ER), courts (The Good Wife), police (CSI), or prosecutors (Law & Order). This is a major change from the days when audiences were encouraged to identify with an aggressive James Cagney squeezing a grapefruit in his girlfriend’s face (Public Enemy, 1931) or even with Jackie Gleason’s apparent ability to stop just short of abuse when Ralph Cramden famously threatened to send his wife Alice “to the moon.” Of course, this was no joking matter to millions of battered wives in the audience for The Honeymooners. For much of the media, and presumably then for their audience, violence against a wife or partner has become the social problem of choice, a mixed blessing perhaps, but a direct reflection of its currency among the general public.

Ironically, both the nadir and the zenith of the domestic violence revolution occurred in close chronological proximity. If we had to pick a single event that could be considered the nadir of the domestic violence revolution, it might be the 1994 murder of Nicole Brown Simpson and her friend, Ron Goldman, and the 1995 trial—and acquittal—of O. J. Simpson for these homicides. The zenith of the revolution also occurred in 1994, when Congress passed, and President Clinton signed, the Violence Against Women Act (VAWA). Previous legislation lacked the scope, ambition, or funding levels of VAWA. Its passage—and its reauthorization in 2000 and 2005—signaled a growing national consensus that domestic violence and rape merited a nationally coordinated effort focused on safety for victims and accountability for “batterers,” both to be achieved through some combination of arrest, prosecution, counseling for offenders, and the delivery of a broad, if
poorly defined, range of community-based and traditional services. It was assumed that states would use VAWA funding to expand training programs for criminal justice personnel, refine criminal justice data collection and processing, and build bridges between law enforcement and domestic violence services. During the first 5 years of VAWA, more than $1.8 billion was appropriated for grant programs, primarily in criminal justice, and administered by the Department of Justice and the Department of Health and Human Services. Through the Services *Training*Officers* Prosecution (STOP) Violence Against Women Formula Grant Program alone, from 1995 to 2000, in excess of $440 million was awarded to support 9,000 projects.

In the wake of VAWA’s passage, there was widespread optimism that a broadly based criminal justice response would contain and significantly reduce the incidence of domestic violence, if not prevent it altogether. As the original authorization period for the VAWA came to a close, it was widely assumed that the sheer quantity of the resources committed would have positive effects. As a September 1999 report issued by then Senator Biden stated, “we have successfully begun to change attitudes, perceptions, and behaviors related to violence against women” (p. 5). The report also claimed that, “[f]ive years after the Violence Against Women Act became law, it is demonstrably true that the state of affairs that existed before its enactment has changed for the better” (p. 9). In making his assessment, Senator Biden highlighted “attitudes, perceptions[,]” and “behaviors related to violence against women.” The implication was that violence against women had dropped as a direct result of new policies and programs.

To some extent, official figures support Senator Biden’s optimism. The last three decades have witnessed a decline in the most serious forms of partner assault, including partner homicides, and for some groups this decline has been dramatic. What is less clear is whether the changes are in the direction we would expect if interventions were effective or are the result of changes in policy or intervention. For example, other than arrest and prosecution, most reforms have sought to enhance the safety of female victims, starting with shelters. Interestingly, however, men rather than women have benefited most from the declines in partner homicide, particularly Black men. Since the mid-1970s, when the first shelters opened, the number of males killed by female partners has dropped 70% (and an astounding 82% among Blacks). This is a
far greater drop than the overall drop in homicides during this period, suggesting that domestic violence interventions may have contributed to the decline. The number of women killed by partners also has dropped during this period but by only 30% on average and a mere 5% for White women, the largest group of victims. Indeed, until very recently, partner homicides actually increased among women who have never married, which is a substantial subgroup (Uniform Crime Reports, 2006).

It may seem strange that more men than women have been saved by new programs and interventions designed to protect women. This positive, but unintended, effect is explained by the different circumstances in which men and women kill their partners. Abusive men tend to kill partners when they fear that the partner will leave them or when the partner actually does so. Since virtually all the new protections for women involve separation from an abusive partner, these protections may threaten men’s control, causing some abusers to escalate their violence. In this line of reasoning, women’s continued vulnerability to male partner violence is the result of another fact, that available protections tend to be short term and fragmented and that no effective means has been found to deny abusive partners from accessing their former victims, at least in the long term. By contrast, female partners tend to kill men when they fear for their own or their children’s safety, although not necessarily in self-defense. The same options that seem to intensify men’s propensity for partner violence may defuse women’s feelings of having no way out of their abusive relationship, making it less likely they will kill male partners.

Measuring how our efforts have affected aggregate changes in domestic violence is difficult. Some studies of individual interventions discussed in this text show high success rates, particularly when a broad spectrum of integrated services is at work. Even here, however, the declines documented are not always uniform. Nor is it clear which element or which enhanced program or effort explains reported declines. To illustrate, we return to partner homicide. A retrospective study published in 2001 and sponsored by the National Institute of Justice (NIJ) assessed whether reductions in partner homicide reported in 48 of the 50 largest US cities could be linked to the changing societal response, specifically recently enacted amendments to state statutes, enhanced local police and prosecution policies, legal advocacy
programs, or the prevalence of hotlines. The study attempted to link these data during a 20-year time frame (1976–1996) that encompassed the period before and after the enactment of these initiatives (Dugan, Nagin, & Rosenfeld, 2001). The findings provided some support for optimistic projections like vice president Biden’s. In slightly more than half of the jurisdictions, an increase in available resources correlated with lower rates of domestic homicide. Ironically, however, in the other jurisdictions, increased resources were correlated with increased homicide rates, especially for certain categories of victims. These findings persisted even after controlling for population mix, demographic trends, and patterns of economic growth or decline.

These examples illustrate a conservative theme that runs through this book: that it is naive to assume that simply increasing the resources or personnel dedicated to domestic violence—adding more dollars to policing or assigning more police or prosecutors or judges to the problem—will lead automatically to a decrease in domestic violence. Even if domestic violence of certain types does decline, this may or may not be the result of the intervention. The corollary of this caution is the importance of specificity: We are at a point in the development of the field when we need to replace the heady generalizations of its early days (such as “arrest works”) with carefully hewn, scientifically grounded observations about which elements of which interventions are effective for which subgroups. This text should help move readers in this direction.

However effective some interventions may be, there can be no question that violence against women remains a major problem affecting a significant proportion of the female population and, by extension, the families and communities in which these families live. Based on extrapolations from the 8,000 women questioned by the highly regarded National Violence against Women Survey (NVAWS) conducted in 2006, approximately 25,677,735 women in the United States have been assaulted, raped, or stalked as adults, while slightly fewer than 2 million women reported being abused in these ways in the last year (Tjaden & Thoennes, 2000). We know from other research that the average duration of abusive relationships is between 5.5 and 7 years (Stark, 2007). This average includes the small proportion for which a single assault is the sole act of abuse and the millions of abusive relationships
that last considerably longer than 7 years. Applying a simple formula of prevalence from public health \((P = I \times D)\) generates a conservative estimate that approximately 15.3 million women in the United States were in abusive relationships in 2010. Whatever the trends in domestic violence, these numbers should justify the important place of intervening and/or ending domestic violence on the public agenda.
The Challenges Before Us

Domestic violence intervention is at a crossroads. Mounting evidence suggests that criminal justice intervention alone has a limited effect on the size and nature of the domestic violence problem and that the most effective approaches involve cross-agency and cross-community alliances and coordination. Despite this understanding, budgetary pressures are dashing society’s capacity and perhaps also its willingness to fund alternatives to a strict law-and-order approach. For example, California has long been recognized as having one of the best programs for proactively addressing social problems, including domestic violence. It was here that the Family Justice Centers were first imagined and implemented. Throughout the state, criminal justice agencies have practiced an integrated approach using community resources to assist victims and to rehabilitate or control offenders. These efforts are now seriously at risk. In 2009, to balance the state’s budget, Governor Arnold Schwarzenegger eliminated the remaining $16 million of financing for his state’s domestic violence programs. These cuts equated to approximately $200,000 for each of the state’s 94 nonprofit programs involved in sheltering victims. One result is that many programs must now turn away victims in crisis, close transitional shelters, or simply put vulnerable victims and their families in cheap hotels where they are unlikely to get the resources or support they need to remain independent.

California’s attempts to balance its budget at the expense of domestic violence services are extreme. But other states, such as New Jersey and Illinois, also have struggled to keep domestic violence services open. The irony is that cutbacks to established and relatively successful programs are occurring on the 15th anniversary of the passage of VAWA.

Discrimination against domestic violence victims is another major challenge. Until this practice was outlawed by the Health Care Reform Bill passed in 2010, seven states and the District of Columbia allowed insurance companies to consider domestic violence as a preexisting condition and as a reason to deny health coverage to women they believed to be victimized. As several congressional representatives observed, this form of discrimination was the equivalent of defining being female as a preexisting condition.
Domestic violence victims can lawfully leave a rental property without notice and get top priority in public housing in Connecticut and several other states. Still, the number of instances where families have been evicted from public housing because of abuse is on the rise as is the adaptation of antiviolence policies and their use against victims by local housing authorities.

Fundamental issues that many thought would have long been settled remain on the table alongside the emergence of new questions and challenges that concern the preferred method of intervention. An issue that seemed to be settled in the early 1990s, the appropriate response to domestic violence and the role of criminal justice intervention as part of this response, is once again being hotly debated.

In the United States, the criminal justice system has spearheaded the response to domestic violence. The dissemination of mandatory arrest and “no-drop” prosecution in the 1980s and early 1990s reflected a consensus that arrest and prosecution were not merely proper but the preferred response in abuse cases. Starting in the late 1990s, however, there was a growing sentiment in the field that criminal justice intervention alone was not an adequate or even a desirable approach to the problem (see, e.g., Mills, 1999, 2006). Even some advocates warned that the reliance on arrest had gone too far, causing the original emphasis on victim empowerment to wane. Today, even those who support a lead role for criminal justice realize that the response by police, prosecution, or criminal courts is merely one piece of society’s overall reaction to domestic violence.

It is important to appreciate that the demand to provide equal protection to victims of partner assault from advocates was not the only source of pressure for criminal justice intervention in the United States. To the contrary, support for a criminal justice response to domestic violence was also part of a long-term trend in the United States toward “law-and-order” approaches to social problems. This trend is reflected in domestic funding priorities and in polling data probing how US citizens believe the government should react to social deviance. The propensity to rely on coercive legal powers to solve multidimensional social problems is illustrated by the “war on drugs,” “get-tough” policies on juvenile crime, and the treatment of drunk driving as a law enforcement issue primarily. In each case, there is little evidence that
criminal justice intervention is particularly effective, especially when compared with alternative prevention and treatment models. Of course, this does not mean criminal justice intervention is not effective with domestic violence. But it does remind us of a point we made earlier, that efficacy is not the sole factor sustaining the current emphasis.

The overall approach to domestic violence also reflects broader societal trends. One such trend is to seek official retribution for a range of acts that were once considered private or outside the law because they occurred in family life. Child abuse and homosexuality fall into this category as well as domestic violence. A concurrent trend involves a shift in decision making in these cases. In the past, it was assumed that justice was best served when police, prosecutors, judges, or other professionals allocated resources or sanctions based on their review of individual circumstances. Today, however, it is increasingly common to find these actors constrained by legislative mandates in decisions that encompass whether to arrest and whom to sentence and for how long they should be imprisoned and who should be released. Interestingly, although there is a new political imperative to protect victims and provide a forum where they can express their fear, hurt, or anger, as Garland (2001) points out, “the crime victim now is a much more representative character whose experience is taken to be common and collective rather than individual and atypical” (p. 144). Thus, domestic violence victims often are viewed as part of a generic group exhibiting typical traits rather than as unique individuals who have been harmed in specific ways by identifiable offenders.

Several other basic questions that were first raised in the 1980s have still not been answered definitively, including when police should arrest offenders, the conditions under which prosecutors should charge or refuse to drop cases, and when and how judges should sentence offenders rather than send them to counseling. Even so, our understanding of domestic violence has been considerably advanced by recently developed typologies of offenders and by a deeper appreciation for the range of tactics deployed by offenders, many of which have yet to be incorporated into criminal law. The most popular of these typologies was developed by sociologist Michael Johnson (1995, 2008). Johnson set out to reconcile discrepancies between population-based surveys and point-of-service data drawn from courts, arrest statistics, and shelters.
Where the former reported high rates of perpetration by female partners as well as of mutual abuse, the latter left a consistent picture of domestic violence as a crime committed largely by men. Johnson argued that the discrepant findings reflected two different general types of abuse. The first type of abuse he described was “common” or “situational” couple violence and was largely limited to physical assault and emotional abuse. The second involved a range of control tactics in addition to physical assault. He termed the latter behavioral dynamic “intimate terrorism.” Either or both partners might engage in situational violence, although women were more likely to sustain injuries in these cases. But men were the primary perpetrators of intimate terrorism, the type of abuse most likely to prompt help-seeking. Johnson used the term “violent resistance” to characterize situations where victims used force in response to a partner who was violent and controlling and termed situations where both partners were violent and controlling “mutual violent control.”

A similar distinction was offered by Evan Stark (2007). Stark subdivided situational couple violence into two separate, but occasionally overlapping, dynamics, one of which he termed “fights” and the other “partner assaults.” For Stark, assaults are distinguished from fights by the intent for which force is employed (to instill fear, hurt, control, and dominate a partner rather than to express anger or resolve differences, for example) and the perception of victimization by the targeted party. Although fights may come to police attention as a form of domestic violence, Stark does not consider them a type of abuse for which domestic violence intervention is properly applied. Stark used “coercive control” rather than intimate terrorism to describe the use of multiple tactics (such as intimidation, isolation, and control) alongside physical assault, and argued that coercive control may exist even in the absence of physical assault. Like Johnson, Stark contended that coercive control was a tactic used by male offenders primarily, largely because they played off existing sexual inequalities. But he placed a greater emphasis than Johnson on the structural deprivations that partners use to establish control (such as taking a partner’s money or depriving her of access to transportation or communication). Several other typologies are reviewed in this book. Suffice it to say that much empirical work must be done before we can determine the utility and applicability of these categories or whether subdividing domestic violence in these ways moves us toward or away from
more definitive and nuanced interventions. In any case, the work on
typologies introduces an argument we will make in the subsequent
discussion, that a straightforward equation of partner abuse with physical
violence may not accurately reflect the dynamics in many, perhaps most,
abusive relationships or fully capture the harms inflicted or the motivation
that causes victims to call police or seek other types of assistance.

We have many more clues today than we did 30 years ago about which facets
of our response are most helpful. We believe that literally thousands of
women, men, and children owe the fact that they are alive to the
overwhelming shift in legal reforms in this field and the improved
responsiveness of criminal justice agencies, the availability of shelters, and
shifts in the response by health care and social service agencies. There is now
a broad spectrum of innovative programs to protect, assist, or otherwise
support abused women and their children. Unfortunately, these programs are
not universally available and most remain vulnerable to the vagaries of local,
state, and federal budgets.
Challenges to a Criminal Justice Approach

An important question we address in this book is what the impact has been of relying so heavily on criminal justice intervention to limit domestic violence. Part of the answer involves changes in rates of partner abuse as a result of criminal justice intervention, an issue to which we give considerable attention. But equally important is how this emphasis has shaped societal perceptions of the problem, including the willingness of individuals to accept responsibility for addressing abuse in their own lives and communities or for supporting local efforts at mitigation or prevention. Does the view of domestic violence as a crime make it more or less likely that hospital patients will discuss it with their health providers, for instance? A related issue involves how the primacy of criminal justice affects the decision of other public or community-based institutions to intervene. Are health providers or child welfare workers likely to make domestic violence a priority if they believe it falls solely in the province of criminal justice or that they may be called as witnesses in abuse cases?

Relegating domestic violence to the criminal justice and legal system also has another unintended effect with far-reaching implications for intervention. Filtering the societal response to domestic violence through the criminal justice system reinforces a widespread proclivity to equate partner abuse with discrete assaults and then to measure the seriousness of these assaults by the level of injury inflicted. This occurs because violence falls squarely in the comfort zone of policing and because prosecution and the criminal courts function best when they target specific acts with tangible consequences. Domestic violence statutes define partner abuse as a form of assault that is only different from stranger assault because of the offender’s relationship to the victim. Although few such statutes include the infliction of injury as part of the definition of a domestic violence crime, as a practical matter, criminal justice and legal resources often are rationed based on a crude calculus of physical harms.

There are at least three problems with equating domestic violence with discrete or injurious criminal assaults. The most obvious is that abuse is repeated in most cases. Although this often is ascribed to recidivism, the
proportion of offenders who “repeat” is so high—much more than 90% according to some estimates—that it may be both more accurate and more useful to frame domestic violence as a chronic or ongoing behavioral pattern that has more in common with a chronic health problem like diabetes or heart disease than with an acute and time-limited problem like the flu. The reconceptualization of domestic violence as ongoing may be hard to reconcile with traditional models of crime that highlight isolated offenses. But it has far-reaching implications for intervention. To continue our medical analogy, imagine the costs as well as the problems created if physicians did a full medical evaluation every time a patient with a diagnosis of heart disease presented with one of the symptoms. By contrast, once the chronic nature of the problem is recognized, intervention can be proactive as well as comprehensive. At present, victims who repeatedly call the police may be labeled as repeaters whose complaints can be taken less and less seriously as abuse escalates. By contrast, if its ongoing nature is incorporated into the definition of abuse, then continuing and even proactive contact with victims would be viewed as a critical facet of help.

Serious injury and fatality are tragic outcomes of domestic violence. But a second problem with the violent incident definition develops because most abuse incidents are noninjurious and seem relatively minor from a criminal justice or legal standpoint if observed in isolation. For many victims, the significance of these violent acts may have less to do with the emergent nature of a given incident than with the cumulative effect of multiple incidents on their sense of autonomy and security in the world. Victims who experience multiple, but low-level assaults may experience high levels of entrapment and fear. But when justice professionals view these effects only in relation to a given abuse incident (which is usually relatively minor), the victim may seem to be exaggerating the situation and may not be taken seriously. Victims also may minimize abuse if they equate “real” domestic violence with an injurious assault.

A third problem with the violent incident definition develops because the emphasis on discrete assaults can mask the co-occurrence of a range of other harmful tactics that may compliment physical abuse in establishing one partner’s domination of the other and compromise a victim’s capacity to escape or resist abuse. These complimentary tactics also may be minimized
because the need for proof beyond a reasonable doubt in a criminal justice system tends to bring injurious violence to the fore rather than the multifaceted behavior that comprises the abuse for victims and their children.

These points are meant to illustrate an important point in the book, that however necessary or important, the criminal justice framework can be a very blunt and inexact instrument to rely on to stop or prevent the ongoing pattern of coercion and control in relationships.
Should Criminal Justice Intervention Be Victim-Centered?

At the heart of the criminal justice response is the dichotomy between victim and offender. Given the mission of criminal justice, including the belief by key actors that the primary role of police and prosecution is to protect society as a whole from crimes against the public order, it is hardly surprising that the justice system has emphasized the identification, arrest, deterrence, and rehabilitation of offenders. But there also has been immense pressure for the system to assist and empower domestic violence victims. Whether to be victim-centered and how to do this in a way that does not undermine other goals of criminal justice presents another set of challenges addressed in the book.

In keeping with a tough-on-crime approach and deterrence-based theories of offending and reoffending, the emphasis in criminal justice intervention has been on tactical issues such as the certainty of apprehension, deterrence via arrest, aggressive prosecution, forced attendance in batterer treatment programs, and “target hardening” via issuance of restraining orders. The general premise behind this emphasis is that crime is an offense against the state, hence, that the interests of any given victim are secondary. The result is that victim assistance has been relegated to an ancillary status in criminal proceedings and that relatively little funding is available for direct victim support. Unfortunately, this model fails to empower, or even protect, many victims of domestic violence. As this book will explore in detail, victims whose preferences are not followed, whether it be to arrest or not arrest, are those who are most dissatisfied. The lack of sensitivity to a victim’s wishes comes into play when a policy determination is made to process all offenders through mandatory arrest and/or mandatory prosecution even if such a course is not a victim’s preference or even, for a variety of reasons, is not objectively in her best interests.

In this book, we argue that this mission-centric emphasis can be shortsighted and that the criminal justice system should consider the impact of intervention on individual victims. Unlike bank robbery or even stranger
assault where the crime is an isolated event against a victim who is relatively anonymous, in “private” crimes such as domestic violence, victims disproportionately bear a crime’s costs. Interestingly, the fact that the largest burden of abuse falls on individual victims was an implicit rationale for nonintervention early on. Some believed that partner violence was a private matter and a byproduct of family conflicts that participants could and should resolve informally. Some observers believed that because victims had entered the abusive relationship voluntarily, they had “made their bed” and now should “lie in it.” There also were positive rationales for noninterference based on respect for the right of adult women to make their own decisions about the sort of troubles they dealt with in their personal lives. Another reason why listening to victim voices is imperative originates from the fact that we have yet to find a foolproof way to deny an offender access to the partner he victimized. The privilege of intimacy often affords offenders a special knowledge of a victim’s whereabouts and vulnerabilities that is rarely available in anonymous crimes. Since most offenders remain at large for some period of time, even if they are eventually convicted and sent to jail or receive relatively minor sanctions, arrest may not enhance victim safety, even if it is followed by conviction and/or assignment to a BIP. It is a well-tested adage of the advocacy movement that victims themselves are the best judge of what keeps them safe. Finally, as we explain in the text, enormous burdens often are placed on victims at each stage of criminal justice processing.

Following a victim’s wishes with respect to arrest or prosecution need not mean doing nothing. Once victims initiate contact with the justice or court system, they should have access to a range of supports and resources regardless of whether an offender is arrested or prosecuted. In opposition to our view, some respected researchers argue that, given the structural and organizational capacities of justice agencies, a traditional crime-fighting approach is preferable to a victim-centered, multipronged approach to domestic violence. Jeffrey Fagan (1996), for example, argues that the criminal justice system functions best when its primary focus is on the detection, control, and punishment of offenders, batterers in this instance, and it has minimal and only indirect involvement in providing services to victims (i.e., battered women). His reasoning is that trying to factor in victim experiences and rights or the rehabilitation of offenders conflicts with the primary mission of these institutions and confounds their efficacy. Ironically,
this broad emphasis on serving victims as well as on punishing offenders can inadvertently make it easier for these agencies to marginalize domestic cases as they did in the past, turning case handling into low-status social work rather than crime fighting.

Another challenge posed by the prevailing economy of offenders and victims originates from the complexity and ambiguity of many abusive relationships. For the criminal justice system to operate within statutory requirements, crimes must have offenders and victims who can be clearly demarcated based on objective criteria. This determination, in turn, implies that the status of the persons involved is not only identifiable but also constant. Unfortunately, research suggests that the offender–victim dichotomy is hard to sustain in a significant proportion of abusive relationships. For example, in an examination of 2,000 police reports during a 10-year period for all assaults (not just domestic), researchers found that 18% to 20% (depending on the year examined) of victims also had been seen by the criminal justice system as offenders (Hotaling & Buzawa, 2001).

Because the law’s definition of a domestic violence assault relies so heavily on violent acts, it is hard to distinguish abusive assaults that merit police intervention from mere fights, where the use of force is typically noninjurious and may reflect a maladaptive response to family conflicts rather than an effort to coerce, control, or dominate a partner. Once persons are publicly recognized as participants in violence, they may suffer the stigma associated with being labeled. Everyone is familiar with the negative effects of being labeled a “wife beater.” But being identified as an abuse victim also can have a downside. However sympathetic the general public may be with persons who have been victimized, in certain communities, being a victim may signal that the particular person can be “had” (i.e., exploited) by others. Individuals may resist the victim label because they associate it with weakness. Moreover, a range of characteristics and behaviors may be associated in the public’s mind with being a “worthy” victim, including a person’s race, age, social class, looks, and propensity for self-assertion or aggression. Moreover, once someone is a victim, he or she may be expected to enact these stereotypes, which is a constraint that often extends to their perceived eligibility for vital services (Wuest & Merritt-Gray, 1999).
The Evolution of This Text

This is the fifth edition of this text. Each edition has been updated and revised, and in this edition, we go even further by complementing the emphasis on criminal justice and law with chapters on how domestic violence affects children and health and on the roles played by the health-care system, child welfare organizations, and the family courts in the societal response. In part, we have broadened the focus to reflect a growing realization that relying so heavily on criminal justice and law may not have proved as effective as was initially hoped.

Interestingly, each edition of this text has appeared at a watershed of sorts in the history of the domestic violence revolution. We try to capture these moments for our readers, particularly in terms of what they imply for the criminal justice response to domestic violence, as well as to anticipate where things are headed.

The first edition of this text was published in 1990, 3 years before the historical signing of VAWA by President Clinton. In a very small way, the goal of the text—to synthesize existing knowledge about the criminal justice response—was the intellectual counterpart to the political goal of VAWA, namely, to bring together the diverse strands of criminal justice intervention under a single-policy umbrella.

The target audiences for the first edition of this text included students and practitioners in criminal justice and other social sciences who had little prior knowledge about domestic violence and those who had a substantive interest in domestic violence but little sense of how the response by police and the courts fit into the broader workings of the criminal justice system. The initial focus solely on criminal justice reflected the overall societal emphasis in the United States on defining domestic violence as a criminal assault involving partners or other family members, the propensity to frame the participants as offenders and victims, the widespread reliance on court orders to protect victims and on police intervention, and primarily on arrest as the front-line intervention that would complement the safety afforded by shelters. The focus on criminal justice also reflected another reality: Starting with hearings
and a report by the US Commission on Civil Rights in 1978, the criminal justice system also had borne the brunt of criticism for the inadequate societal response to domestic violence.

By 1993, most localities had already adapted so-called mandatory arrest policies, although debate about the wisdom and efficacy of these policies was still widespread. Although some commentators questioned whether domestic violence should be treated as a crime rather than as a problem in family dynamics, the most trenchant criticism highlighted the threat these policies posed to victim autonomy and police discretion and the possibility that making arrest standard procedure might exacerbate racial bias in policing. Many jurisdictions also had initiated BIPs, although criminal courts were not yet relying on referrals to counseling as the preferred alternative to jail to nearly the extent they are today. Although some research suggested these programs could reduce subsequent violence, the quality of evaluations was poor. Moreover, advocacy organizations remained skeptical about BIPs, both because they questioned their efficacy in reducing violence and because they worried that money spent to rehabilitate offenders might draw funds away from front-line protections for victims, including shelters. In addition to mandatory arrest, many cutting-edge issues of the day involved the sensitivity of police, prosecutors, judges, and other front-line providers to victims, the wisdom of so-called dedicated domestic violence prosecution, the interstate enforcement of protection orders issued by civil or criminal courts, and whether no-drop prosecution should be widely adapted.

The second edition, published in 1996, focused on the nature and extent of the rapidly evolving criminal justice system and offered tentative observations about the opportunities and limitations of the various approaches being attempted at the time of its publication.

In the third edition, published in 2003, we noted a proliferation of research evaluating the impact of innovative intervention strategies and the unanticipated problems originating from aggressive intervention.

In the decade since the first edition was released, it also had become clear that the efficacy of arrest, prosecution, and other components of the criminal justice response depend on their interplay with other components of the societal response, including health, child welfare, and the family courts. The
third edition presented the various elements of the criminal justice response as if each could be evaluated in isolation (as if we could answer questions like “Does arrest end violence?” solely by comparing the propensity for continued violence among arrested offenders with offenders who are not arrested, for instance). This was the dominant approach in the field, and we felt we should reflect it. In reality, however, there are few communities in the United States where arrest exists in a vacuum. Even if an individual offender is not deterred by arrest, for instance, the police response may open a door to a range of services for victims as well as to counseling for the batterer. Thus, the question of whether arrest is an effective deterrent is increasingly secondary to the assessment of which package of services is available, and which supports are most likely to inhibit subsequent abuse. This is why the fourth edition included chapters on key non–criminal justice responses by BIPs, the child welfare system, family courts, and health-care agencies. We covered both the strategies that guide intervention by these agencies and the knowledge base that supports these interventions. We also identified the limits of these interventions. Key issues in these chapters are the health dimensions and consequences of adult and child victimization; the institutional response by the health-care system, child welfare organizations, and the family courts; and whether and how the harms caused by domestic violence are ameliorated by these institutional responses. As with criminal justice, an outstanding question is whether certain interventions do more harm to victims than good. Examples include mandatory reporting of domestic violence by health providers and the removal of children from mothers who have been abused.

A primary goal of this edition, as with the earlier editions, is to assist the reader in understanding the cultural, political, and organizational contexts that shape how criminal justice agencies relate to one another as well as to other societal agencies or institutions, historically and at the present time. This edition explores the individual components of the criminal justice system, how these components interact, and how these interactions affect outcomes.

The current edition expands upon our growing understanding of the nature of domestic violence and in particular, the importance of coercive control when looking at its impact on victims and assessing the danger posed by offenders.
There also continues to be a proliferation of research examining the impact of many innovations in our criminal justice system and societal response to domestic violence. We now have much more knowledge about a diverse range of interventions. Therefore, this edition substantially updates what we know both in terms of current responses as well as their impact and effectiveness.

There also has been a growing awareness internationally of the problem of domestic violence and many efforts are under way in response to its recognition. Therefore, this edition will provide some discussion of these efforts as they help make important comparisons with approaches taken in North America.

We now find new policy issues emerging as well. The dramatic increase in victims seeking criminal justice intervention seems to have leveled off at about 55% (Truman & Morgan, 2014). The question remains as to whether and how this percentage can be increased or whether victims prefer alternative sources for intervention. In addition, we now find that our ability to control the most serious violent offenders and those at risk for committing homicide—not necessarily the same profile—remain a challenge. Many have raised concerns about the growing reliance on risk assessment instruments often used by overburdened criminal justice agencies that lack the resources to address the massive influx of cases reaching their attention. This volume provides a framework for understanding the progress we have made, as well as the challenges we still face in helping the millions of victims in need of assistance.
Organization of This Edition

Most chapters have been substantially rewritten from the earlier editions. An obvious exception is the chapter on the historical precedents. In accordance with the sweeping changes undertaken by the criminal justice system, we have significantly expanded our emphasis on current innovations made by the criminal justice system as well as by health-care and social-service agencies. We also have provided expanded coverage of the empirical research on the impact of these interventions on victims as well as the efficacy of such interventions with offenders. We include numerous case studies to show both our successes and challenges as agencies and society strive for continued improvement.

The text is structurally organized as follows:

Chapter 2 explores why the definition of domestic abuse, perhaps more than any criminal act, should encompass a very wide range of behaviors and apply to all forms of intimacy, regardless of marital or living status. We will discuss how, along with the direct impact of enforcement actions, case processing requirements might have indirectly defined the parameters of “permissible” contact by only criminalizing certain violent conduct, while conversely, tacitly condoning harassment or other strategies of coercive control—actions that in practice rarely result in arrest or prosecution. Thus, definitions are important not merely for what they highlight, but also for the sorts of behaviors, relationships, and consequences they throw into the shadows. We also introduce a new source of data, the National Intimate Partner and Sexual Violence Survey (NISVS), and explore how it helps inform us of the incidence and prevalence of sexual violence, physical violence, and stalking as well as variations in the general population.

Chapter 2 identifies gaps in the behaviors and relationships covered by domestic violence criminal codes. We contrast the propensity for criminal codes to define violence as individual acts, usually a physical assault or threat of physical harm, with the growing realization by researchers that domestic violence is more accurately conceptualized as including a range of behaviors that coerce and control victims, many of which currently are not recognized
as criminal. These behaviors may entail isolating victims from resources or supports; exploiting them financially, sexually, or emotionally; humiliating them; intimidating them through a range of threatening behaviors; and using various means to control them physically or psychologically. Although not directly causing physical injury, by undermining a victim’s ability to resist or escape abuse, these behaviors can greatly increase the likelihood that a victim will be vulnerable to injury or even death. In this perspective, it is the pattern of violent and abusive behavior within the relationship that constitutes domestic violence rather than the individual acts of perpetrators. The relationships included under these acts also vary from state to state, sometimes only including married individuals, or alternatively, including some or all of the following: current and past intimate partners, anyone living in the same residence, children, siblings, any other family members, and any relative. Nothing we say here or elsewhere in the text suggests ending or even significantly limiting the role of criminal justice intervention. However, we do suggest that criminal justice and law enforcement are unlikely to prevent domestic violence or even revictimization unless their focus is clear and consistent and they are parts of a comprehensive societal response.

**Chapter 3** discusses the historical context of domestic violence. There have been significant variations in how societies have responded to domestic violence, starting with ancient peoples. But close inspection reveals these responses to have revolved around a single theme, the right of the male patriarch or his surrogate to use violence and other means to enforce his will on the women and children under his control. Male domination in family or intimate relationships was alternately sanctioned by culture, religion, law, or some combination, making governmental support for abuse implicit, and faced periodic challenges from liberal governments, social critics, or movements to improve women’s lot. Nevertheless, the domestic violence revolution that sets the stage for this book has been far and away the most effective in eliciting reform.

**Chapter 4** provides a number of theoretical frameworks currently used to analyze the behavior of domestic violence offenders. The chapter posits that actual acts of violence often are merely a part of an overall pattern of behavior. We include an extensive discussion of coercive control and its significance in understanding why a given offender may select a particular
means of coercion or control from all available options; the chronic nature of most abuse; and the complexity of the dynamic that typically unfolds making it unrealistic to hope that either party will simply stop or withdraw in the moment. Conversely, any effective societal intervention must confront this complexity either by complementing situational sanctions with a larger strategy of prevention; by building from the bottom up, so to speak; or as part of a coordinated community response in which criminal justice is deployed, as needed, as part of a multi-institutional strategy designed to prevent revictimization and reoffending. We see funding for prevention, criminal justice intervention, and health and human services as parts of a piece rather than as alternative policy initiatives.

**Chapter 5** discusses the long history of societal neglect of this problem. Prior to the 1970s, the statutory structure for handling domestic violence could charitably be described as “benevolent neglect” of “family problems.” State assistance for victims, if any, went to traditional social welfare agencies that handled a variety of family problems, most of which were assumed to originate from poverty, ignorance, or ill-breeding. Not only did these agencies lack expertise in domestic violence, but also they often took the occurrence of violence as an occasion to strengthen family bonds, in many cases exacerbating women’s abuse. Managing violence against women was considered beyond the purview of government; as a result, the failure of government to assume responsibility for the safety of women and children in their homes was not noticed. To the contrary, it was widely believed that intervening to protect women and children except in the most egregious cases could do incalculable harm to family structure and so, by extension, to society as a whole.

**Chapter 6** identifies the factors that changed the traditional criminal justice response. The frequency of calls for help to police suggests that the general public viewed domestic violence as a problem meriting state intervention. Nevertheless, little was done to address it, let alone to control its incidence. By the early 1970s, however, the climate had changed and a range of publications, including research monographs, news articles, and advocacy papers criticized justice agencies for their failure to deter future acts of violence or respond to requests for assistance from victims. Changing the criminal justice response proved much more difficult than criticizing it,
Reforms in the criminal justice system were elicited by a historically unique constellation of the grassroots activists who formed the battered women’s movement, policymakers across a broad political spectrum, and those law professors Elizabeth Schneider (2000) called “feminist lawmakers.” Resistance to change was deeply rooted in organizational culture. Police and prosecution were committed to using their discretion to filter out cases that lacked sufficient public purpose to merit a major expenditure of resources. In effect, they had used this discretion historically to eliminate not only cases where there was insufficient evidence for an arrest or conviction, but also those considered unimportant or unworthy of their time. Domestic violence fell squarely in this latter group, making police arrest-averse and instilling a strong bias in favor of dismissal among prosecutors.

Chapter 7 homes in on a core issue, how the criminalization of domestic violence led first to an emphasis on arrest as the solution to domestic violence and, more recently, as a required initial response. The immediate effect of such legislation was to give primary responsibility for the suppression of ongoing domestic violence to the criminal justice system—the very institution that had neglected the problem historically—and to do so by constraining discretion in the decision to arrest, which is a core value in policing. There also is an examination of the implementation and diverse impact of the new pro-arrest statutes on police arrest practices. We argue that some proponents of more aggressive intervention had a limited understanding of how laws or policies that mandated a particular response would affect victims, especially in those states or police departments that require officers to make an arrest in cases of intimate partner violence. The chapter highlights an unintended consequence of these policies: that many victims feel disempowered by their inability to control the outcome of a call for police assistance. To reiterate earlier points, some victims may feel that control over the arrest decision provides bargaining room with an abusive partner or may fear the financial consequences of arrest for themselves or their abusive partner, particularly if he is unable to work or she must miss work to appear in court. In addition, victims who choose to remain with offenders may find their relationship harmed, whereas those leaving may find themselves in greater danger from the offender. As a result, victim reporting may diminish,
and in such jurisdictions, a smaller population of victims may actually be served than would be if police discretion is exercised in the victim’s interest. This chapter also addresses another serious and unintended consequence of current arrest policies, the dramatic increase in the arrest of women as well as an increase in dual arrests (i.e., the arrest of both parties). In fact, the leveling off in reporting to police may be a manifestation of this problem.

Chapter 8 focuses on the increasing attention and significance attributed to the role of the prosecutor. As practitioners and policymakers realized that the mere arrest of an offender was rarely sufficient to deter reoffending and/or protect victims, the focus shifted to the practices and efficacy of prosecutors. As with police, changed expectations for prosecutors have spurred attempts to mandate aggressive prosecution in domestic violence cases. Although legislative mandates with respect to prosecution are more problematic than similar mandates for police, there has been a massive increase in the proportion of cases prosecuted. However, victim cooperation continues to be a key factor in determining whether prosecution is successful.

Even more than police, prosecutors have the capacity to provide key services for victims beyond taking a case to trial. Specifically, they can help reduce victim fear, provide a degree of ongoing protection, and facilitate access to needed services, including advocacy. Many victims may be safer as the result of prosecution. But most offenders continue their abuse, many are undeterred by conviction, and some become even more violent. The solution is not to forgo prosecution but to combine aggressive prosecution of high-risk offenders with enhanced efforts to ensure victim safety. There is now evidence that we can identify a subpopulation of low-risk offenders who are unlikely to reoffend, regardless of whether the case is prosecuted. In these instances, the best course from the standpoint of both the victim and society may be to follow a victim’s preference and provide alternative strategies for intervention.

Chapter 9 discusses restraining orders and how civil courts work to address elements of domestic violence that are not specified in criminal statutes. There have been additional court cases impacting how such orders are applied, as well as knowledge about their effectiveness. They can potentially provide greater relief by expanding the application of other statutes not
expressly linked to domestic violence at the moment, including harassment or stalking laws. In addition, the growing use of risk assessment instruments in identifying the most dangerous offenders can help determine where such orders should be more closely monitored. Finally, there is a discussion of new strategies to enforce their effectiveness.

Chapter 10 covers the role of the judiciary. Determining the extent and nature of judicial intervention depends on which of many conflicting goals is considered paramount: retribution, rehabilitation, or satisfaction and safety of the victim. Historically, the response fluctuated between punitive responses to domestic violence—ensure arrest, prosecution, and conviction—and violence suppression strategies to deter aggressive behavior without regard to their punitive nature.

There have been tremendous changes in the judicial response, but the diversity and inconsistency of these responses make it hard to generalize across jurisdictions. Some jurisdictions prefer the traditional model, with domestic violence cases heard in a criminal court setting where the offender and victim can be clearly demarcated. Other jurisdictions favor a more holistic approach, hearing all misdemeanor domestic violence cases in a single venue or “domestic violence court,” for instance, or combining all matters pertaining to the couple in a single proceeding, including family matters—the “integrated” domestic violence court. This chapter explores these alternative approaches, identifies their varied goals and procedures, and highlights the need for research that explores their relative efficacy. Since the last edition, we also have additional information on their effectiveness which previously was lacking.

Chapter 11 focuses on the breadth of statutory changes since the 1970s, including legislative reform in all 50 states. Although the new statutes differed markedly in their scope and substance, they were designed to effect profound structural changes in the response of government agencies to domestic violence. Such changes have primarily been concentrated in three areas: (a) the police response, (b) the handling of cases by prosecutors, and to a lesser extent, (c) the judiciary methods of educating the public about the problem and providing state funding for shelters and direct assistance to victims. An additional set of reforms supported batterer intervention. More
recently, criminal codes have evolved to include stalking and harassment as forms of abuse. These statutes move beyond the equation of domestic violent with physical assault. But they are not as widely used as the original statutes, often are inconsistent, and are set standards of proof that are difficult to meet. Little is known about whether these statutes are an effective way to combat abuse or even whether their use is an improvement over the statutes focused only on violent incidents. We conclude this chapter by asking whether the focus on identifying violent offenders, determining guilt, and using criminal justice sanctions to prevent reoffending have clarified or obscured the larger societal concerns about the control of domestic violence. Also new in this edition is an extensive discussion of international efforts to address domestic violence and what can be learned from their initiatives.

Chapter 12 focuses on the courts’ most common disposition, mandated attendance at a BIP. Currently, most batterers attending these programs are there as part of a judicial sentence. We assess the general efficacy of such programs in reducing violence as well as their relative success with specific types of offenders. Proponents of these programs continue to insist on their general efficacy, at least in reducing repeat violence in the long term. Our conclusion, however, is that these programs do not seem to deter many types of offenders, specifically those who are chronic and severe batterers. In response to these concerns, there is a growing trend to use these programs to ensure offender accountability rather than to rehabilitate offenders. We assess the wisdom of this approach.

Research continues to show that, no matter how innovative or enhanced, serious domestic violence cannot be effectively addressed unless the criminal justice system works in concert with the range of government, nonprofit, and community-based agencies and programs. Chapters 13 and 14 address the three other institutions that are central in the lives of domestic violence victims: the health-care, child welfare, and family court systems.

It was by no means inevitable that the domestic violence revolution in the United States would rely so heavily on the criminal justice system. In countries where the welfare state is more developed than it is in the United States—in England or Scotland, for instance—arrest is just one piece of a complex web of services to which domestic violence victims have access.
Scandinavia, support for victims plays a more important role than sanctioning offenders. So it is worth asking why police were so central to the societal response in the United States. One obvious reason is that, with the exception of health crises, the police are the default agency contacted in the midst of an emergency. A related factor is that their services are free and are available 24/7, which is an important fact since only a small proportion of family assault calls occur on weekdays during “office hours” between 8:00 a.m. and 5:00 p.m. Also important is the nature of the crisis precipitated by domestic violence. In the midst of an assault, many victims want police intervention: Police are easy to contact, respond relatively quickly, make home visits, and provide a highly visible authority figure to counter the raw power of the abuser. These factors mean that the police often are the source of the family’s contact with other local government agencies such as health care or child welfare and that these agencies, in turn, often depend on police referrals for their clientele.

Chapter 13 covers the health dimensions and consequences of domestic violence, the subsequent utilization of health services by victims and related costs, and the development of a health-care response. Starting in the late 1970s, a substantial body of research documented the significance of abuse for women’s health. Early work focused on physical injury as the most obvious symptom of abusive relationships, showing, for example, that domestic violence was the leading cause of injury for which women sought medical attention (Stark & Flitcraft, 1996). However, comparisons of health utilization by battered and non-battered women also showed that victims suffered disproportionately from a range of medical, behavioral, and mental health problems in addition to injury, including most notably substance abuse, attempted suicide, depression, and a range of disorders related to the fear and entrapment established by abuse. Although the emphasis on injury pointed toward intervention in hospital emergency rooms, a larger picture of its health consequences suggested that domestic violence required clinical violence intervention across the board, ranging from health to mental health to public health services.

Many of the same factors that defined the police as first responders in domestic violence cases disqualified other services, at least initially, including health care. Although hospital emergency rooms are usually open
around the clock 7 days a week, they present victims with any number of obstacles to access. These obstacles include long waits, the need for self-transport, ambiguity about where domestic violence ranks in relation to the sorts of trauma for which emergency medicine was established, and limited services for the uninsured or underinsured. Through much of the 1970s and 1980s, medical providers were much less likely to be aware of domestic violence than the police and even more reluctant to become involved with family problems. Thus, they responded symptomatically, providing medication for pain but doing nothing to enhance women’s awareness or safety.

Today, some, but by no means all, of the barriers to accessing health services have been removed. Starting with the introduction of domestic violence into professional education and training, medicine, nursing, psychology, psychiatry, and social work have introduced a range of innovative programs to identify and respond more appropriately to the adult and child victims of abuse. Most agencies where these professionals work have adapted formal protocols for recognizing, assessing, and providing services to victims as well as for interfacing with the criminal justice system, shelters, and other service agencies where appropriate. Still, major challenges to mounting an appropriate health system response remain.

**Chapter 14** starts with a remarkable fact: that domestic violence may be the most prevalent context for child abuse and neglect. We explore the many ways in which exposure to abuse can harm children as well as the resiliency of battered mothers and their children in the face of abuse. Despite the significant impact of domestic violence on children’s well-being, the child welfare system and the family court—the two institutions most directly charged with protecting children and their best interests—have hesitated to get involved in partner abuse, in part because they have feared that doing so would embroil them in political controversy. The traditional focus of child welfare on women as mothers and its historical move away from criminal justice toward counseling and parent education has left enormous ambiguity about whether its function in these cases is to protect children by removing them from the potential danger posed by abuse or to broaden its perspective to encompass women’s safety as well. A similar dilemma has faced the family court. Following congressional guidance, many states have adapted
rules mandating that their family courts give significant weight to domestic violence in custody disputes. But many of these same states also have emphasized shared or co-parenting as the most desirable outcome of divorce for children. The dilemmas faced by the child welfare and family court systems often are borne by victimized women.
Conclusion

The goal of this edition is to track the domestic violence revolution largely, but not exclusively, through the prism of the criminal justice and legal response. The text has evolved alongside the societal response. In an ideal world, three decades of intervention would yield a finite picture of what works and what does not, and we could simply embrace those programs identified as best practices and move on to eliminate partner violence against women. This is not the world in which we live. Some of what has been done to end domestic violence seems to help. However, the effect of much of what has been done remains unclear, with equivocal findings suggesting that the organizational, social, and cultural context in which interventions operate may be as important to their outcome as their content. And some interventions that are widely thought to be effective are probably not. We take a victim-friendly approach and suggest where we should go next in our support for victims and our efforts to sanction or otherwise manage offenders. But this text is not designed to promote one type of program, solution, political direction, or philosophy. Rather, it takes stock, asking how we got where we are in our societal response to domestic violence and where we are likely to go next. We will be satisfied if the text helps readers locate these points on their social compass.
Part I What Is Domestic Violence?
Chapter 2: The Nature and Extent of Domestic Violence
Chapter Overview

What are the extent, nature, and scope of the domestic violence problem? Is it increasing or decreasing? Which groups are at highest risk of victimization and/or offending? Do data based on official definitions of domestic violence give us a realistic picture of the extent and nature of partner abuse? Is violence gendered, as is suggested by the title of federal legislation (i.e., the Violence Against Women Act) or gender neutral, as state domestic violence statutes imply? Even if there is parity in the number of physical assaults committed by male and female partners, are male and female partner abuse symmetrical—that is, are they the same social phenomenon?

Providing definitive answers to these questions is difficult. Despite the huge societal investment in managing domestic violence, despite the countless laws, decades of research, billions in public expenditures and the proliferation of a safety net for victims and their children that touches almost every community in the United States, there is as yet no consensus about exactly how the problem should be defined and so no single number or numbers on which key players in the field agree. Based on international surveys, the figure most often cited is that “one in four” women is abused by a partner worldwide. But few countries have systems of data collection as sophisticated as those in the United States. Should we limit ourselves to the criminal justice definition of assault and rely on evidence from crime surveys and police reports? Or, at the other extreme, should we take the all-inclusive understanding of abuse or battering or coercive control that is popular abroad and used by advocates and some researchers here? If we do the latter, what sources of data do we have? The best we can do is to clarify the terms of debate and the assumptions that underlie the evidence we present.

Official data show that serious and fatal partner violence has declined sharply during the past 30 years, as have all violent crimes, though this trend may have slowed or even been reversed in recent years. Whatever the trend, domestic violence remains a major social problem. For the years 2003–2012, domestic violence accounted for 21% of all violent victimizations (Truman & Morgan, 2014). The NISVS reported that 24.3% of women and 13.8% of men experience severe physical violence in their intimate partner
relationships (Black et al., 2011). Official estimates are considered extremely conservative, in part because many victims do not report being abused and because the definitions that underlie survey questions may not coincide with how victims define the problem, let alone how the problem is seen by the range of policymakers, researchers, practitioners, and feminist advocates involved with the issue. As we shall see, measurement tools are constrained by unspoken assumptions about the nature of partner abuse as well as by legal definitions that vary in the types of relationships they cover and which acts are subsumed by the term “violence.” As a result, researchers and government agencies measure domestic violence in different ways.
Survivor
Falling

My mother never told me how it happened—her fall from grace. In high school she was a beauty queen—beautiful, popular, fun. We would look at her scrapbooks together and for a few minutes her eyes would shine, making her look more like the girl in the pictures. Once, I asked her why she didn’t have fun like that anymore. She stopped smiling and went back to the ironing.

I was in high school when I learned the real story——how she had shocked everyone by coming up pregnant in her senior year.

I was in college when I learned that my dad wasn’t the father. He’d married my mother later, to “make an honest woman of her.”

I was working at a shelter when I learned how she’d paid for her respectability. How he’d beaten her up on their wedding night. How he’d knocked her down the stairs when she was eight months pregnant with me.
Somehow she forgave him, and they went on. But somewhere between the fall from grace and the fall down the stairs, the light left my mother’s eyes. I’ll never get to ask her about it, though. Twenty-six years later, after an argument with my father, she shot herself in the head.

*Source:* Artwork and text from *Beating Hearts: Stories of Domestic Violence* featuring “Survivor” by Kate Sartor Hilburn. [http://www.beatinghearts.net/exhibit/window.html](http://www.beatinghearts.net/exhibit/window.html)
The Nature and Extent of Domestic Violence

In 2010, the CDC initiated the NIPSVS (Black et al., 2011), which considered a range of controlling behaviors in addition to violence among a random population sample. The CDC promises to administer the NIPSVS at regular intervals. When it does so, and assuming budgeting and staffing allow it to retain a similar battery of questions, this will be our first opportunity to assess the prevalence of abuse and changes over time from a non–criminal justice perspective. Until then, we must draw our evidence on the prevalence of the problem from two types of sources primarily: official sources that record the types of partner abuse considered criminal by either victims or police, and cross-sectional surveys conducted by academic researchers that use a range of definitions and are administered at different points in time. The resulting estimates are useful only if qualified by a clear understanding of what is being measured. We discuss some of the methodological challenges posed to survey researchers later in this section. Here, we concentrate on longitudinal data from several of the most widely used official sources and one widely published, but dated, unofficial national study whose findings present us with an outlier estimate that may nonetheless reflect an experiential reality.
Official Domestic Violence Data Sources

Official government sources support the conclusion that all types of intimate partner violence have declined during the last few decades, including intimate partner homicides. While these trends generally mirror the overall drop in all violent crime during this period, there are important differences that support a possible role for intervention in these changes.

The National Crime Victimization Survey (NCVS), supported by the Bureau of Justice Statistics (BJS), is the most comprehensive source for data on victimization for individuals 12 years of age and older. Its nationally representative sample draws on US Census Bureau data and is address or household based. The NCVS is based on interviews with victims, and therefore does not provide homicide data. Respondents are asked to only report acts they considered “crimes” and, therefore, it is generally assumed to capture the most severe acts of domestic violence. Among domestic violence victims identified by the NCVS, a far higher proportion were injured by a partner than among self-identified victims in the general population. The same sample is used for 3 years and sampled 7 times at 6-month intervals.

According to the NCVS, between 1994 and 2012 intimate partner violence declined 67%, from 9.8 to 3.2 per 1,000 persons aged 12 or older (Truman & Morgan, 2014). During the same period, all types of violence between family members declined at a similar rate, from 13.5 to 5.0 per 1,000 (63%); serious violence by immediate family members decreased 57%, from 0.7 to 0.3 per 1,000; and serious violence by other relatives decreased 50%, from 0.4 to 0.2 per 1,000.

Interestingly, there was an important difference between these declines and the overall drop in violent crime during this period. Whereas the overall decline in violent crime followed a consistent downward trend after 1994, the declines in intimate partner violence largely occurred in the decade following the passage of VAWA in 1994 and the subsequent infusion of funds into policing, shelters, and other services and leveled off after 2002.

Figure 2.1 Violent and property victimization, 1993–2014

Note: In a small percentage of victimizations, the victim–offender relationship was unknown or the number of offenders was unknown.

a Includes current or former spouses, boyfriends, and girlfriends.

b Includes parents, children, and siblings.


Note: In a small percentage of victimizations, the victim–offender relationship was unknown or the number of offenders was unknown.

a Includes current or former spouses, boyfriends, and girlfriends.
Supplemental Homicide Reports

The FBI Uniform Crime Report (UCR) has provided information on homicides since 1961 in its Supplemental Homicide Report (SHR), which is estimated to capture 92% of homicides. The SHR data are far more complete than those in the UCR and include detailed information similar to the National Incident-Based Reporting System (NIBRS). The limited reliability and comprehensiveness of police reports affect the accuracy of the SHR, as they do all UCR data.

First, homicide data are voluntarily reported to the FBI by law enforcement agencies active in the UCR program. Many jurisdictions fail to file the SHR or file only for portions of the year. In some years entire states fail to file reports with the UCR. As a result, there are considerable gaps in the information it provides.

Second, jurisdictions vary in the percentage of cases where the perpetrator is classified as “unknown” or is not described. For example, between 1993 and 2010, offender information (and, therefore, information on the victim–offender relationship) was missing in 24% to 32% of homicide incidents involving female victims and 40% to 51% of homicide incidents involving male victims. This information is missing because no offender was identified or the offender was not apprehended at the time of the report (Catalano, 2013). For Table 2.1, missing victim–offender relationships were estimated by assuming that the distribution of relationships in murders for which the relationship was known was the same as in murders for which the relationship information was missing.

Third, cases are misclassified. For example, a report may not be modified to reflect the fact that the victim of a reported assault has died.

As Table 2.1 shows, homicide, the most serious form of domestic violence, remains a persistent problem.

Data on homicides are the most complete, largely because the homicide is
more apparent than other crimes, and offenders are more often related to or known by the victim and therefore easier to identify than with other crimes. Domestic violence is an important cause of homicide, particularly among women. Between 1993 and 2010, approximately 39% of female victims of homicide were killed by an intimate partner compared with approximately 3% of male murder victims (Catalano, 2013). Intimate partner homicide (IPH) accounts for 7% of all homicides (Roberts, 2009).

Since 1976, shortly after the first shelters opened in the United States, there has been a dramatic decline in IPH deaths for both men and women. As Table 2.1 shows, this decline continued between 1992 and 2010. The decline has been considerably greater for Blacks than Whites. The decline in the absolute number of persons killed by a partner between 1992 and 2010 is a remarkable improvement, particularly against the background of population growth. But the news is not all good. Given the focus of public policy during this period, however, it is ironic that men benefitted far more than women from these declines in partner homicides. The decline in female homicides was far less than the decline for men. Even as the number of male deaths caused by female partners has dropped consistently for the last 40 years, there was little or no decline in female deaths caused by male partners until 1993. Since then, the drop has lagged behind both the drop in partner killings of men as well as the overall drop in homicides during this period. As a result, the killing of women by their partners has actually increased as a proportion of overall female homicides. Among female victims of homicide, the reduction in risk has occurred primarily among married women. Indeed, the risk of partner homicide to never-married women actually increased until 2004 and has declined only slightly since. The risk to both Black and White spouses was considerably higher than to boyfriends and girlfriends in 1976. Today, this pattern is reversed and boyfriends and girlfriends now face a significantly higher risk than spouses

The racial component of the downward trend in partner homicides is extremely important. Far and away the largest proportion of the overall drop in partner homicides over the last 40 years is accounted for by the drop in the killing of Black men by female partners both in absolute numbers and as a proportion of all partner homicides. Remarkably, the absolute number of Black males killed by intimate partners has dropped more than 90% since
1976 and continued to drop in the more recent period covered by Table 2.1. In 1976, Black husbands were 16 times as likely as White husbands to be killed by a female partner and Black boyfriends were 20 times as likely to be killed by a female partner as their White counterparts. By 2004, this ratio had dropped to approximately 5:1 for spouses and 6:1 for boyfriends and has continued to drop since. The killing of Black women also declined during this period, but far less than the decline in partner-caused deaths of Black males. While the decline in partner deaths of Black men declined more than the overall decline in Black-on-Black homicide during this period, the decline in partner deaths of Black women were considerably less than the overall rates of decline in Black-on-Black homicide—though still significantly greater than the decline in deaths for White women (Rennison & Welchans, 2003).

<table>
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<th>Year</th>
<th>Female</th>
<th></th>
<th>Male</th>
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<td>Percent of homicides</td>
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<td>Number of homicide incidents</td>
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How can this trend be explained? What role did intervention play? In particular, if intervention did play a role, why did it protect men more than women, particularly Black men (Rennison & Welchans, 2003)? Intervention
cannot explain all of these changes, since the declines began in 1976, before most reforms in domestic violence laws, court protections, and services were introduced, let alone widespread. We do not yet have a definitive explanation for these notable declines.

Policymakers and criminal justice officials love to take blanket credit for saving lives and reducing serious domestic violence through their initiatives. The challenge facing researchers is to do a more nuanced analysis that links specific changes to specific outcomes even as we recognize that general changes in the normative support for domestic violence can also make an important difference. Most observers agree that enhanced criminal justice intervention probably played a minor role in reducing partner homicides, largely because it was too sporadic and uneven to send a consistent message of deterrence. Since the serious sanctions that were imposed tended to target offenders who committed the most severe violence, it is possible that police interdiction, targeted prosecution, and other reforms contributed to the declines in the most serious forms of nonfatal violence recorded by the NCVS. Did the declines in partner homicide result from the same factors that caused the drop in all types of homicide since the mid-1980s?

Since the downward trends for partner homicides and all homicides were similar, if not identical, did the same factors cause declines in both rates? Some researchers have found that the same factors that affected an overall drop in homicide explain the drop in partner homicides of White women and, to a lesser extent, the decline in homicides of Black men—but not the benefits that accrued to White men or Black women (Wells & DeLeon-Granados, 2002). Dugan and his colleagues (2000) reported that the involvement of legal advocates was associated with fewer killings of White wives but actually increased the risk for unmarried Black women. As for domestic violence resources, Dugan and colleagues (1999) found little evidence that exposure reduction (such as domestic violence shelters or orders of protection) affected the rate of female intimate partner homicide. They also argued that new legal protections helped married Black women more than unmarried Black women, but that marriage was itself a risk factor for Black women. Meanwhile, Wells and DeLeon-Granados (2002) found that shelter utilization helped to protect Hispanic and rural women, but not Black women, from homicide. They correlated the protective benefits of
shelter with the levels of violence that women were fleeing. Because the severity of violence and abuse affecting black women was higher to start than for other groups, they found that black women benefited least from the short-term, emergency protection offered by shelters. Wells and DeLeon-Granados also identified a backlash effect that protected Black men, a sharp increase in the arrest of non-offending female victims, particularly if they were Black and unmarried. They concluded that “laws designed to protect African American women only work if the woman is married to her offender” (p. 36).

Stark (2007) offered another explanation for the seeming paradox that services designed to protect women protected Black men more effectively than their female partners. He agreed that the policy and criminal justice focus on assault reduced this type of domestic violence. He also argued that the short-term and emergency protections offered by shelters, protective orders, and arrest eliminated a major scenario for female partner homicide: that is, when women kill because they perceive themselves or their children are threatened and see no alternative to violence, even if they are not under immediate attack. Because abusive men tend to kill women when they feel they are losing control or their partner threatens to leave them—or actually does so—the short-term protections offered by existing reforms did little to reduce their long-term vulnerability. This argument converges with the evidence that these separated and divorced women face the highest risk of domestic violence and suggests the possible value of combining sophisticated risk assessment at all points of service with enhanced, longer-term protections, an issue we return to in the conclusion of this book.

Similarly, Figure 2. provides official data on the types and numbers of victims of domestic violence through CY2008. As shown in Figure 2.2, victims of intimate partner violence were more likely to be injured than victims of other types of domestic violence.

**Figure 2.2** Nonfatal Violent Victimization Rate by Victim–Offender Relationship and Victim Gender


**Figure 2.3** Composition of Victim–Offender Relationships in Domestic Violence Victimization, by Victim’s Sex, 2003–2012

Source: Bureau of Justice Statistics, National Crime Victimization
Sexual Assault

Sexual assault and partner violence against women overlap in a high proportion of cases. Twenty-six percent of the abused women identified by the NISVS reported that they had been sexually assaulted by an intimate partner. Conversely, intimate partners (51%) and acquaintances (41%) accounted for the vast majority of offenders in the sexual assaults reported (Black et al., 2011), with just 13% of women reporting they had been sexually assaulted by a stranger. We return to the significance of sexual assault in abusive relationships in our chapter on the health effects of domestic violence (Chapter 13).

Due to underreporting of sexual assaults to police, official figures on sexual assault are gross underestimates. Suffice it to say here that the proportion of domestic violence incidents reported to the police is among the lowest of any crime and within the broad category of domestic violence crimes, marital sexual assaults and, particularly, “marital rape,” are reported least often and even less often than stranger rapes. Even so, a study in the UK found that intimate partner assaults comprised the largest category of rapes reported to police, even though they were much less likely than rapes by strangers or other family members to be prosecuted (Hester & Westmarland, 2006). The researchers explained the discrepancies among reporting, charging, and conviction by the fact that victims of partner rape make “bad victims” because they often recant, since they are still readily accessible to their partner, and because they have often reported multiple sexual assaults by the same individual and may have complicated mental health profiles (due to the abuse).

The UCR relies upon data on 8 categories of crime collected by the FBI from law enforcement agencies nationwide. These data can tell us much about cases seen by the police, who are the gatekeepers to the criminal justice
system. However, there are numerous limitations to the data’s use. First, a very high percentage of domestic assaults never reach police attention, with estimates ranging from 7% to 50%. Second, police record only varying percentages of what is actually reported. Third, the UCR uses its own definitions and classifications of offenses and requires reporting agencies to conform to these standards. Fourth, many departments do not submit any data to the FBI, even when doing so is state mandated. Fifth, the quality of data that police provide is often questionable, and considerable information may be lacking. As a result, statistics on domestic violence may either reflect the department’s record keeping or the experience of its service population. Sixth, its data are offender based with no information provided on victims. Although the UCR now requires assaults to be categorized as domestic or nondomestic, it does not include relationship status. Many police departments do not even record this information on incident reports, resulting in the inability to correctly categorize incidents.

A key improvement to the FBI’s UCR is NIBRS, which has been implemented in several jurisdictions. The NIBRS collects data on 57 types of crimes and includes detailed information on offender–victim demographics, victim–offender relationship, time and place of occurrence, weapon use, and victim injury. However, currently only 30% of the populations reside in jurisdictions where NIBRS data collection methods are used and the data represent only 28% of the crime statistics collected by the UCR program.

One of the most recent instruments developed is the NISVS, to which we have already referred on several occasions. Compiled by the CDC and first administered in 2010, the NISVS used random-digit dialing to generate a representative national sample of individuals 18 and older. The NISVS is intended to provide far more comprehensive data than has been gathered by other governmental surveys on the prevalence, characteristics, and health and mental health consequences of interpersonal violence by male and female partners as well as on their service utilization. The survey collected data on sexual violence, stalking, “psychological aggression,” and control (including control related to reproductive health) as well as on physical violence by intimate partners.

The 2011 report indicates that nearly 3 in 10 women and 1 in 10 men in the
United States have experienced rape, physical violence, or stalking by an intimate partner and at least one impact related to these or other forms of violent behavior in the relationship (e.g., being fearful, concerned for safety, PTSD, etc.; Black et al., 2011). The significant differences between the experiences of male and female victims are revealed by findings on the frequency of violence suffered and the concurrence of sexual violence and stalking with physical abuse. The NISVS reported that abused women experienced the following types of assault between 11 and 50 times or >50 times: choked (10%; 5%); kicked (18%; 7%); hit with a fist or an object (19%; 10%); beaten (21%; 18%); and slapped, pushed, or shoved (see Table 2.3) (22%; 21%; Black et al., 2011). The survey also found that 39% of the women identifying themselves as victims of intimate partner violence had also been raped (9%), stalked (15%), or stalked and raped (13%). The number of women who were stalked by male partners (9.2%) was considerably larger than the number of men stalked by women (2.5%) (Breiding et al., 2014) and the number of men experiencing similar frequencies of assault or experiencing violence in combination with sexual assault and stalking was too small to calculate. In contrast, men reported being subjected to slightly higher levels of emotional aggression than women and similar degrees of control, though not in those areas that involve the most consequential constraints, such as control over money, monitoring of time and movement, and not being allowed to leave the house (Black, 2011). Unfortunately, while the CDC report calculated the proportion of abused women experiencing violence, stalking, and sexual assault, it did not correlate violent acts with instances of emotional abuse or control, making it impossible to identify the prevalence of coercive control in the sample (Black et al., 2011).
Abbreviation: CI = confidence interval.

As shown in Table 2.2, there are considerable variations based not only on sex but also on race and ethnicity. The reported lifetime percentages for multiracial women (13.3%) were highest, followed by non-Hispanic White women (9.9%), non-Hispanic Black women (9.5%), and Hispanic women (6.8%).
While the CDC estimated that 1.7% of non-Hispanic White men were stalked by an intimate partner during their lifetimes, the case counts were not sufficient for all other male racial and ethnic groups to provide reliable estimates (Breiding et al., 2014).

In addition, the NISVS is unique in reporting several indicators of coercive control, as illustrated in Table 2.3.
Unofficial Survey Data

The National Family Violence Survey and the Conflict Tactics Scale

Aside from the official sources of data, the National Family Violence Surveys (NFVS), conducted in slightly different form in 1975, 1985, 1992, and 1995, came closest to providing unofficial longitudinal data from a representative population sample. The NFVS employed an innovative methodology known as the Conflict Tactics Scale (CTS) to identify the extent to which intact couples deployed violence as a “conflict tactic” in their relationship during the sample year and which violent acts they used.

**Figure 2.4 Violence, Rape and Stalking Among Abuse Victims**


The specific findings of the NFVS and the methods used have been superseded by subsequent work. But, because they were the first population-based national surveys of domestic violence, when the researchers first announced their finding that between 100 and 121 women per 1,000 were victims of domestic violence annually, it sent shock waves through the family research community. Meanwhile, advocates seized on what appeared to be the first reliable data on the extent of violence against women to help them fight for legislation and funding. Depending on the year, the estimated prevalence of violence against women provided by the NFVS was anywhere from 12 to 30 times higher than comparable estimates of domestic violence from criminal justice sources such as the NCVS. For instance, in 1992, the NCVS reported that the combined rate of simple and aggravated assault against women by an intimate partner was 7.6 per 1,000 (Bachman & Saltzman, 1995; Bachman, 2000). By contrast, the NFVS conducted that same year reported a rate of 91 per 1,000 women just for more serious violence, a rate that was more than 12 times higher than the NCVS estimate—though still considerably lower than the NFVS survey estimates from 1976 (121/1,000), 1985 (116/1,000) or 1995 (135/1,000) (Straus, 1990; Schafer, Caetano, & Clark, 1998; Straus & Gelles, 1986; and Straus in Straus & Smith, 1990; Bachman, 2000). At the very least, this suggested that there was a hidden population of victimized individuals whose experience was not being tapped by official sources such as the NCVS. The magnitude of these
discrepancies and their implication for services and funding is dramatized when we consider the actual numbers involved. Using projections based on the 2010 US census, according to the NFVS, the domestic violence problem may affect more than 25 million adult Americans in 2015. By contrast, according to the NCVS, the problem affects 1 million or fewer.

In addition to the initial shock elicited by the findings of the NFVS and the discrepancies between its findings and criminal justice findings, the NFVS was significant because of its methodology, the CTS. Initially developed because family sociologists were concerned with how couples handled conflict and particularly how readily they resorted to force with one another or their children, the CTS consisted of 18 items that measured three different ways of handling interpersonal conflict: reasoning, verbal aggression (also known as emotional or psychological abuse), and physical violence. Various versions of the CTS or the violence panel taken from the CTS are the most widely used tools used to measure and compare estimates of partner abuse in the United States and abroad.

Researchers and advocates harshly criticized the CTS as a measure of partner abuse, starting with the widely documented fact that “conflict” is only one of many contexts in which partners use violence—an estimated 10% of women are beaten in their sleep—and by no means even the most important. Critics have also pointed to the fact that the CTS is insensitive to the context in which violence occurs (e.g., assaultive and retaliatory violence are treated identically) as well as to motivations behind the use of force, the meaning of the violence to the parties engaged, and the outcomes of the violence (Belknap, Fleury, Melton, Sullivan, & Leisenring, 2001; Belknap & Potter, 2005; DeKeseredy, 1995; DeKeseredy & Schwartz, 1998; Stark, 2007; Stark & Flitcraft, 1983; Yllö, 1984). Each subsequent iteration of the CTS has attempted to address some of these criticisms. Still, to the family violence researchers, violence is violence, whatever its motive (excuse) or context. If the instrument remains in wide use regardless of its limits, this is largely because its very popularity makes it hard to compare research outcomes if another method or panel of questions is employed.

Finally, the NFVS set the stage for researchers and others who claim there is parity in partner violence, even if the symmetry between male and female
partner abuse is inexact. As we explore below, particularly severe criticism has been leveled by those who believe family violence studies inappropriately equate rates of violence by heterosexual women against their partners with similar to rates of violence and abuse or battering committed by heterosexual men. A more subtle issue raised is that men and women report violence differently, with men tending to underreport their own abuse and overreport being abused, while women tend to overreport their own violent behavior and to minimize the violence used against them (Belknap & Potter, 2005; Berns, 2000; Campbell, 1995). Female underreporting of domestic violence has been attributed to fear of retaliation and the fact that they suffer from embarrassment, view the violence as a private matter, or distrust the interviewer (Belknap & Potter, 2005; Smith, 1994). To counter this argument, Hamel (2007) points to research suggesting that acknowledging being abused contradicts cultural images of masculinity, causing men to avoid embarrassment by denying the abuse used against them.
The Revised Conflict Tactics Scale

Items are hierarchically ranked from least to most severe. The first 10 items list tactics that are not physically violent; the next 3 describe minor acts of violence; and the last 5 constitute the “severe violence” index.

The respondent is read the following passage:

No matter how well a couple gets along, there are times when they disagree, get annoyed with the other person, or just have spats or fights because they’re in a bad mood or tired or for some other reason. They also use many different ways of trying to settle their differences. I’m going to read some things that you and your (spouse/partner) might do when you have an argument. I would like you to tell me how many times . . . in the past 12 months [Read item] (Straus, 1990, p. 33).

A major criticism of the CTS is the assumption that violence between intimates is a result of “conflict.” It can easily be argued that violence between partners is not always the result of conflict.

The CTS ranks behaviors from least serious to most serious. As a result, it may erroneously assume that psychological abuse and the first 3 acts of “minor” violence items—slapping, hitting, and kicking—are less serious than the items in the severe violence index. This hierarchy of abuse based on seriousness has been criticized because many victims experience emotional abuse as more harmful than physical violence.

The CTS assumes that violence is the result of conflict rather seeing the issue as one of male violence directed toward women.

The CTS only asks about several specific types of abuse. However, it fails to ask about many others, including sexual assault. Many researchers believe a respondent will only report those injuries about which they are asked directly.

The CTS relies on simply tabulating the actual number of violent acts committed. However, it fails to tell us why people use violence (e.g., the context). Therefore, CTS data almost always report men and women as equally violent. It does not consider that some acts of violence may be in self-defense, especially by women.
The CTS2

As a result of criticisms that were expressed for many years, Straus, Hamby, Boney-McCoy, and Sugarman developed the CTS2 in 1995 to address some of these criticisms. It includes several more physical and psychological abuse items including 7 types of sexual assault.

The revised CTS2 also attempts to address differences between behaviors that result in physical injury compared to behaviors that do not (e.g., slaps that break teeth versus those that are unlikely to cause physical injury). This was achieved by asking about several injury outcome measures, including the need for medical treatment.

Still, the CTS2 does not answer all the criticisms. The primary concern is that the CTS2 still asks about a specific act taken out of context without understanding the reasons that led up to the aggressive behavior. Further, violence that is not a result of conflict (e.g., unprovoked) is not included. Therefore, many of the motives for violence are not included.

Straus and Gelles reported that about 16% of all households surveyed and approximately 10% of both women and men reported some victimization in the past year with slightly greater than 3% in any given year suffering severe abuse involving punching with a fist, kicking, biting, beating, and attacking with knives and guns.
Controversies Over Definitions

Before going further and commenting on the prevalence of domestic violence, we need to discuss the fundamental controversies regarding the definition of domestic violence. These continue despite years of public attention, much research, and an active legislative effort to develop explicit statutory definitions. There are societal definitions, legal definitions, and research definitions—all of which differ. However, they all involve two primary considerations. First, what are the relationships considered in identifying cases of domestic violence? Second, what acts actually should be defined as “domestic violence” or perhaps as “domestic abuse”?

We recognize that the definitions used by advocates in their work with victims may differ from each of the definitions discussed here. We also expect that victims, offenders, and populations vulnerable or prone to abuse may define it differently than one another or than it is defined by research, law, or the media. These context-specific definitions have important bearing on how domestic violence and coercive control are used, perceived, reported, rationalized, and inhibited. While what may be termed “definitions in ordinary life” deserve more attention, this is not our focus here.
Statutorily Defined Relationships

The complexity and the diversity of relationships encompassed by domestic violence statutes are often unappreciated. Most people believe that domestic violence is or should be interchangeable with, and limited to, wife battering or spousal abuse (e.g., an assault against present or former partners). However, many statutory definitions of domestic violence cover a far broader range of relationships.

The earliest domestic violence statutes only covered married or previously married couples. Most states have long since revised initial statutes to encompass offenses involving parents or caretakers, dependent children, siblings, grandparents, and grandchildren. Therefore, it is safe to say that, currently, state domestic violence statutes address a far broader range of relationships than simply intimate partner violence.

This is troublesome in that official statistics may be misinterpreted unless carefully presented. Of course, any form of intrafamily violence may be severe and require intervention. However, the characteristics, causes, and appropriate interventions for violence against children or elderly parents may differ markedly from those for intimate partner violence. For instance, protective services designed for frail elderly victims are not appropriate for an otherwise competent adult victimized by a partner. It is important to place intimate partner violence in the broader context of violent behavior. But intimate partner violence against women has historical, cultural and societal roots that distinguish it from other types of family violence, including female partner violence. Using official statistics on domestic violence can lead to deceptive conclusions about many facets of partner violence, including rates of injury, criminal justice decision making, and revictimization. In addition, without disaggregating official data on domestic violence, it is difficult to draw valid conclusions about rates or trends in partner victimization.

Fortunately, the federal government has relied on other sources of data. Compiled from police reports to the FBI, the NIBRS found that, of incidents of intimate partner violence and intimidation in 2012, 31% involved spouses, 62.6% involved a boyfriend or girlfriend, 1.9% involved a homosexual
relationship, and 4.4% involved an ex-spouse.

Of the intimate partner cases falling under the category of “boyfriend/girlfriend” there is great room for interpretation. What type of relationship between a male and a female constitutes a boyfriend or girlfriend? When classifying a call, do police routinely ask such couples if they have ever resided together or if they have been sexually intimate?
Domestic Violence Offenses

Most people would probably agree on what types of behavior comprise a burglary, a mugging, or an identity theft. With domestic violence, however, there is a widening gap between the legal definitions and the behaviors that researchers, practitioners, victim advocates, the media, and the general public associate with domestic violence or partner abuse. At one extreme are the many members of the public who believe that only extreme physical or sexual violence should be recognized as abusive and elicit a criminal justice response. At the other extreme are those, including many advocates, practitioners, and some researchers, who argue that abuse should include “psychological abuse” (such as chronic degradation) or “coercive control,” including patterns of isolation, intimidation, and control as well as physical and sexual violence. For some time, television shows like CSI or other police procedurals have portrayed abusive relationships as involving far more than physical violence.

A major achievement of the domestic violence revolution, according to Stark (2007), is a cultural change that has made the absence of physical abuse a litmus test for the integrity of an intimate relationship, particularly among younger people. But there is a growing sense that the dichotomy between “violent” and acceptable partner behavior fails to capture the range of coercive and controlling behaviors that should rightfully be considered abusive, even if some of these behaviors are not criminal offenses. An example of such behavior is taking a partner’s money or depriving a partner of money. Economic violence, psychological abuse (or emotional violence), and certain forms of stalking and surveillance by partners have been included in domestic violence offenses in Europe (see Chapter 9). In the United States, there is still skepticism about how to identify these acts or to define them as crimes as well as about whether, even if proved, these acts are worthy of criminal sanctions.

The pattern of coercion and control has been variously identified as psychological abuse, “patriarchal terrorism,” or “coercive control,” the term we use here. An early definition of coercive control was provided by Evan Stark and Anne Flitcraft (1996). They define coercive control as including:
[A] pattern of coercion characterized by the use of threats, intimidation, isolation, and emotional abuse, as well as a pattern of control over sexuality and social life, including . . . relationships with family and friends; material resources (such as money, food, or transportation); and various facets of everyday life (such as coming and going, shopping, cleaning, and so forth). (pp. 166–167)

But there is even less consensus about how to define or measure coercive control than there is about domestic violence. Most researchers who discuss this broader pattern acknowledge that a significant proportion of abusive relationships fit the conventional model of domestic violence (Johnson, 2008; Stark, 2007). Even so, they insist, in a large proportion of abusive relationships, the pattern of frequent physical and sexual violence documented by the NISVS occurs in the context of a broader repertoire of tactics designed not merely to hurt a partner, but also to subordinate, subjugate, or dominate them (Gordon, 2000). Encouraging our readers to “look beyond violence” is not intended to diminish the significance of physical or sexual violence and even less to minimize the incredible suffering that such physical and sexual violence occasion. To the contrary, setting violence in the context of coercive control is meant to complement the emphasis on trauma by highlighting how stalking, isolation, and control tactics also harm a victim’s rights and liberties as well as their sense of physical or sexual autonomy and safety.

As Angela Moore Parmley (2004) of the US Department of Justice noted about the relationship of the domestic violence and coercive control models of abuse:

The two perspectives are not diametrically opposed . . . to accept a narrow definition of violence against women would deny the totality of the vast majority of those women who are victimized by their intimate partners on a daily basis . . . adopting a broad definition that includes various types of abuse, control, and coercive behavior means incorporating some behavior . . . that has not been legally proscribed and thus not sanctioned. (p. 1419)
In Chapter 4 we examine the coercive control model of abuse in detail. Suffice it to say here that most of the evidence we summarize on the scope, dynamics, and consequences of partner abuse throughout the text is drawn from research conducted from the vantage of the domestic violence model. This is an important caveat that, we hope, will become less important as official sources begin to assess coercive and controlling behaviors, as the CDC did in the NISVS. When we are not citing specific studies, however, we use the term “domestic violence” to encompass a broad range of maltreatment by intimates. We include (a) physical violence, including an assault or a homicide; (b) sexual violence; (c) threats of physical and sexual violence; (d) severe emotional or psychological abuse, including behaviors designed to isolate or control victims; (e) economic violence, such as taking a partner’s money, denying them access to money, or holding them accountable for all expenditures; and (f) stalking by present or former intimates for the express purpose of committing domestic violence.

There is as yet no consensus on the elements that comprise coercive control —on whether it should be limited to psychological abuse and control, for instance, or also include economic abuse and the range of coercive acts. Nor is there agreement on the harms it causes. For Gelles (1997), looking beyond violence in a definition “muddies the waters” in ways that make it hard to do systematic empirical research. Other critics worry that when psychological abuse is juxtaposed to “real” violence, either the harms caused by emotional abuse are lost or claims about the extent of severe assault appear as hyperbole. By contrast, Stark (2007) insists that research that sacrifices accuracy for consistency is of little use in supporting effective intervention. Moreover, he insists that by incorporating the range of coercive acts into the definition of abuse, alongside tactics like depriving women of money, transport, or other necessities of daily life, we enhance the harms caused and overcome the current tendency to trivialize or ignore cases in which victims are not seriously injured. Until these issues are resolved, we will specify which acts are being subsumed in working definitions and which are being measured while remaining agnostic about whether abuse is best understood as a unitary experience (with variations) or a multifaceted problem that shares certain central characteristics.
Stalking as Coercive Control

As researchers and lawmakers have begun to look beyond violence, the significance of stalking in intimate partner relationships has emerged as a core concern. As it is typically defined by law, stalking involves a pattern of harassing, following, or other acts that are deliberate, unwanted, and create a credible threat, explicit or implied. While early interest focused on celebrity stalking, the passage of anti-stalking legislation has been accompanied by the growing realization that most stalkers know their target and are present or former partners. As we saw above, the NISVS conducted by the CDC found that 28% of the women who had experienced partner violence were also victims of stalking by their partner. We discuss the legal aspects of stalking in detail in Chapter 9. Here, we want to make two important points: that stalking poses a challenge to understanding domestic violence because it is a course of conduct rather than a single act, and that stalking behavior often begins while a couple is still together, a fact that is overlooked by current anti-stalking law.

One of the primary difficulties many agencies face, especially criminal justice bureaucracies such as the police, prosecutors, and the judiciary, is the confusion between patterns of behavior and violent acts. Specifically, the criminal justice system does not adequately address patterns of abusive behavior, but it is systematically biased to address specific illegal acts. After all, individuals are charged with a specific offense that must be proven beyond a reasonable doubt. This inherently separates how the legal system defines domestic violence from the more inclusive definitions preferred by most social scientists. Harassment is an example of a crime that is defined by a course of behavior rather than by a single act. So is stalking. An outstanding issue is whether domestic violence is more like assault than it is like stalking. Importantly, Spain, the UK, and other European countries have supplemented their official definitions of domestic violence by identifying either coercive control or a similar pattern as a course of conduct offense involving repeated acts of partner violence or other forms of abuse, modeling these revised definitions after stalking laws.

The ready availability of court protective orders, divorces, or actions that
remove an offending partner from the site of the abuse has led many abusive partners to circumvent “no contact” prohibitions through stalking (Logan, Shannon, Cole, & Walker, 2006). Stalking is sometimes considered a separate phenomenon, but it is often closely related, and sometimes a precursor, to physical and sexual assaults and is therefore properly included in many domestic violence statutes. Although many in the general public consider stalking behavior a mere nuisance or inconvenience, the reality of stalking is far different and, in the context of former intimate partners, is potentially very dangerous to the target. Indeed, there is mounting evidence that partner stalking lasts longer than stalking by strangers and is linked to a far higher probability of eventual physical and sexual violence (Logan, 2010; Logan, Shannon, & Cole, 2007).

The psychological trauma inflicted by partner stalking can be all-encompassing, since the victim is continually fearful about when the predator will strike.

A less well-known reality about stalking is that, in more than half of all stalking cases, stalking and other forms of harassment and surveillance begin while the couple is still together. Additionally 50% of abused women reported “proxy stalking,” when their partner used friends, family members, children, or paid outsiders to follow and acquire information on their partners instead of doing so themselves. Internal stalking is almost never identified as an offense, reported, or a matter of police concern. Yet it is a powerful weapon in domestic violence and coercive control.

There is also confusion between committing violent acts and actually inflicting an observable injury. Many people incorrectly believe that the sole legal criterion for measuring a violent act should be injury. However, even domestic violence statutes do not require physical contact as an element of a criminal assault. Placing someone in “reasonable fear” of such an assault is legally sufficient. Criminal law acknowledges differences in assault severity only by a dichotomy that distinguishes among simple assault, aggravated assault, and sexual assault. Researchers, however, often use the umbrella term “assault” to measure a wide range of behaviors, from a continuum ranging from minor threats to serious violent behavior resulting in injury.

Similarly, for estimation purposes, the US Justice Department’s BJS’s NCVS
adopted an inclusive definition that acknowledges that an assault may range from a minor threat to incidents that are nearly fatal.

State statutes regularly redefine what constitutes legal criteria for “attempts” as well as “acts.” Most surveys take a much broader view of assault that goes beyond simply measuring injuries. Assault incidents may therefore range from face-to-face verbal threats to an attack resulting in extensive injuries. An even wider net can be cast in defining assault by arguing for the inclusion of behaviors such as verbal aggression, harassment, or other behaviors that are emotionally distressing.

The number of violent acts committed by a stranger often is reported as an indicator of the relative seriousness of intimate partner violence, compared with total violent acts. For example, in 2013, 28.5% of violence against women were committed by a stranger, 3.8% were committed by an “other relative,” and 28.2% by a “friend or acquaintance.” The percentage of violent crimes against women by an intimate partner was 26.8% compared with 6% of all men (Planty, 2014).

One conclusion that can be drawn with obvious certainty is that studies report wide variation in domestic violence rates, partially originating from differences in the age of the sample population, how the sample was selected, and other methodological artifacts.

It is equally unclear whether different findings in these studies reflect not only differences in methodology but also real differences in rates of occurrence. For example, the NCVS reported a 67% decline in domestic violence from 1994 to 2013 (Planty, 2014). However, serious domestic violence from 2004 to 2013 did not decrease as fast as stranger violence (Truman & Langton, 2014). Moreover, it is premature to conclude that any official statistics showing a drop in domestic violence rates are related to recent more proactive efforts to combat such offenses. Nonetheless, it was encouraging to observe a drop in both fatal and nonfatal domestic violence between 1994 and 2013 of both simple and aggravated assault (Planty, 2014).

Definitions of domestic violence are largely dependent on descriptions by the police, assailants, victims, and witnesses. Hence, the definition of domestic violence also is largely based on then prevalent societal values. Many people
assume assaults are physical acts that result in injuries. However, physical contact is not the sole legal criterion for assault.

Unfortunately, official data are not always accurate. Researchers know that official data measuring many minor crimes like domestic violence are critically dependent on a series of problematic assumptions—that the police are called for each incident, that the police respond in time to intervene, that the police accurately fill out official reports, and finally that police departments submit these data to the FBI. Unfortunately, in crimes that are considered by the police to be relatively minor, each of these critical assumptions tends to be unrealistic. As a result, official statistics dramatically understate real incidence rates.

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France provides an interesting example of efforts to address psychological abuse through its legal system. It is the first country in the world to criminalize psychological abuse. The law is expected to include “repeated rude remarks about a partner’s appearance, false allegations of infidelity, and threats of physical violence” (Allen, 2010, para. 4).

“According to government statistics, 10% of women in France are victims of domestic mistreatment of some kind, and 80% of women who make calls to state-funded help lines complain of severe verbal abuse compared to 77% who report physical violence. . . . [T]here is growing sentiment that something must be done to halt the emotional and mental trauma that continues unabated.” (Crumley, 2010, para. 5)
An Example of Internal Stalking

When John Davis was arrested for following his ex-wife, she told police that the stalking had begun early in their 18 year marriage. She described how there was no place she could be alone, even in their own house. She told police:

“I would go to the bathroom and if I was in there, you know, just sitting there was relief. I thought ‘Thank God, I’m alone.’ Just to go to the bathroom—to me that was like going to Florida for some women or to Paris even. And if I was in there two minutes longer than he thought I should . . . he would just come in there (she motioned grabbing her hair to show how her husband would drag her out of the bathroom, right off the toilet). And if I was just in there, he would say I was “thinking”—“conspiring” to go with another man.
Who Are the Victims?

National-level aggregate data often tend to mask major differences among various subgroups in the United States. These variations are now being identified, and their significance for practitioners and policymakers is being explored further. When domestic violence first became recognized as a national problem, researchers and advocates emphasized that it was equally prevalent among all groups of women. Pragmatically, this made sense. If domestic violence was considered primarily a problem of specific racial or ethnic groups, or the poor in general, it risked being marginalized as an important societal issue—simply another seemingly intractable problem of these subgroups within society. Like poverty itself, poor housing, or inadequate medical care, such problems if they did not involve the middle class could politically be set aside. The fact that domestic violence was better known among victims of lower socioeconomic or racial minority status was attributed solely to its visibility in this group, compared with more affluent, white victims, who tend to keep such incidents hidden from the public eye. However, the differential impact of domestic violence on groups is now widely acknowledged (Buzawa & Buzawa, 2003; Stanko, 2004).
The Role of Gender

This section deals with an ongoing debate in the domestic violence field, whether gender matters to the understanding of partner abuse and, if so, how it matters. Behind these questions lie two seemingly contradictory findings: that male and female partners appear to use violence in equal numbers and that women comprise the vast majority of those who seek outside assistance because of abuse.¹

Most of the world takes for granted that violence in relationships is a pervasive expression of male violence against women and that our major challenge is to identify and win government support for the optimum combination of protection and support for victimized women and punishment and rehabilitation of perpetrators. Does the use of violence by women have the same meaning as violence used by men? A continuing source of controversy is whether there is gender symmetry in the perpetration of intimate partner assaults or whether there is a distinct and far more severe problem of women being the victims of male violence. Gender “refers to the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for men and women” (World Health Organization, 2014). Gender is a key way in which society is ordered and refers to the relationships between men and women and the social, political, and cultural environment within which they operate, the code of conduct expected of them (Connell, 2002).

Some researchers using a family violence or gender symmetry perspective contend that women initiate as many, if not more, acts of violence compared with men (Straus, 2010). The NFVS as well as more than 200 additional studies that used the CTS tended as a group to report rates of violence committed by women to be as high as those of men (Dixon & Graham-Kevan, 2011; Straus, 1999, 2010, 2011). Straus believes this reflects the critical differences between crime studies and conflict studies. Research by Straus and his colleagues suggests that only approximately 2% of domestic assault incidents are reported to police (compared with 55% according to the NCVS, as discussed earlier) and that those reported are likely to be the more serious assaults or those for which there is greatest fear of serious injury—
most likely by a male perpetrator (Straus & Gelles, 1986, 1990).

Many similar surveys have shown that many of these women initiate the use of force, employ injurious levels of violence, stalk or sexually coerce their partners, and insult or humiliate them (psychological aggression). (Archer, 2000; Tjaden & Thoennes, 2000; Graham-Kevan & Archer, 2008; Swan et al., 2009).

A larger proportion of women than men identified their violent acts as retaliatory (though not necessarily defensive). But like men, women often reported being motivated by jealousy or a desire to punish or control their partners (Swan et al., 2009; Archer, 2000; Felson, 1996; Tjaden & Thoennes, 2000). There is some evidence that women emotionally abuse their partners as often as men and use many of the same control tactics (Graham-Kevan & Archer, 2008). For example, women arrested for domestic violence reported they threatened or used violence at least sometimes to make their partner do things they wanted him to do (38%) and these threats were sometimes effective (53%) to “get control” of their partner (22%) or to make their partner agree with them (17%; Swan et al., 2009). One important difference is that women arrested for partner violence are far more likely than the men arrested to report they have been victimized by the male partner they assaulted, with the proportion reporting victimization ranging from a low of 64% (the NFVS) to a high of 92% (Swan et al., 2009).

In a widely cited meta-analysis of these surveys, Archer (2000) concluded that women perpetrated slightly more than 50% of reported partner violence and inflicted 35% of domestic violence injuries on men. But Archer excluded the NVAWS from his overview, the largest population survey to date, presumably because the numbers involved would have skewed his results. He also excluded studies of sexual assault and sexual coercion, which are committed almost exclusively by men. Importantly, the NVAWS looked at abuse over the adult life course and included male and female rates of being stalked and sexually assaulted alongside rates of domestic violence.

It is noteworthy that significant gender differences in victimization emerged when distinguishing between reported violent acts during the study year (where the male to female ratio was only 1.4:1), and partner assault over the life course, where the ratio was more than 3:1 (22.1% vs. 7.4%) (Tjaden &
Thoennes, 2000). Gender differences in sexual abuse and stalking were considerably larger.2

In contrast with the family violence perspective is the view that violence is highly gendered and that women use violence primarily for self-defense. These researchers argue that women are far more likely to be the victim than the perpetrator of violence, and that it is important to consider this in understanding both the effects as well as the context of the violent act and the degree of injury inflicted (Dobash & Dobash, 2004; Johnson, 2008; Stark, 2007).

In addition, while men are more likely than female partners to inflict injury—possibly as a result of their greater physical strength—well over 95% of reported abuse is noninjurious, involving slaps, pushes, shoves, and so on, including the abuse reported to police, the ER, and the military (Stark & Flitcraft, 1996; Black et al., 2011).

Other researchers report that women use violence instrumentally and that it is for purposes of self-defense or out of frustration (Miller & Meloy, 2006). A recent study that interviewed women arrested for domestic violence found that women used violence instrumentally in self-defense or for retribution. In addition, they noted the importance of protecting other potential victims, especially children, as a reason. Unlike Straus (2010), the study did not find that coercion played a role. (Simiao, Levick, Eichman, & Chang, 2015).

Resolution of this issue is important not just for its academic merit but also primarily because statutory criminal penalties may be differentially applied if this is treated as a crime against women. Perhaps even more importantly, federal funding is granted to combat male-on-female violence under VAWA with no direct analog to the reverse sequence or, for that matter, violence against male intimates in same-sex relationships.

Figure 2.2, as shown earlier, fairly clearly demonstrates that officially reported rates of nonfatal domestic violence are very heavily skewed toward women as victims. This pattern is not a 1-year phenomenon, but it has continued during the past 15 years with approximately a 5-to-1 ratio of officially reported female-to-male victims reported for most years.
Advocates of a gender-neutral approach to intimate violence conclude that violence perpetrated by females against males is widely underreported to the police for a variety of reasons. They do acknowledge that the injury and level of violence is far greater in cases of male-against-female violence, but they believe that law enforcement should treat the commission of interpersonal violence by anyone as a problem, and not just focus on male-against-female violence. They also note that official statistics are suspect because male victims of abuse tend not to report as frequently as females, out of embarrassment or because they are aware that police frequently do not take such complaints as seriously as violence against women.

Both sides have some validity. Male-against-female violence is the more serious problem both in terms of frequency and in terms of rates of serious crime. Official BJS data show how domestic violence is proportionately a far greater concern to women than to men relative to other violent victimizations. However, while 36.3% of women disclosed violence to the police, only 12.6% of males reported violence committed by an intimate partner (Breiding et al., 2014).

Another valid indicator is the seriousness of victim injuries. The more serious the nature of the injury, the more likely the crime is to be reported. The NISVS reported that 4 in 10 female victims compared to 1 in 7 male victims reported experiencing a physical injury as a result of violence by an intimate partner (Breiding et al., 2014). The most serious of all is, of course, a homicide. Table 2.1, as reported earlier, discusses the sex of victims of intimate homicides. Such crimes are, for obvious reasons, not likely to not be reported or recategorized.

The majority of researchers believe that female-initiated violence poses less of a problem to society than male-on-female violence. As discussed, their rates of violence are somewhat lower, and when violence is used by women it is often instrumental rather than for purposes of control. Furthermore, they unequivocally account for far less severe injuries to their victims than heterosexual men. Therefore, although our legal system supports a definition of intimate partner violence that is gender neutral, women are clearly at a disproportionate amount of risk for serious victimization. Their risks for intimate partner violence, sexual assault, and stalking simply are greater than
for men. They also are at greater risk for multiple types of victimization as well as for recurrent violent victimization within relationships.

The flawed but official data sources—the NCVS, the NVAWS, and the NISVS—have consistently reported higher rates of female compared with male intimate partner victimization (Bachman & Saltzman, 1995; Tjaden & Thoennes, 2000; Breiding et al., 2014). The NISVS reports that nearly 3 in 10 women (28.8%) and nearly 1 in 10 men (9.9%) have experienced rape, physical violence, or stalking by a partner in their lifetime (Breiding et al., 2014).

In addition to controversy over which data source more accurately reflects women’s use of violence, many independent researchers argue that the number of violent acts alone should not be the basis for judging female violence in comparison with that committed by males but that the outcome and the context of their violent acts also should be considered. They believe this for a variety of good reasons.

First, the comparative rates of injury clearly demonstrate that women use less force than men. The NISVS reported that nearly 1 in 7 (14.8%) surveyed women and approximately 1 in 25 (4.0%) surveyed men reported at least one injury as a result of violence in a relationship.

Similarly, the NVAWS reported that 42% of women who were assaulted since the age of 18 years old were injured in their most recent assault; however, most injuries were relatively minor (Tjaden & Thoennes, 2000). The NISVS found that approximately 84.2% of female victims disclosed their victimization, compared to 60.9% of men.

The NVAWS also found that gender differences became even more pronounced when the severity of the injury was measured. Of the 4.8 million rapes and physical assaults perpetrated against women annually, approximately 2 million resulted in an injury to the victim, and more than 550,000 required some type of medical treatment for female victims. In contrast, of the approximately 2.9 million intimate partner physical assaults perpetrated against men annually, approximately 580,000 resulted in injuries and only 125,000 required medical treatment. Therefore, although the total overall number of injuries—4.8 million compared with 2.9 million—may not
be remarkably dissimilar, the difference between the 550,000 women requiring medical care compared with the 125,000 men reveals considerably greater risk to women. In addition, because the NVAWS study included same-sex violence, where a far larger percentage of men were far more likely to be abused by a male partner, the difference in injuries sustained by each sex at the hands of the other is even greater.

Second, although the overall rate of violence against women may be less than the rate of violence against males (as a result of staggering levels of male-on-male violence), the relative impact of intimate partner violence on each group is different. Between 2003 and 2012, the NCVS reported that 26.6% of serious violence against women was committed by an intimate partner, compared with only 5.8% of serious violence against men (Truman & Morgan, 2014). In a real sense, violence committed by women against their heterosexual partners is only a small incremental risk factor to men, whereas it is a large component of the overall risk to women. In addition, although both men and women initiate violence, in most cases, violence initiated by women is far less severe and is often in response to actual or anticipated male violence.

Third, as noted earlier, it has long been suggested that there are major differences in the reasons for use of violence between men and women in their relationships. Since the early 1980s, some researchers have suggested that women may initiate violence more often than men as a tactical strategy to avoid an imminent violent act against them (Bowker, 1983; Feld & Straus, 1989). In addition, many women may be acting in self-defense or simply fighting back (Barnett, Lee, & Thelen, 1997; Chesney-Lind, 2002; Hanmer & Saunders, 1984; Miller, 2005; Renzetti, 1999; Renzetti, Goodstein, & Miller, 2005; Stark, 2007; Stark & Flitcraft, 1996).

This argument is further substantiated by empirical data from a national study of dating violence in Canada, which reported that most women who used violence were acting in self-defense or fighting back (DeKeseredy, Saunders, Schwartz, & Alvi, 1997). A study by Swan and Snow (2002) studied women who had used physical violence with a male partner. They reported that “almost all of the women committed moderate physical violence, 57% committed severe violence, 54% injured their partner, 28% used sexual
coercion, and 86% used some form of coercive control” (Swan & Snow, 2002, p. 311). Almost all of these women also experienced physical violence from their male partners. They ultimately reported that only 12% of women were aggressors; the remaining women reported that the men committed significantly more acts of violence against them with fewer than 6% experiencing no physical violence by their partner.

Similarly, Swan, Gambone, Fields, Sullivan, and Snow (2005) reported that close to 92% of the women they studied used violence against male partners who had physically or sexually abused them.

Although women committed significantly more acts of moderate physical violence against male partners than their partners committed against them, their male partners committed almost 1.5 times the number of severe physical acts against them (although only moderately significant), committed 2.5 times the rate of sexual coercion, and caused 1.5 times as much injury. Also of interest is that although there were many relationships in which the female partner was more physically aggressive while her male partner was more controlling (50% of relationships). The researchers suggested that this indicates these women were not necessarily in control of their partners’ behavior despite the fact that they used more severe violence (Swan & Snow, 2002).

Belknap and Melton (2004) provided four reasons that they suggest represent a feminist rationale for defining the primary problem as one of violence against women rather than as a gender-neutral domestic violence. First, they believe that the CTS leads to inaccurate results as it is incapable of measuring the “context, motivations, meanings, and consequences.” Hence, these studies cannot distinguish a female victim from a male victim who may be subject to violence but is likely to have initiated the overall sequence by his prior abusive behavior. Thus, only a few situations would be considered female-initiated or mutually combative domestic violence. In support of this, they note that the most serious violence is committed against women. Further, in studies using shelter samples, police reports, and hospitals, as many as 90% to 95% are male-on-female violence.

Second, research arguably demonstrates that we are in a societal environment in which women are more likely to minimize victimization and men are more
likely to minimize their violent offending (Campbell, 1995; Dobash, Dobash, Cavanagh, & Lewis, 1998; Goodrum, Umberson, & Anderson, 2001; Heckert & Gondolf, 2000).

Third, the data collection methods for studies using the CTS are critiqued since subjects are not questioned in a private, safe environment such as a shelter or hospital. If measures are not taken to ensure that the abuser is not present and that the victim does not fear his learning about an interview, victims may be afraid to disclose abuse or provide candid accounts.

Fourth, Belknap and Melton believed that “common couple violence” as reported by gender-neutral theorists is only occasionally correct. They will acknowledge that in some cases, each family member may use occasional outbursts of abuse, but this phenomenon is qualitatively different from patriarchal terrorism, in which a man uses much more serious violence to maintain control. Therefore, what they consider problematic behavior is limited to cases of patriarchal terrorism rather than to use of violence in general.

There is validity to the foregoing commentary. Violence committed against women by male abusers causes far more injuries and has been documented as posing a far more significant societal problem. Nevertheless, limiting the problem of partner violence almost exclusively to that of female victimization may be criticized. First, the context, meanings, and consequences of violence can rarely be determined in any circumstance. There are often divergent perspectives as to the underlying cause, intermediary variables, and actual trigger for violence. To imply that it is typically a case of male domination over a female is a political perspective, and it is not necessarily borne out by empirical research. Furthermore, it does not encompass the role of critical risk factors for offending such as substance abuse and mental health or, alternatively, implicitly generalizes them as primarily “male problems.”

Claire Renzetti (1999), while bringing a feminist view to the problem, moderates this approach by noting the need to acknowledge that some women do use violence, if only to remain credible to others. The historic reluctance of many victim advocates to hold women accountable for acts of violence could have contributed to the backlash expressed by many men’s organizations. Women do initiate acts of domestic assault, and these are not
always the result of self-defense (Moore Parmley, 2004).

Second, issues of control and implicit domination are unclear. If one party verbally abuses the other, some will argue that this is part of a pattern of patriarchal intimidation and hence essential to violence against women, which is different than the pattern of verbal abuse initiated by a woman against a male partner. In reality, when one party consistently verbally harasses and the other uses physical violence because of an inability to be able to defend himself verbally, the person actually in control of the relationship may not really be clear; the line between physical and psychological abuse may become less distinct.

This is especially true when the definition of domestic violence is broadened to include a pattern of emotional abuse. One must then be ideologically certain that a patriarchal society has similarly conditioned the behavior of both genders and all immigrant, racial, and ethnic groups, and that such behavior patterns have remained unchanged during the past decades despite major societal changes. In this case, might not chronic verbal abuse be initiated by the woman?

Another point many people raise is that comments made at victim shelters, to victim advocates, hospital personnel, and police contradict the rough parity of violence. However, there are few, if any, shelters available for male victims of female violence, and few victim service agencies handle problems of male victims. Meanwhile, the police, as will be noted in subsequent chapters, are less likely to be sympathetic to complaints of female violence against male partners. It would seem that the more impartial format of a well-designed telephone survey bears some distinct advantages.

One in-depth study that does present an interesting view of female-on-male violence examined a representative sample of 360 couples. These couples were interviewed as young adults when the incidence of partner violence is greatest. In addition, partners corroborated each other’s reports of abuse, and all reports were examined for reliability (Moffitt, Robins, & Caspi, 2001). Moffitt and colleagues’ research did not support a male aggressor model of violence. Instead, these researchers found that the range and distribution of abusive acts did not significantly differ by gender. In addition, their findings did not support the belief that women’s use of violence is usually motivated
by self-defense. The researchers reported that a substantial number of women committed one-sided violent acts during the study period that exceeded the number of male acts. Furthermore, 18% of women initiated assaults despite the fact that both parties agreed that the male partner had committed no acts of abuse, a fact true for only 6% of the male respondents.

Moffitt, Caspi, Rutter, and Silva (2001) also reported that women in the study who were abusive toward their partners were four times more likely to have been violent toward someone other than an intimate partner in the same year. What is interesting is that longitudinal studies have suggested that there are relationships in which women are the initially aggressive partner but that at a later point in time, men become physically abusive—“men do abuse women who abuse them” (p. 23).

The preceding recent studies collectively suggest that the extent of female-on-male violence is highly dependent on how violence is defined. If common couple violence is eliminated from the definition (Belknap & Melton, 2004) because it is not typically gender related and its outcome is less injurious and non-life-threatening (Johnson, 1995), then it is likely that the actual data would be in agreement. Researchers from either orientation emphasize that women are at a much greater rate of risk of severe victimization. However, disagreement remains on whether the use of any violence in interpersonal relationships should be sanctioned. Alternatively, should common couple violence be deemed acceptable and only serious acts of violence addressed, primarily because female-on-male violence does not fit into the image that many authors, activists, and politicians have of a crime that is almost exclusively committed by men?

Finally, if common acts of violence in “battling family structure” are to be tolerated because they do not fit into a mold of male repression of women, should they be equally tolerated for both men and women? Hamel and Nicholls argued that domestic violence varies in its type, severity, and degree of mutuality, and that reliance on any one perspective impacts our ability to effectively intervene (Hamel & Nicholls, 2006).
Is a Woman Who Fights Back Considered a Victim?

The image of a victim of domestic violence morphed from a low-income woman of color to a passive, middle-class, White woman cowering in the corner as her enraged husband prepares to beat her again. This woman never fights back. Because this woman is the one whom lawyers want to present and judges expect to see in their courtrooms, women who fight back are at a distinct disadvantage when they turn to the civil legal system for assistance. The battered woman who fights back simply is not a victim in the eyes of many in the legal system. (Goodmark, 2008, p. 78)
Same-Sex Domestic Violence

Data also suggest that lifetime domestic violence is experienced by a large percentage of lesbian and gay individuals, although there is considerable variation in the estimates of violent attacks that occur in these groups (Pattavina, Hirschel, Buzawa, Faggiani, & Bentley, 2007). Early research was limited to small, unrepresentative samples of same-sex partner violence. Not only did this make it difficult to generalize from the findings, but the estimates of prevalence varied tremendously, ranging from 17% (Loulan, 1987) to 74% (Lie, Schilit, Bush, Montagne, & Reyes, 1991) depending on the measures used and the time period measured.

The NVAWS was the first study to include same-sex violence as part of a large-scale national survey. It reported that approximately 11% of women in a lesbian relationship reported being raped, physically assaulted, or stalked by their partner. Although a significant percentage, this number was less than the 30% of women who reported such violence when living with a man in a heterosexual relationship. In contrast, in male same-sex couples the rate of violence was approximately 15% against a partner, whereas men in heterosexual relationships were physically abused by women at a rate slightly less than 8%. Hence, although same-sex violence is clearly an underaddressed issue, the research suggests that men perpetrate more violence in both same-sex and heterosexual relationships, with the highest rates of male violence occurring in heterosexual relationships (Tjaden & Thoennes, 2000).

The NISVS reports that more than 4 in 10 lesbian women (43.8%), 6 in 10 bisexual women (61.1%), and more than 1 in 3 heterosexual women (35%) have been the victim of rape, physical violence, or stalking by an intimate partner during their lifetime. While there was no significant difference between lesbian and heterosexual women, bisexual women are significantly more likely to be victims of violence.

More than 1 in 4 gay men (26%), more than 1 in 3 bisexual men (37.3%), and nearly 3 in 10 heterosexual men (29%) have experienced rape, physical violence, or stalking by an intimate partner during their lifetime. There were
no significant differences in rates among these categories (Breiding et al., 2014).

Profiles of victims of same-sex violence may not fit common stereotypes. The difficulty in reporting this type of partner violence is that it does not fit the narrative of a socially marginalized woman. As such, it does not fit traditional feminist theory (Simpson & Helfrich, 2005). In fact, the battered women’s movement historically viewed lesbian relationships as a safe haven where women would be free from male violence and patriarchal ideals (Hassouneh & Glass, 2008).

This theoretical framework will be discussed in the next chapter. What it does show, however, is that within a same-sex relationship partner violence parallels that within a heterosexual relationship. Most violence occurs against victims who have less power in their relationship and less power in sexual decision making (Eaton et al., 2008; Glass et al., 2008). The fact is that in society as a whole, despite marked social change in recent decades, this still means that heterosexual women are more likely to be victimized by men than the converse.
Age

Victims’ ages also seem to affect the incidence and reports of domestic violence. Data are somewhat difficult to analyze because there is some overlap in the studies between domestic violence and child abuse, which is typically committed in families. The NCVS addresses all women 12 years and older, many of whom are not likely to be at risk of violence by an intimate. In contrast, the UCR published by the US Department of Justice addresses adults aged 18 years and older, as does the NFVS. To further confuse the issue, the NVAWS, sponsored by the NIJ and the CDC and comprising the responses of 8,000 women and 8,000 men, addressed violence committed against women ages 16 years and older (Tjaden & Thoennes, 1998). Because parental violence against teens in this country is at least as prevalent as intimate partner violence, these studies may be capturing and reporting this phenomenon as domestic violence. Similarly, the more age-restricted studies largely fail to report violence committed between teen partners, whose relationships can be violent according to statistics.

In an examination of NCVS data from 1993 to 2004, Catalano (2006) reported that, in general, female respondents in the youngest age group (12–15 years) had the least risk of domestic assault. However, this may be a function of reporting. Finkelhor, Cross, and Cantor (2005) argued that the rate of juvenile victimization for such crimes is vastly underreported. They further noted that NCVS survey data stated that only 28% of incidents for juveniles aged 12–17 years were reported to police, a rate substantially lower than for adults.

To some extent, definitions of abuse toward children and adolescents impact reporting. Children and juveniles are less likely than their parents or other adults to report intimate violence especially if in the form of violence in an ongoing dating relationship. Many teens simply do not trust their parents or other adults to handle appropriately complaints of violence committed by intimate friends. Instead, they worry that if they discuss being abused these adults are equally likely to blame the adolescent victim for having sexual relations in the first place.
If we discard as unreliable the somewhat questionable survey data involving intimate violence against children, most available data show that violence among intimates peaks in early adulthood and then declines. For example, the NISVS reported that in 2010, women aged 25 years or older experienced a significantly lower rate of intimate partner violence during the past year compared to those in the 18-to-24-year-old age group. Prevalence decreased steadily with females over the age of 55 having the lowest rate (1.4%; Breiding et al., 2014).
Marital Status

Marital status has a significant and complex relationship to rates of violence. Currently married victims reported the lowest rates of intimate partner violence. However, women who have separated reported higher victimization rates compared with women in other relationships. However, most intimate partner homicides involved spouses, although the number of deaths by boyfriends and girlfriends has remained stable in recent years (Catalano, 2006). These data may simply be explained by the fact that when a husband uses violence against family members, including his intimate partner, a growing tendency exists for the female partner to leave the relationship and possibly secure a protective order against her abuser. The alternative explanation, undoubtedly true for some abusers, is that when they lose control over their previous spouse they are more likely to become physically abusive in an escalating pattern to try to reestablish control.
Socioeconomic Status

Women with less income have higher rates of victimization (Catalano, 2006). For example, the NCVS data reported that women in low-income households with annual incomes less than $7,500 reported a rate of nonlethal violence committed against them at a rate 10 times greater than those with an income of $75,000 or more. Women who are supported by welfare experience higher rates of abuse than women in a similarly low socioeconomic bracket. One estimate reports that approximately one third of women on welfare are current victims of abuse, whereas slightly more than half had been victims of abuse during their lifetime (Tolman & Raphael, 2000). Undoubtedly showing an overlap of such population sets, the BJS reported that, from 1993 to 2004, both women and men living in rental housing were three times more likely to be victims of domestic violence than those living in their own homes. This factor may have been significant during the recession as a result of the increasing toll on the economics of many families and may also help explain its subsequent decline.
Racial and Ethnic Variations

The popular press still seems obsessed with violence among high-profile, primarily White victims. Similarly, popular movies and television programs, in an effort to appeal to their viewers, often highlight victims who are White, heterosexual, and middle class. During the last decade, research has, however, allowed for the development of a more balanced picture that can penetrate some stereotypes and examine past overly broad generalizations. As we will see in detail in the following sections, racial and ethnic minorities are more likely to be victims (Bent-Goodley, 2001; Frye, Wilt, & Schomberg, 2000). In Chapter 3, we will discuss the likely reasons for this variance. In this chapter, it is sufficient to note that available data show a significant racial and ethnic variance. Efforts at data collection often have contributed to overly simplistic characterizations as well.

Violence Among Black Americans

Coker (2000) discussed how research simplifies the diverse experience of women in the United States. She observed that studies purporting to examine women of color have relied primarily on African American women, whereas research on White women in many smaller-scale studies has become the surrogate for all women. Even domestic violence among intimate partners is primarily intraracial in nature, as with other forms of nonfatal victimization (Catalano, 2006). Catalano (2006) reported that approximately 89% of White victims were victimized by White offenders, whereas approximately 95% of Black victims were victimized by Black offenders.

Data on intimate partner violence among Blacks as compared with the general population consistently show a larger pattern of victimization. In one of the earliest studies, Straus and Gelles (1986) reported that African Americans had four times the rate of partner violence compared with Whites. Moreover, injuries within that group tend to be disproportionately severe and actual homicides more frequent (Bent-Goodley, 2001). Hence, as a social pathology, intimate partner violence victimizes African Americans at rates significantly higher than any other group (Bent-Goodley, 2001; Rennison &
The NISVS data show that the 12-month prevalence rate was 9.2% for Black women compared to 5.1% for White women and 9.9% for Black men compared to 4.2% for White men.

Before the birth of the battered women’s movement, the assumption was that domestic violence happened to “them”—poor African American women who lived in slums. Advocacy by the battered women’s movement around the idea that domestic violence is endemic to all races, ethnicities, religions, and socioeconomic brackets, coupled with the introduction of “battered woman syndrome” and its reliance on the theory of learned helplessness to explain why battered women remain in abusive relationships, changed the portrait of the victim of intimate partner violence. (Goodmark, 2008, p. 76)

**Violence Among Hispanic Americans**

Many studies have attempted to identify rates of violence in the Hispanic community. The earliest studies suffered from severe methodological difficulties. For example, Coker (2000) performed one of the largest studies at that time to examine domestic violence rates among Latino women; the study included only women who spoke English, obviously limiting participation.

Second, one of the largest problems when addressing violence in the Hispanic population is that the term “Hispanic” simply defines one characteristic of this population—the language spoken by their immigrant ancestors. We are just now beginning to see research that does a good job in differentiating among such disparate groups as those whose parents may have emigrated from Puerto Rico, Cuba and other Caribbean Islands, Mexico, Central America, and South America. It should be intuitively obvious that these cultural backgrounds are extremely diverse. The immigrant families may have originated from different socioeconomic groups within their countries, and in many cases the assumption of a Catholic upbringing is incorrect, as there has been growth in populations of evangelical Christians and other denominations.

Interpreting overall rates of intimate partner violence among Hispanics as a
defined population subset also needs special care because most large-scale official studies fail to differentiate between native born and immigrant, and they do not differentiate as to whether immigrant status is documented or undocumented. Specifically, many surveys combined the population of Hispanic immigrants with Hispanics born in the United States, whose families may have been raised in the United States for generations.

We know that measuring overall rates of intimate partner violence among immigrant groups as a defined subset of the population is extremely difficult. A national survey of criminal justice officials and leaders of six ethnic communities (including, but not limited to, Hispanic) suggests that many recent immigrants fail to report crimes. In fact, 67% of the officials in the national survey believed that they were less likely to report crimes compared with other victims, and only 12% thought they were as likely or more likely to report offenses to the police. In addition, domestic violence victims were less likely to report their victimizations, making an overall appraisal of the rates of domestic violence in this group especially problematic. This has been especially true as the federal government, along with some state governments, has made a point of deporting individuals charged with crimes. Unless a woman is terrified for her life or the lives of her children, this is a huge deterrent to reporting a crime committed by her husband.

A recent study by the Family Violence Prevention Fund (2009) provides a comprehensive literature review on interpersonal violence in immigrant and refugee communities. The study points out the continued lack of data. The review of the literature suggests that nonfatal domestic violence is not more prevalent and is possibly less prevalent among immigrant and refugee populations; however, they are overrepresented in the homicide data compared with American-born individuals. As the authors note, there are numerous methodological problems with the data. Not all the studies cited separate out first-generation immigrants. Furthermore, how violence becomes known in order for data to be generated is problematic. Thus, it is unclear whether nonfatal rates are in fact lower, especially when coupled with the increased risk for homicide in the immigrant and refugee communities—where the incident is far more likely to be identified.

Given these severe methodological problems, at this stage, we can simply
report on the results of individual studies that have focused on Hispanic Americans. More general observations will need to wait until the next edition of this treatise.

The available data are inconsistent. The NVAWS reported little difference in intimate partner physical violence and stalking between Hispanic and non-Hispanic women, but it did find significant differences in rape reported by a current or former partner in these populations. The researchers highlighted the significance of this finding because Hispanic women are less likely than other women to be sexually assaulted by a nonintimate or a former nonintimate partner (Tjaden & Thoennes, 2000). Meanwhile, a study of 292 Latina women who were American-born, immigrant, or seasonal migrant workers was conducted in San Diego in 2002 and reported a different, higher-risk profile (Hazen & Soriano, 2007). They reported a higher rate of physical violence than the NVAWS rates with a reported lifetime prevalence rate of 34% for physical violence, 21% for sexual coercion, and 83% for psychological aggression. The NISVS reported that 8.1% of Hispanic women and 6.2% of Hispanic men were the victims of intimate partner violence with a 12-month prevalence rate. This compares to 5.1% for White women and 4.2% for White men (Breiding et al., 2014).

Also, Frias and Angel (2005) reported that the risk of reported victimization by foreign-born Mexicans and Puerto Ricans was lower than for those born in the United States. In addition, Dominican, Puerto Rican, and other Hispanic women reported significantly lower rates of violence than African American women, whereas Mexican-born women reported rates similar to African American women. However, they were properly cautious in drawing conclusions regarding citizenship status (Davis & Erez, 1998).

More recent NISVS data confirm overall lower lifetime prevalence rates of intimate partner violence: 29.7% physical violence; 6.8% stalking; 16.1% sexual violence for women; and 27.1% physical violence and 13.5% sexual violence for men (Breiding et al., 2014).

**Other Ethnic Groups**

Significant differences in intimate partner violence also have been reported
among other racial groups; however, the data are inconsistent and frankly suspect. The NVAWS found that American Indian and Alaska Native women reported significantly higher rates of intimate partner violence than women of other racial backgrounds. The researchers noted that American Indian and Alaska Native women could have been more willing to report victimization to interviewers than other victims (Tjaden & Thoennes, 2000). NISVS data report a lifetime prevalence of physical violence that is well over half (51.7%) for American Indian or Alaska Native women and almost half (43%) for men (Breiding et al., 2014).

Another rapidly growing population is Asian Americans. Research on domestic violence within this group shares somewhat the same methodological problems as with Hispanics. Specifically, there may be marked differences based on whether Asian Americans were born in this country compared with first-generation immigrants. In addition, other than racial identity, we suspect there is little, if any, commonality in cultural experience between immigrants from Japan and Korea compared with less economically developed countries in Southeast Asia. Even when a group emigrates from an individual country such as India, there could theoretically be major differences between rates of domestic violence based on whether they identify as Indian Muslims or Hindus. We do not believe that these disparities can ever be fully addressed as the cultural backgrounds are simply not analogous except on a superficial racial level. Therefore, the best data that we can hope to capture will be the results of studies that carefully differentiate rates of domestic violence between immigrants from a specific country and the general population. To have external validity, such studies also would need to control for the legal status of the participants and the number of years in which they were immersed into US culture.

Having stated these severe limitations, some data are available. Yoshihama and Dabby (2009) reported markedly higher rates of physical and sexual violence by an intimate partner within the Asian population in the United States. We appreciate the work done by the Asian and Pacific Islander Institute on Domestic Violence that has carefully summarized several diverse studies at the community level, which show distinctly different results. Given the disparity, it is there that studies of individual communities are typically done at the level of a particular ethnic group within a particular US city.
These small-scale studies may be instructive, but generalizability to the overall population is suspect.

For example, the Asian American Task Force on Domestic Violence in Boston, using a self-administered questionnaire at ethnic fairs, reported that 44% to 47% of Cambodians interviewed said they knew a woman who had experienced domestic violence (Yoshioka & Dang, 2000). Similarly, random telephone surveys of the Chinese community in Los Angeles reported lifetime violence rates of between 18% (minor physical violence) and 8% (severe physical violence) (Yick, 2000). Furthermore, 20% of a survey population of 54 undocumented Filipinos living in San Francisco reported some form of domestic violence (Hoagland & Rosen, 1990), whereas in 1995, in a random sample of 211 Japanese immigrants, 61% reported some form of physical, emotional, or sexual partner violence and 52% reported lifetime physical violence (Shimtuh, 2000). In a 1986 study of 150 Koreans living in Chicago, 60% reported lifetime prevalence of physical abuse (Kim & Sung, 2000). A study of 160 South Asian women in Greater Boston reported that 41% experienced lifetime physical or sexual abuse from their current male partners. This study also showed far higher rates of current abuse given that 37% reported having been so victimized in the last year (Raj & Silverman, 2002a). In addition, 65% of the women reporting physical abuse also reported sexual abuse, and 30% reporting sexual abuse reported injuries (Raj & Silverman, 2002a).

Similarly another high-risk group may be the Vietnamese, where in a study of 30 Vietnamese women in Boston, 47% reported intimate physical violence in their lifetime and 30% reported intimate physical violence in the past year (Tran, 1997).

The victim-related needs of many ethnic groups of women also have not been fully recognized. The country’s increasing ethnic diversity necessitates an understanding of the additional challenges facing these groups of domestic violence victims. Although specific interventions and services will be discussed in a later chapter, efforts first need to be made to improve our identification of these victims.
Celebrities and Domestic Violence

Domestic violence touches the lives both of the obscure and the famous. Any attempt to single out a few would be bound to be inadequate. However, for illustration purposes the following have been noted in various reports as being a victim, witness, or perpetrator of domestic violence.
Victims

**Christina Aguilera**, musical artist and actress, wrote a touching song, “I’m OK,” about the experience she and her mother faced with an abusive stepfather.

**Halle Berry**, actress, as a child watched her mother being abused and was herself beaten so badly by a boyfriend that she lost 80% of her hearing. She now works to assist shelters and promote awareness of domestic violence.

**Robin Givens**, actress, was married to world champion boxer Mike Tyson and was abused by him. Ms. Givens now actively assists fundraising for victims of domestic abuse.

**Charlize Theron**, actress, both witnessed abuse and was abused by her father (who was subsequently killed by her mother in self-defense). Ms. Theron now serves as a UN Ambassador for Peace for South Africa.

**Tina Turner**, musical artist and actress, suffered physical abuse at the hands of her husband, actor and singer Ike Turner. An inspiring film, *What’s Love Got to Do With It*, was made describing her life and relationship with Ike Turner.
**Witnesses**

**Bill Clinton**, former US president, as an 8-year-old witnessed his stepfather beating his mother. At the age of 15, Mr. Clinton stood up to his stepfather, demanding that the abuse end. As president, he signed the original Violence Against Women Act in 1994. He has also reported, but not confirmed, to be a victim of domestic violence.

**Missy Elliott**, American musical artist, has served as a spokesperson for Breaking the Cycle, an organization dedicated to freeing young people from the cycle of violence.

**Darren Hayes**, singer and songwriter from Savage Garden, dedicated the haunting song “Two Beds and a Coffee Machine” to victims of domestic abuse, having witnessed it in his family.
Arrested for Abuse

Mike Tyson, WBC heavyweight world champion, for his abuse of Robin Givens, as noted above.

Ray Rice, star NFL player, whose case might be the most famous involving an NFL player, both because of his star status as a player and because he was captured on video dragging his unconscious fiancée out of an elevator. Mr. Rice’s case received no initial reaction from his team nor the NFL until extreme public outrage forced them to take action. The NFL has had at least 79 players arrested for domestic violence, more than any other league sport.

Chris Brown, singer, known for serious abuse of then girlfriend, singer Rihanna.

Oscar Pistorius, the South African Olympic athlete known as “The Bladerunner,” was convicted of manslaughter for shooting his girlfriend, model Reeva Steenkamp, in February 2013.

Charlie Sheen, actor, maintains that many of his female accusers, including his ex-wives, were “sad trolls with silly lies.” He has pleaded guilty to several charges of domestic violence involving strangling, hitting, and in one case shooting, different women.

Sean Penn, actor, attacked his then wife, singer and actress Madonna, in 1987 with a baseball bat.

Christian Slater, actor, served 59 days in jail for a domestic assault.

Floyd Mayweather Jr., current WBC welterweight boxing champion, denies having punched his ex-girlfriend in front of their children, instead claiming he merely “restrained” her. He did plead guilty to reduced misdemeanor charges and served 60 days in jail.
The Impact of Domestic Violence
Injuries

Tjaden and Thoennes (2000) estimated that 41.5% of women who were physically assaulted, and 36.2% of women who were sexually assaulted, by an intimate partner were injured. They also reported that nearly 15,000 of the rapes and 240,000 of the physical assaults resulted in emergency room visits.

Sexual assault as a component of domestic violence also is common, but it is less frequently reported. Although it may occur in isolation from physical and other forms of abuse, sexual assault often is observed in cases in which there also is severe physical abuse. This form of victimization can be particularly harmful for victims and can lead to other chronic health problems (Stark, 2007).

Acute physical injury resulting from a domestic assault may lead to long-term physical health problems for the victim. These problems include chronic pain, sexually transmitted diseases, miscarriages, gastrointestinal disorders, genitourinary tract problems, and a variety of other disorders (Walker, Logan, Jordan, & Campbell, 2004). Although many women receive medical treatment for their problems, many others are denied access for a variety of reasons, including lack of assistance in obtaining care, financial constraints, or prohibitions placed on them by their abuser.

As Figure 2.5 illustrates, 41.6% of female victims and 13.9% of male victims reported at least one injury related to intimate partner violence (Breiding et al., 2014).
Psychological and Quality-of-Life Effects on Victims

Many researchers and practitioners believe that emotional and psychological adjustments typically precede physical separation (Theran, Sutherland, Sullivan, & Bogat, 2006; Walker et al., 2004). The impact of domestic violence is far greater than the individual acts. Severe physical abuse is more likely to result in greater psychological impact. The degree of psychological impact may not be totally a result of measures of violence such as the amount of force used or injuries sustained, but instead based in part on individual subjective factors. Victims become emotionally traumatized. The battering syndrome has been found to result in high rates of seemingly unrelated medical complaints (Stark & Flitcraft, 1988), including depression and low self-esteem (Campbell, Kub, Belknap, & Templin, 1997), psychosocial problems, and later disproportionate risks of rape, miscarriage, abortion, alcohol and drug abuse, attempted suicide (Stets & Straus, 1990), and general emotional problems including posttraumatic stress disorder (PTSD) resulting from severe stress (Campbell & Soeken, 1999; Stark & Flitcraft, 1988).

The impact of these problems is difficult to exaggerate. Suicide rates for battered women are almost five times as high as in non-battered populations (Stark, 1984). Furthermore, it seems that many of these problems begin after the abuse, not as a cluster of which abuse is merely one factor (Holtzworth-Munroe, Smutzler, & Sandin, 1997; Stark, 1984; Woods, 1999). The emotional toll of domestic violence also may be greatly increased if a psychological assault is part of the pattern of abuse. Some researchers have reported that many women find psychological, verbal, and emotional abuse more harmful and of far greater duration than physical abuse (DeKeseredy & MacLeod, 1997; Fitzpatrick & Halliday, 1992).

**Figure 2.5** Distribution of Specific IPV-related Injuries<sup>a</sup> Experienced Among Female and Male Victims of Rape, Physical Violence, or Stalking by an Intimate Partner—NISVS 2010
a PV-related injury was assessed in relation to specific perpetrators and asked in relation to any form of IPV experienced (sexual violence, physical violence, stalking, expressive aggression, coercive control, and control of reproductive or sexual health) in that relationship.

† Statistically significant difference (p <.05) in prevalence.

Source: National Center for Injury Prevention and Control.
The severity and extent of abuse is highly related to the victims showing symptoms of PTSD. In fact, not only do large proportions of victims of sexual, physical, and psychological assault suffer from PTSD, these individuals also constitute a significant proportion of the total number of people who experience these symptoms.
Monetary Costs

Actual dollar figures have been attributed in an effort to better determine the impact of domestic violence on society. The CDC estimates that physical and mental health-care costs for intimate partner violence are close to $4.1 billion. They place an additional productivity cost of $858.6 million for days of employment and household chores lost (Centers for Disease Control and Prevention, 2003).
Domestic Violence in the Workplace

Domestic violence often impacts the victim at work, whether in the form of the victim’s diminished productivity or because the workplace may become an active crime scene. One 2005 study reported an average of 7.2 days per year of work-related lost productivity for female victims of domestic violence (Baum, Catalano, Rand, & Rose, 2009). Incidents of serious domestic violence include on-the-job deaths of 321 women and 38 men during the 12-year period between 1997 and 2009 (US Department of Labor, Bureau of Labor Statistics, 2010). Estimates for employer costs vary widely; however, the CDC estimates that in 1995 such assaults cost $5.8 billion for direct medical and mental health care services that are typically insured by employers. When updated to 2015, comparable figures would be well in excess of $10 billion per year (Arias & Corso, 2004).

**Figure 2.6** Distribution of the Number of Discrete Psychologically Aggressive Behaviors Experienced by Victims, Maximum Number by an Individual Perpetrator—a—NISVS 2010
Source: National Center for Injury Prevention and Control.

a Victims who experienced psychological aggression by multiple intimate partners are included once in relation to the relationship in which they experienced the largest number of discrete psychologically aggressive behaviors.

b Estimates not reported for >17 behaviors experienced, relative standard error >30%, or cell size ≤20 for both women and men.

* Estimate is not reported; relative standard error >30% or cell size ≤ 20.

Source: National Center for Injury Prevention and Control.

a Victims who experienced psychological aggression by multiple intimate partners are included once in relation to the relationship in which they experienced the largest number of discrete psychologically aggressive behaviors.

b Estimates not reported for >17 behaviors experienced, relative standard error >30%, or cell size ≤20 for both women and men.

* Estimate is not reported; relative standard error >30% or cell size ≤ 20.

In the past, many victims who have obtained restraining orders find that they may not be safe at work because the abuser knows their location and they lack needed protection. As a result, many employers have developed domestic violence protocols, including cooperation with local law enforcement to assist employees in obtaining restraining orders, alerting guards or otherwise limiting access to abusers, or providing employee
assistance programs (EAPs) to help victims with their many needs. Despite such efforts, 44% of full-time employees surveyed report that they have personally observed the effects of domestic violence in their workplace (Corporate Alliance to End Partner Violence, 2007). As a result, approximately 30% of US workplaces currently have a program addressing workplace violence, while 70% do not (US Department of Labor, 2006). 3

Many headlines have shown that such efforts may not be sufficient. There have been numerous widely publicized murders and murder/suicides in the workplace.
The NFL and Domestic Abuse

After a video began circulating in September 2014 of star running back Ray Rice coldcocking his wife in a casino elevator, the NFL initially responded tepidly with only a minor two-game suspension. When criticism became intense and along with calls to boycott NFL games, pressure grew insurmountable and talk even arose of replacing the NFL commissioner, Roger Goodell, both for his poor response and for his failure to take action earlier. The NFL has had approximately 80 players already arrested for domestic violence without noticeably impacting their careers.

The NFL, undoubtedly the premier sports enterprise in the United States both in terms of popularity and in revenue, entered into one of its most profound crises. How could or should they respond? If no action was taken, the league risked an economic boycott, or worse, total distrust and indifference by many women who were now openly talking about the violence surrounding the league.

While the ultimate resolution has not yet been implemented at the time of this publication, the league has dramatically increased penalties for cases of domestic violence moving forward, and is expecting a new permanent policy before the January 2016 Super Bowl.

Even with the best goodwill, the NFL has to face conflicting demands and consider a number of questions.

- Should the NFL adopt a zero-tolerance approach to intimate partner violence?
- Will this approach really deter professional athletes used to violence as an integral part of their lives and their success?
- If so, will many victims fail to report because their family’s income would go from the highest level to unemployment?
- Should the NFL focus on the few who have been arrested or on training for all players?
- If the focus is on training for everyone, should the emphasis be on training all NFL players on family violence (both against children as well as spouses) given the Adrian Peterson arrest?
- Should the League have a set punishment schedule in terms of games not played or money forfeited per incident?
- If so, does a slap equal a punch?
- How do these compare to a beating or a pattern of coercive control?
- Can a sports league ever make these determinations logically?
- Should punishments for such behavior be restricted solely to the individuals, or should punishments be given to the team for selecting individuals with a known history of abuse or failing to maintain a culture where abuse among its key employees is not tolerated?
- Should every employer have the same responsibilities, or is it only appropriate for sports teams?
The Impact on Children and Adolescents

In Chapter 14 we discuss in detail how childhood exposure to domestic violence may create a lifetime cycle of domestic violence that carries over to future generations. In this chapter, we will talk about the general consequences of childhood exposure to such trauma. Children in abusive families seem to be psychologically vulnerable. It is significant that large numbers of this especially vulnerable group regularly witness violence in the family. One estimate (using data derived from total instances of domestic violence and adjusted for the number of children in the household) is that approximately 3.3 million children witness acts of domestic violence each year (Carlson, 1984). Straus and Gelles (1990) using the Family Violence Survey suggested an even higher figure of 10 million, or one third, of American children who witness violence each year between their parents. More recently, the National Survey of Children’s Exposure to Violence (NatSCEV) estimated that 9.8% of children are exposed to domestic violence each year (Finkelhor, Turner, Ormrod, Hamby, & Kracke, 2009). This is considerably different than estimates from NCVS data, which found that between 1993 and 2004, children were residents in households where domestic violence occurred in 43% of the incidents involving women and in 25% of the incidents involving men (Catalano, 2006). This disparity could be because the latter does not distinguish children who are present from those who actually witness the incident.

These figures are only estimates and are dependent on definitions (Edleson, 2007). Researchers still disagree as to whether estimates should include only serious incidents of domestic violence or a broad set of behaviors including slaps, pushing, or shoving (see also Kracke & Hahn, 2008; Osthoff, 2002).

What impact does witnessing violence have on children? Could such an impact manifest itself in the context of general behavioral problems or in a tendency to be a victim or a victimizer? These questions are important in the context of theories of the generation of long-term social and behavioral problems and the possible intergenerational transfer of violence.

An extensive body of literature now exists with more than 100 studies trying


to determine the impact of family violence on children and approximately one third of those studies dealing solely with children witnessing violence as opposed to being battered themselves (Edleson, 2001). Edleson reported that several studies found that externalized behaviors such as aggression and antisocial behavior were more common in children exposed to domestic violence, especially boys, and that internalized behaviors such as unusual fears and inhibitions also were common, especially among girls (Fantuzzo et al., 1991). Other studies have reported a variety of adverse effects with children who have witnessed domestic violence, including that, in general, they score lower on tests of social competency and higher on depression, anxiety, aggression, shyness, and school-related problems (Adamson & Thompson, 1998; Fantuzzo et al., 1991; Silvern et al., 1995). Another study indicates that these children score lower on tests of cognitive functioning (Rossman, 1998).

These attitudes can potentially result in a series of behavioral problems. One study of violent teenage boys reported that exposure to family violence apparently was associated with the development of positive feelings toward using violence to solve problems and hence indirectly associated with violent offending (Spaccarelli, Coatworth, & Bowden, 1995).

In addition—and perhaps this is the most chilling prospect—witnessing parental violence is highly correlated with subsequent suicide attempts of children. One study found that 65% of children who had attempted suicide had previously witnessed family violence (Kosky, 1983). Although Edleson (2001) correctly noted that solely using this factor to predict individual attitudes or behavior would be wrong, he also noted that within the highly variable individual experiences and reactions, most studies show group trends in which adverse impact may be observed.

Some children and teens are more affected by exposure to violence than others. Resilience may be a result of several factors. First, a child’s relationship with a caring adult, usually a parent, may reduce the negative impact of exposure. Second, characteristics of the victim have been found to be of significance. Children with average or above average intelligence and strong interpersonal skills are more likely to have increased resilience. Additional factors include self-esteem and other personality traits,
socioeconomic background, religion, and contact with supportive people (Osofsky, 1999).

Children and teens exposed to family violence are also at greater risk for exposure to other types of violence. Often, they reside in places with high rates of community violence. Youth growing up in such neighborhoods are regularly exposed to the use of drugs, guns and other weapons, and random acts of violence. One report stated that children in urban schools who have not received such exposure are the exception, not the norm (Osofsky, 1999). In fact, the Juvenile Victimization Questionnaire (JVQ) reported that the average child experienced three different direct or indirect victimizations in a 1-year time frame and only 29% of children had none (Finkelhor et al., 2005).

Although research regarding the impact of childhood and adolescent exposure to violence is now emerging, findings still need more development. We lack an understanding of what the link is between witnessing violence and subsequent victimization and offending. Many witnesses of early violence do not become either victims or offenders as adults. Others become offenders, and still others become victims. Also, some children become both victims and offenders. A better understanding is needed of how these behaviors evolve. We also need an increased understanding of how to intervene successfully with children and adolescents to decrease the likelihood of negative consequences. At this point in time, we simply know we need to intervene, but we lack an empirical understanding of how best to provide assistance.
Might Effectively Controlling Domestic Violence Limit Other Violence?

Much of the recent literature in domestic violence provides ample proof that recurrent serious domestic violence occurs most often in generally violent offenders—that is, those who have already been arrested or at least committed numerous acts of violence, making home violence merely part of their overall pathological repertoire. From this perspective, future domestic violence is a correlate or even a result of past criminality.

Might the causation train at times be reversed? Might unconstrained domestic violence be a precursor to even more serious violence outside the home? This intriguing hypothesis has been explored in several recent high profile cases.

Before Tamerlan Tsarnaev was suspected of carrying out the bombing of the Boston Marathon, he was arrested for beating his girlfriend. When Man Haron Monis held 17 people hostage at a Lindt Chocolate Café in Sydney, he had already been charged as an accessory to the murder of his ex-wife. Before George Zimmerman shot Trayvon Martin to death in Florida, his ex-girlfriend accused him of physically assaulting her. He faced no charges, but has been arrested twice for alleged domestic violence since 2013. A recent study found that more than half of the 110 mass shootings in the United States between January 2009 and July 2014 included the murder of a current or former spouse, an intimate partner, or a family member. Everytown for Gun Safety, the group that released the study, found a “noteworthy connection between mass-shooting incidents and domestic or family violence.” This connection is not limited to mass shootings. An analysis of the criminal justice history of hundreds of thousands of offenders in Washington State suggests that a felony domestic violence conviction is the single greatest predictor of future violent crime among men.
To Stop Violence, Start at Home

OP-ED CONTRIBUTORS

By PAMELA SHIFMAN and SALAMISHAH TILLET


A causal relationship is certainly plausible. We already know from learning theory that adolescents, especially boys, who experience violence in the home are far more likely to subsequently commit domestic violence. What if the first acts of domestic violence, if left unchecked, reinforce such tendencies and in effect condition a susceptible offender into acting as if violence is the correct method to channel their real frustrations or perceived injustices into action on a broader stage?

If this causal direction proves correct there are major policy implications. Controlling domestic violence was historically not a high priority for police departments except under extraordinary political pressure. If however, such violence can be regarded as a logical precursor or at least a risk marker for mass violence, there might be considerably more public support for intervention at this critical first step, before mass violence. Or as stated by Ms. Shifman and Professor Tillet, “Safe and democratic families are the key to ensuring safe and democratic communities. Until women are safe in the home, none of us will be safe outside the home” (Shifman & Tillet, 2015).
The Specialized Problem of Stalking in Intimate Relationships

Stalking has become increasingly prevalent in the context of domestic abuse because of the increased tendency of judges to order abusers to leave their family abode and restrain themselves from any contact. Many such abusers react by plotting a campaign either to reinsert themselves into the lives of their former intimates or, in essence, to terrorize them into submission.

Many definitions have been proposed for the term “stalking.” We will use the definition proposed by the National Center for Victims of Crime (NCVC). In 2007, they published the revised Model Stalking Code. It defined stalking as follows:

Any person who purposefully engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to fear for his or her safety or the safety of a third person or suffer emotional distress is guilty of the crime of stalking.

(a) “Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.

(b) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(c) “Reasonable person” means a reasonable person in the victim’s circumstances. (NCVC, 2007, p. 44)

Estimates of the prevalence of stalking vary. There are significant difficulties
in determining the rates of stalking. The percentage of stalking incidents reported to police is even lower than is the percentage when an actual assault or an assault involving an injury has occurred. As a result, recent survey research that is not dependent on police reports has revealed prevalence rates for stalking that are far higher than previously considered.

It has been reported that almost 5% of women and 0.6% of men were stalked by a current or former spouse, cohabitating partner, or date during their lifetime. In addition, 0.5% of the women and 0.2% of the men were stalked within the last 12 months. They extrapolated these figures to result in approximately 504,000 women and 185,000 men being stalked annually by intimate partners in the United States (Tjaden & Thoennes, 2000).

Recently, a meta-analysis was performed of 175 studies of stalking. The results demonstrated far greater prevalence than we would have anticipated. Various studies showed a lifetime prevalence rate between 2% and 13% for men, whereas lifetime victimization rates for women were 8% to 32%. Furthermore, although many studies covered nonrelationship stalking such as celebrity stalking, the meta-analysis shows that approximately 80% of stalkers were known by the victim and approximately half occurred in the context of some form of romantic relationship (Botuck et al., 2009; Spitzberg & Cupach, 2007).

Unfortunately, most studies included in the meta-analysis were not exclusively focused on intimate partner stalking. This may be because stalking is considered ancillary to or simply a part of an overall pattern of intimate partner violence and is studied in that context rather than as a separate phenomenon with potentially different causal factors and perhaps different effects on victims (Stark, 2007).

Not surprisingly, research has suggested that college women may be at increased risk for stalking victimization compared with the general population (Fisher, Cullen, & Turner, 2002; Schwartz & DeKeseredy, 1997). Fisher and colleagues (2002) conducted a national telephone survey of 4,446 women attending 2- and 4-year colleges and universities in 1997. They reported that 13.1% of women were stalked during a 7-month period, which is a figure considerably higher than the national average. Of those women, 12.7% experienced two incidents, and 2.3% experienced three or more
incidents. Victims were threatened or an assault was attempted in 15.3% of the cases.
The Impact of Stalking

As mentioned earlier, stalking is part of the definition of domestic violence, either in the context of being part of an ongoing pattern of a variety of types of abuse, of becoming an alternative to earlier physical abuse, or as the only type of behavior the offender displays. In the case of its becoming an alternative form of abuse, the methods chosen continue at long range the control tactics that had been finely honed previously. Stalking has been concisely described as “psychological war” (Geberth, 1992), and it instills tremendous terror in victims. Tactics vary enormously. Some stalkers simply trail their victims continuously. Others destroy or vandalize property; send packages or deliveries (often of inappropriate or bizarre items); poison or kill pets; use phone threats; and contact employers, neighbors, and relatives, making normal life impossible.

Danger in stalking is an ever-present threat. In this context, the behavior of O. J. Simpson in stalking his ex-wife Nicole Brown Simpson is a typical pattern, even if the outcome was extreme. Although research in this field is in its infancy, we know that stalking by itself is a strong predictor of subsequent, often uncontrolled, violence against the victim, her (or his) family, bystanders, and even the offender. Mass murder and suicidal rage are not uncommon, although difficult to predict. The public is familiar with headlines in which celebrities and others have been stalked and sometimes killed. Others have been attacked and permanently injured or disfigured. In the context of the psychopathological stalker, this is explainable; he seeks to retain control. Such violence may be used as either a tactic (to keep control) or a spasmodic response to the realization that he has utterly “lost it,” perhaps when the victim finally rebuffs him (or her) or becomes involved with another. The best evidence of this is the often expressed stalker statement, “If I can’t have her, no one else will.”

In addition, stalking affects the mental health of victims (Davis & Freeze, 2000; Turmanis & Brown, 2006). The NVAWS reported that one third of female stalking victims sought psychological counseling. Victims often suffer “social damage” (Knoll & Resnick, 2007, p. 16; Logan, Walker, Stewart, & Allen, 2006) and often are forced to make major lifestyle changes that can
include relocating, not working or seeking new employment resulting in monetary costs to these victims. In fact, more than a quarter of the victims reported losing time from their current employment because of stalking, and 7% gave up their job altogether (Tjaden & Thoennes, 1998).

Victims also suffer from increased emotional stress that increases their risk for anxiety disorders, substance abuse, PTSD, and depression (Knoll & Resnick, 2007).
Summary

Intimate partner and domestic violence is a huge problem in terms of the number of incidents and its effects on victims. Disparities in definitions of domestic violence have at times resulted in conflicting reports of its incidence and trends. There is considerable variation in the relationships considered, and one must consider the variations among legal, research, and societal definitions. Legal definitions shape our official response by defining the acts and behaviors that are criminalized. Thus, surveys by government agencies such as the UCR and NCVS frame and measure the problem differently than other sources such as the NFVS and NVAWS.

Furthermore, intimate partner and domestic violence remains a highly controversial topic among researchers, and this is reflected in the diverse range of findings among their studies (e.g., the NFVS and NVAWS, victim advocates, and practitioners). These data sources help us frame and understand the problem of domestic violence. They further impacts how policymakers address the problem. Therefore, definitions do matter and are worth our careful consideration.

Available evidence suggests that violence rates may vary among different subpopulations with many minorities and ethnic groups being particularly vulnerable. Finally, stalking may be regarded as a newly identified variant of domestic violence or, perhaps more appropriately, coercive control. Even though it may have been extant for some time, rates may be increasing as abusive partners are evicted from their homes.
Discussion Questions

1. How would you define domestic violence? What relationships and acts do you think should be included? Should stalking be viewed as part of domestic violence or as a separate problem?
2. When is mutual violence self-defense against an aggressor, and when is it retaliation?
3. If violence is committed in self-defense, should this make a difference in how we intervene? In other words, if a woman prefers to respond to a violent attack with reciprocal violence rather than seeking police assistance, should she be considered an aggressor as well?
4. If one party uses physical violence and the other party uses extreme coercion and psychological abuse, is only the perpetrator of physical violence considered the offender?
5. What are the policy implications of how we define domestic violence in the allocation of victim services?
6. How do we respond to cases where victims and offenders change roles?
7. John Hamel (2007) has typologized people in what he terms the “Gender Camp” and the “Conflict Tactics Camp.” Those in the “Gender Camp” believe that domestic violence is primarily a crime committed by men against women and that women are more likely to be subjected to serious violence and in fear of their abuser. Conversely, those in the “Conflict Tactics Camp” believe that men and women are equally likely to be victims and offenders for a variety of reasons. Do you think domestic violence is gender neutral?

Think Critically with SAGE journal articles study.sagepub.com/buzawa5e

1 It is currently fashionable in the United States to refer to “gender violence” when describing partner abuse. Ironically, this term was adapted in response to right-wing criticism of the emphasis on violence against women. In other words, the term “gender violence” is used to mean that violence is not gendered.

2 Proponents of the parity argument dismissed the NVAWS because respondents were asked to only report violent acts that made them feel unsafe. By focusing on violence that threatened personal security, the NVAWS excluded the range of fights and other violent acts picked up by the NFVS that neither party considered threatening, including a significant proportion of (but not all) violent acts self-reported by women. By contrast, this emphasis was what made the NVAWS (but not the NFVS) relevant for an understanding of abuse and why it was dismissed by critics of the gender violence model.
An excellent resource for those interested in further study of workplace violence, guns and the workplace, and domestic violence protection orders as they apply to the workplace can be found at [www.workplacesrespond.org](http://www.workplacesrespond.org), where there are draft protocols and policies.
3 Matters of History, Faith, and Society
Chapter Overview

Why do we care about historical attitudes and precedents toward women or religion in the United States, a largely secular society? Are religious doctrines and attitudes still important in the context of a modern western society? Simply stated, an understanding of domestic violence should include a macro-level analysis to explain the structural violence considered by many to be endemic against women in most societies. This chapter will discuss how socially sanctioned violence against women has persisted since ancient times. Many religions—Christianity, Judaism, Islam, and others—often simply have affirmed ancient male-dominated family structures. The result can be found in the official discrimination and historical tolerance of domestic violence. These are exemplified by English common law in the history and practices of the United States at least until the enactment of modern reforms. Although most societies have the same—or even significantly worse—issues with official and tacit tolerance toward domestic violence, this chapter will focus on historical and religious antecedents that have shaped the “traditional” US tolerance of domestic violence. Furthermore, we will explore how these might still impact how our society treats domestic violence.
**Historic Attitudes on Domestic Violence**

Domestic violence has long been a feature of both ancient and modern societies. From the earliest record, most societies to varying extents have given the male patriarch of a family the right to use force against women and children under his control.

The basis for patriarchal power often was a desire to maintain social order extending to defined relations within the family. One graphic example is Roman civil law, *patria potestas*, which gave legal guardianship of a wife to her husband. This concept included the largely unfettered ability of the husband to beat his wife, who became, in legal effect, his daughter. Such rights were not necessarily for her well-being since this right extended to the ability (if not the reality) to sell a wife into slavery or, under certain limited circumstances, to put her to death. This was codified in the earliest known example of a written marital code (753 BC); Roman law stated simply that wives were “to conform themselves entirely to the temper of their husbands and the husbands to rule their wives as necessary and inseparable possessions” (Pressman, 1984, p. 18). Similar codes or judicial doctrines were enacted in many ancient societies where women, whether slaves, concubines, or wives, were under the authority of men. In law, they were treated as property (Anderson & Zinsser, 1989) or viewed as inherently having an inferior role “as men ruled in government and society, so husbands ruled in the home” (Lentz, 1999, p. 10). Ancient historical precedents can therefore best be summarized by the concept of the natural inferiority of women, the natural authority of the male head of the household, and at its extreme, the “property” rights of the head of the household over everyone in his domain.
English Common Law and European History

English common law, the progenitor legal system of 49 of the 50 US states (all but Louisiana), followed a variant of the well-recognized custom. In traditional English society, property rights were the key denominator of social status. English feudal law reinforced religious edicts using the concept of male property rights over women and the right of men to beat “their women” if needed. Class or heredity determined far more than personal achievement in setting the potential limits for what a person could attain. Hence, one was either bred into nobility with the numerous rights thereof or one was a commoner. Each group had clearly defined property rights and behavioral expectations with regard to the other. Within such a charged atmosphere, the characterization of one’s rights over property was perhaps the most important attribute of a person’s status. In feudal times and according to common law, women became “a femme covert,” the law of “coverture.” This meant women were under the protection and control of their husbands. There also were risks for men in this allocation of responsibilities as under the law of coverture; husbands were legally responsible for the actions of their wives. However, women incurred the far greater loss as they relinquished property rights in favor of their husbands, even when property was inherited from their families (Lentz, 1999).

The implications of a man’s property rights and his reaction to the violation of such rights were acknowledged in the British judiciary’s reaction to adultery by each gender. For example, English common law differentiated between the “reasonable reactions” of a husband to his spouse’s adultery (justifying to some extent an impulse to extreme violence) and those of a similarly situated wife.

From the 17th century through the mid-20th century, British common law endorsed conceptions of men having a more aggressive sex drive and a natural dominance over their wives. Hence, a “normal” reaction to a woman’s adultery was understood. Under this conception of dominance, adultery by the wife constituted adequate provocation enough to mitigate murder to manslaughter (a lesser crime not punished by death) regardless of whether a husband killed the wife or her lover. Because adultery was viewed as
violating a husband’s property rights in his wife’s body and his family name, the common law recognized allegations of infidelity as the most severe form of provocation. As a court opined in *Regina v. Mawgridge* (as cited in Miccio, 2000, p. 161), “Jealousy is the rage of a man, and adultery is the highest invasion of property. . . . [A] man cannot receive a higher provocation.”

Although spousal infidelity might always be considered a severe betrayal, the law of adultery was totally gendered in its application. Until 1946, English courts assumed that wives did not experience rage as men did. Therefore, women who killed philandering husbands could not use adultery as a justification to reduce a murder charge to manslaughter.

This exemption for killing in defense of a man’s honor—and in effect, in defense of his property—was carried forth from common law and widely recognized in the United States as well, both by state statutes (four of which made it a complete defense to criminal charges of killing a wife’s lover) and more commonly by judicial notice (Miccio, 2000).

Some historical change, however, was evident beginning in the 1500s. In response to beating deaths that were regarded as extreme, English common law began the process of introducing some limits on a man’s rights over his wife. The concept of “restraint” was introduced to place some limits on the up-until-then largely unfettered rights of the husband. Under later English common law, husbands were entitled to dominate wives using violence “with restraint” (e.g., the theory of “moderate chastisement”). The power of life and death over his wife was taken away—at least officially. In practice, however, few if any restraints short of punishing homicide were imposed on the husband’s ability to chastise his wife (Gamache, Edelson, & Schock, 1988; Oppenlander, 1982; Sigler, 1989; Walker, 1990).

Such limiting rights were perhaps most graphically illustrated by the often-stated, if somewhat allegorical, concept of the rule of thumb, which purported to allow husbands to beat their wives with a rod or stick no thicker than his thumb. The probability that a whipping with such an instrument could still cause serious injury or even death illustrates how maintenance of the family unit was more important than stopping violence. As such, one 18th-century court ruling gave authority to the husband to punish his wife as long as it was
confined to “blows, thumps, kicks or punches in the back which did not leave marks” (Dobash & Dobash, 1979, p. 40).

Also in the late 1500s, the British jurisprudence began debating whether there were legal limits to the theory of chastisement. Public debate began as to whether God or the state sanctioned physical beatings (Doggett, 1992; Fletcher, 1995; Lentz, 1999). In this regard, trial courts began to be concerned about the reasons for the beating and the extent of the physical damage inflicted. Hence, it held if the woman somehow was responsible for the beating—if she was an adulteress, or even a nag, more physical punishment would be permitted. Alternatively, if the beating was the result of a drunken rage, it would be illegitimate and punishable. From this perspective, the concept of restricting beating to particular acts as well as the physical punishment inflicted became key limitations on the common law right to chastise one’s wife.

From a different perspective, it is possible to see that “wife beating,” although widespread, came to be viewed as a mark of the lower class—at least by members of the upper classes, who increasingly disdained such violence as the product of the British drunk lower classes. In reality, although few records exist, it is equally possible that beatings in upper-class families also were widely present. Although rarer than in the lower classes, such abuse was more likely to be veiled in silence and never reported to the authorities to prevent shaming the families in proper society (Fletcher, 1995; Lentz, 1999).

Other societies adopted similar theories that limited the application of the husband’s violence while in effect condoning his right as the family patriarch to engage in certain violence to promote family values. For example, a 16th-century Russian ordinance expressly listed the methods by which a man could beat his wife (Quinn, 1985). When violence became too serious, laws against assault and battery were typically not invoked. Instead, informal sanctions by family, friends, the church, and perhaps vigilantes were undertaken. Such sanctions included social ostracism, lectures by the clergy, or retaliatory beatings of an offender by the wife’s male kinfolk (Pleck, 1979).

The fact is that in virtually every society we have examined, proverbs, jokes,
and laws indicate strong cultural acceptance and even approval of the beating of women by their husbands. Any effort to list them all would be futile, but two examples are illustrative of the extent of such beliefs:

A wife is not a jug . . . she won’t crack if you hit her 10 times. (Russian proverb)
A spaniel, a woman, and a walnut tree—the more they’re beaten, the better they be. (English proverb)

In addition, English comic plays used wife beating as a recurrent comic theme. One obvious example is William Shakespeare’s witty comedy, *The Taming of the Shrew*, where the woman’s desire to test the limits and her acceptance of a beating were comedic.

Certainly US culture is no less inundated with messages of this nature. Until at least the 1970s, American pop culture often trivialized domestic violence. Consider television programs such as *I Love Lucy*, in which Ricky Ricardo regularly spanked Lucille Ball, for comic effect, or *The Honeymooners*, in which Jackie Gleason’s arguments with his wife, Alice, typically ended with his catch phrase, “One of these days, Alice . . . pow, zoom, right to the moon.” John Wayne movies similarly used spanking as a staple strategy in many movies to tame a spouse or even to “win over” independent, strong women—usually in front of the entire town. Notably, such taming did not stop until the woman stopped struggling. Although the spanking might have been perceived as trivial, and no injuries ever resulted, at least on camera, in effect women were perceived to encourage moderate violence by taunting the male until he gave her the beating she tacitly desired. The reality of serious domestic violence was simply never addressed.
Early American Strategies and Interventions

The Massachusetts Body of Laws and Liberties, enacted by the Puritans in 1641, were the first laws in the world expressly making domestic violence illegal. This statute provided that “every married woman shall be free from bodily correction or stripes [lashing] by her husband, unless it be in his own defense upon her assault” (Pleck, 1987, pp. 21–22). Similarly, in 1672, the Pilgrims of Plymouth Plantation made wife beating illegal, punishable by fine or a whipping (Pleck, 1987). The limitations of this first US intervention, however, should be clearly understood. Puritans and Pilgrims did not object to moderate violence under religious law, and over time, the practices sanctioned (or tolerated by the Pilgrims and Puritans) began to evolve into the more definitive boundaries for permissible levels of violence that became the historical antecedents for the experience in the United States.

Within these sects, the family patriarch not only retained the responsibility but also the duty to enforce rules of conduct within the family. Therefore, they largely concurred, perhaps unknowingly, with European thinking regarding violence in the family. Moderate force was necessary and proper to ensure that women, as well as children, followed the correct path to salvation. In effect, the right to use violence was sanctioned, but only if it was for the benefit of the family—and hence of the colony’s social stability (Koehler, 1980; Pleck, 1979).

Also, the effect of these laws was largely symbolic, defining acceptable conduct and not often enforced by the public floggings or the other more draconian criminal justice punishments then in vogue. One exhaustive research project found that from 1633 to 1802 (169 years), only 12 cases of wife abuse were ever brought in Plymouth Colony (Pleck, 1989). In addition, although these statutes might have influenced other colonies, they were confined to the more religious New England colonies and were not extended to the larger and more religiously representative Southern and Mid-Atlantic settlements. Finally, because these were primarily based on religion, determining the appropriateness of conduct that was “suitable in the Eyes of the Lord” became even more problematic as American society, in common with most of Europe, became more secularized. For these reasons,
enforcement of such laws largely disappeared before the American Revolution.

During the period between the late 1700s and the 1850s, there were virtually no recorded initiatives by society to control domestic violence, and despite a detailed search, it seems that a legislative vacuum existed (Pleck, 1989). In fact, in the early 1800s throughout the United States, judges commonly dismissed infrequent criminal charges of spousal violence because a husband was legally permitted to chastise his wife without being prosecuted for assault and battery (Lerman, 1981).

Furthermore, although not codified into law, state courts as early as the 1824 Supreme Court of Mississippi decision in *Bradley v. State* (1824) expressly reiterated the English common law principle that a husband could beat his wife “with a rod no thicker than his thumb.” Some court decisions of this period, although using extreme language, illustrate the prevailing judicial sentiments toward intervening in domestic matters.

One court clearly focused on how the wife brought punishment down on herself (Hirschel, Hutchison, Dean, & Mills, 1992): “The law gives the husband power to use such a degree of force as is necessary to make the wife behave herself and know her place” (p. 251). The same court made it clear that it was even immaterial whether the husband used a whip or another weapon on his wife “if she deserved it,” and this gave her no authority to abandon her husband, *an offense for which she could be prosecuted* (Hirschel et al., 1992, pp. 252–253, emphasis in original).

In reality, a married woman was not viewed as being autonomous nor being an adult in most popular conceptions of the word. Until the start of the 20th century, she had few legal rights. For example, a husband owned all of a family’s property and assets and in practice was allowed to chastise his wife physically. He also had the right to force her to move and accept new domiciles even if this meant uprooting the family. Not surprisingly, in the closely related context of marital rape, legislatures and courts viewed the husband as having an unfettered right to the sexual enjoyment of his wife with or without her consent.

This acceptance of marital rape changed only in the last century. In


*Oppenheim v. Kridel* (1923), the court abridged this right, noting that in the past in New York State,

> [t]he marriage contract vested in husbands a limited property interest in the wife’s body with the concomitant right to “the personal enjoyment” of his wife. Consequently, in exchange for shelter and protection from external forms of violence, the wife gave over her body. If wives refused conveyance of the self, husbands enforced compliance by force. Marital status conferred upon husbands the right to violate the bodily integrity of their wives. (Miccio, 2000, p. 157, emphasis added)

Why did judges condone obvious violence? Well, it was no coincidence that for centuries all judges were men, but we believe it simply reflected the widely held societal belief that a woman, with an inferior mind and countenance, needed the protection of her spouse, regardless of the possible harm inflicted by the few that used such powers to abuse their spouse. It also is probable that larger societal trends were at work. As society became more secularized, the enforcement of community moral standards in private conduct became considered an improper state activity—an overreaching use of governmental power.

In this regard, the operations of the legal systems of the new US Republic (as well as Great Britain) reflected the philosophies and teachings of classic “liberal” philosophers. For example, John Locke, the British philosopher, strongly believed that society should restrict its concerns to the maintenance of public order and abjure both trying to regulate the private order and to eliminate private vice (Pleck, 1989). Jean-Jacques Rousseau, the French philosopher, had a strong intellectual influence in the United States on the importance of equality and the role of the state. His beliefs did not extend his concept of equality to women, however, whom he viewed as inferior and as having interests confined to “women’s functions” (Miccio, 2000).
Enforcement in the Mid-1800s

In the United States, the second period of criminal justice enforcement against domestic violence occurred in the context of the major societal upheavals of the latter part of the 19th century. Laws passed and cases decided during or immediately after the Civil War reflected a new willingness to impose restrictions typical of a more urban environment and of an enhanced government willingness to regulate families. Some legislation began to erode the husband’s unfettered authority over his spouse (Pleck, 1989).

Did such new enforcement occur because of an enhanced appreciation of the rights of women? Perhaps, but frankly, we believe that we should not underestimate the dominant society’s reaction to the lifestyles and mores of new immigrants and the lower social classes—long a theme of American “reformers.” At this time, the emerging financial elite, as well as the professional and middle classes, were frightened, almost to the point of hysteria, over their perception of uncontrollable crime waves committed by the lower classes. This was exacerbated due to fear of the demise of American civilization resulting from waves of immigrants with markedly different—and supposedly far more brutal—cultural backgrounds (Boyer, 1978).

For whatever reason, in 1871, the Supreme Court of Alabama became the first appellate court in the United States to rescind the common law rights of a husband to beat his wife as follows:

The privilege, ancient though it may be, to beat [one’s wife] with a stick, to pull her hair, choke her, spit in her face or kick her about the floor, or to inflict upon her like indignities, is not now acknowledged by our law. . . . In person, the wife is entitled to the same protection of the law that the husband can invoke for himself. (Hart, 1992, p. 22)
In sharp contrast, the North Carolina Supreme Court had rejected a similar case just 3 years earlier in 1868: “If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the civilian, shut out the public gaze, and leave the parties to forget and forgive” (State v. Rhodes, 1868).

In addition to growing judicial limits on a husband’s authority to chastise his wife, concerns about physical abuse were beginning to be expressed by the nascent women’s advocacy movement. Upper-class and highly religious women had begun organizing to achieve political and societal reforms. The first of these organizations were the Temperance Leagues. The Temperance Leagues saw their primary mission as stamping out the most visible cause of societal problems, “demon rum,” especially when used by immigrants and the lower classes. Out of these early movements, a new phenomenon, “suffragettes,” evolved into the effort to gain women’s voting rights. Although this was their primary mission, they also organized activities designed to help women more generally, including efforts to lift the numerous legal restrictions on women’s freedom, such as the right to own property in their own name.

In the last decades of the 19th century, women began to achieve some modest degree of financial freedom and protection of their property rights. Divorce became at least theoretically possible. Although there were legislative reforms to “protect women” by limiting their ability to work in difficult, but well-paying, positions, there was a gradual acceptance of women in the workforce, at least in what we now view as traditional female occupations such as teaching, nursing, and other skilled services. Also, with the widespread passage in all states of Married Women’s Property Acts, most restrictive limits on women holding property in their own name were abolished. Women thus began the process of accumulating wealth and some degree of economic—and later political—power.

In addition to the right to own property in their own name, women’s groups did, indeed, affect official attitudes toward domestic violence. By the end of the 19th century, chastisement as an official defense to a charge of assault largely ended. Twelve states considered, and three adopted, a stronger position containing explicit laws against wife beating. In these three states,
Maryland (1882), Delaware (1881), and Oregon (1886), the crime of wife beating became officially punishable at the whipping post.

Although these statutes demonstrated a new level of societal activism, we believe that they were rarely officially enforced. In a far more problematic manner, vigilantes, including the Ku Klux Klan, supplanted official sanctions by using beatings against alleged offenders, primarily Blacks, to control behavior and oppress targeted groups (Pleck, 1989). One can obviously question their real motivation in that such vigilantism had the effect of maintaining the enforcers’ claim as final arbiter of permissible conduct—powers dramatically abused to support rigid racial and ethnic discrimination since their formation.
The Continuing Importance of History

Does pre-1900 history still matter? Although it would be easy to dismiss its relevance to the present, several recurrent patterns between domestic violence and the criminal justice system seem to carry over. First, restrictive laws nominally on statute books were not equated with real enforcement policies. Although they might exist, criminal sanctions were infrequently imposed. Instead, they were tacitly deployed to control the fringes of clearly improper conduct. The excess had to become impossible to ignore because of a victim’s recurrent severe injuries or public breaches of the peace. Instead, as we discuss later in this chapter, informal methods of control became the primary vehicle for enforcing basic societal norms.

Second, when official punishment was deployed, it was far more extensively used against Blacks, immigrants, vagrants, and other groups without political, economic, or social power. In these cases, it is debatable whether societal interventions were primarily out of concern for the men’s wives or intimate partners, or instead became yet an additional method to enforce the existing social order against these disfavored minorities.

Third, the contemplated use of highly visible and emotionally charged punishments such as the whipping post, even though infrequently applied, might be considered an attempt to deter future criminal activity with the prospect of public humiliation. As such, it might have been the logical precursor to modern efforts to use arrest without real efforts to obtain a subsequent conviction as a mechanism for deterrence via public humiliation rather than relying on the actual exercise of criminal punishment.
The Historical Pull Back

In any event, just as domestic violence as an issue seemed to have gained a foothold in the national consciousness, by the early 1900s, the second great experiment of using societal sanctions to combat domestic violence had largely ended. By several accounts, domestic violence as an officially punished crime virtually disappeared from the public view (Pleck, 1979, 1989; Rothman, 1980). This was probably inevitable. After a series of financial panics in the late 1800s and early 1900s, economic rather than social issues became the focal point of concern for middle-class Americans. Also, female activists were focusing their efforts on their primary goals: temperance and, subsequently, suffrage, and not domestic violence.

During this period, the criminal justice system and other social institutions rapidly evolved away from enforcing crimes committed in the home. Political theorists instead began to fear the possibility of coercive use of police, a characteristic rapidly increasing in the emerging authoritarian states of Prussia and czarist (and later Soviet) Russia. Excesses of police use of force in Europe greatly contributed to a counter reaction in the United States. US politicians and commentators contrasted their supposedly superior respect of family privacy compared to authoritarian Europe. Not surprisingly, this so-called concern for family privacy minimized societal intrusion into the family, even if there were severe abuse in the family (Rothman, 1980).

Furthermore, as with the police, the judicial trend moved away from criminalizing domestic violence. Americans also were concerned about courts that might work with the government to repress individual freedom. They saw, in the more authoritarian states of Europe, courts that suppressed dissent by sentencing large numbers of people on pretextual crimes.

In this context, in the early 20th century, case law and statutory restrictions developed that severely restricted the previously growing power of the police. The impact of these restrictions, perhaps unintended, was to limit dramatically societal control on violence in families. In one highly significant development, virtually all states codified and then reinforced requirements that forbade police from making arrests in misdemeanor cases without
witnesses. Hence, a perverse American outcome to the international growth of police state abuse was to limit society’s ability to react to family violence.

The United States’s reaction was to try to limit the role of criminal courts and to divert as many cases as possible away from the criminal justice system. Family disputes were a key area for such diversion. In the first several decades of the 20th century, the development of family courts was expressly designed to eliminate routine family troubles from criminal court dockets and instead provide a specialized forum that would deal with family crises. Although these courts could frequently grant divorce, the typically expressed goals of such courts were to assist couples to work out problems within the existing family structure and seek reconciliation. In this context, their primary mission did not usually include efforts to criminalize violence within the family.

Family courts, as well as courts of general jurisdiction, also began to be influenced by the nascent social work movement. Although perhaps simplistic, at least in the early years, some social work professionals viewed criminal prosecution of domestic violence cases as unprofessional or as being a product of society’s overall preference to stamp its own normative behavioral models coercively onto those of the lower classes and minorities. The rehabilitative model used by social workers was viewed as vastly superior in that it tried to help dysfunctional family units and to rehabilitate an offender’s behavior. Thus, early social workers attempted to develop a consistent intervention strategy for all batterers (as compared with current approaches that acknowledge vast differences among batterers).

This period of criminal justice dormancy had a profound impact on current criminal justice operational practices. Although less true than reported in the earlier editions of this treatise, and despite nearly universal official policies to the contrary, some police officers, prosecutors, and judges still privately hold that society should not customarily intervene in domestic disputes except in cases of dire violence.

As we explore in subsequent chapters, until recently, procedural requirements adopted by bureaucratized and highly controlled police forces virtually eliminated criminal justice intervention. At the same time, there was a largely unexplored but probably real increase in the tendency of police to mete out
street-level justice to minor miscreants, by giving stern lectures, or even an occasional beating, to drunk domestic violence offenders to teach them a lesson while avoiding making an actual arrest.

The restrictions on misdemeanor arrests without a warrant were probably the key legal impediment to the use of arrest; however, the restrictive policies of prosecutors adopted in the 1900s also made use of criminal sanctions even more problematic. The combined effect of these procedural barriers made the actual intervention of the criminal justice system far more remote than the crime would otherwise warrant based on victim injuries or offender intent and conduct.
The Religious Basis for Abuse

 Traditions subordinating women have a long religious history rooted in a literal biblical understanding of “patriarchy”—the institutional rule of men. Much of the Bible portrays women as naturally inferior, both physically and intellectually. As we all know from the Old Testament, Genesis is the foundation for the Jewish, Christian, and Islamic faiths. Within this book, it is strongly suggested that women should be subordinate to men and that they are potentially untrustworthy. God creates Adam in his likeness, while Eve was created solely from a rib or appendage of Adam, marking her as a subordinate both in time and in stature. “And the rib that the Lord God had taken from the man he made into a woman” (Genesis 2:22; note that all biblical text references herein are to the New King James Version Bible).

Why is this passage important? Because in medieval times, God was the center of all good and people rightly wanted to be considered in his image. Hence, in early church law, it often was explicitly stated that women were one step further removed from the image of God.

Eve moreover also fell first prey to the Devil, and then successfully tempted Adam to partake of her sin. (“Then to Adam He said, ‘Because you have heeded the voice of your wife and have eaten from the tree . . . in toil you shall eat of it all the days of your life.’”) Thus, the first sin of the woman ultimately led to the expulsion of mankind from the Garden of Eden and to mankind’s fall from grace.

Therefore, in a literal sense, Adam, although made in the image of God, was led away from the Garden of Eden (paradise on Earth) by the transgressions of his wife, Eve. It seems that because a woman had already led to the fall of man once, it was right that he whom the woman had led into wrongdoing should have her under his direction so that they might not fall a second time.

Sections of the Bible repeatedly set forth that all women should expressly suffer for this original sin. “I will greatly multiply your (woman’s) sorrow, and your conception; in pain you shall bring forth children; your desire shall be to thy husband, and he shall rule over you” (Genesis 3:16, emphasis added).
This passage clearly sets the tone indicating that God deliberately sought to extract special punishment on women; and, in a very literal sense, gave the authority of a husband to rule over his wife. No chapter or verse in the Bible ever contradicts this very direct subservient role of women. It is not surprising, then, that throughout recorded history, Judeo-Christian writings have been used to reinforce the subordination of women and, in effect, have condoned any measures used to support the primacy of men.

Therefore, when looking at responses to abuse, we need to consider how ecclesiastical or religious law treated family control and responsibility. Throughout recorded history, we know that deeply held religious beliefs have strongly influenced and, in many societies, have governed, political and social attitudes. In this regard, the impact of the religious experience on domestic violence can be huge. Although this subject can be oversimplified, at a minimum we can say that Judeo-Christian religions have reinforced a husband’s right to control his wife since, as we will show, many passages in the Bible repeatedly justify man’s primacy. In fact, as the patriarch of the family, the husband was to enforce the law against his spouse.

Consider the following passage:

[W]hen a wife while under her husband’s authority, goes astray and defiles herself or when the spirit of jealousy comes on a man and he is jealous of his wife; then he shall stand the woman before the Lord and the priest shall execute all this law upon her. Then the man shall be free from iniquity, but that woman shall bear her guilt.
(Numbers 5:29–32++)

Other biblical passages are even more explicit in promulgating the husband as an agent of the state to both interpret and enforce the law. The husband was given the authority to interpret the wife’s actions as improper and therefore to invoke religious law against her. “Wives be subject to your husbands as you are to the Lord. For the husband is the head of the wife just as Christ is the head of the Church, his body, of which he is the Savior” (Ephesians 5:22–23). Although we doubt most women truly worshipped their husbands, the husband’s authority over his wife is made clear. See also
Numbers 5:15, where it is clear the husband can go to the priest to bring forth an allegation of infidelity (due simply to a “spirit of jealousy”), whereas no parallel authority is ever given to a woman.

Priestly, and hence societal, authoritative interpretations of the Bible have reinforced the subordinate role of women. St. Augustine in the 5th century wrote of the natural order of a man and woman’s respective duties:

For domestic peace . . . they who care for the rest, rule—the husband: the wife, the parents: the children, the masters: the servants; and they who are cared for obey—the women their husbands, the children their parents, the servants their masters. (Lentz, 1999, p. 11, emphasis added)

In this Christian family and household, rule was not ostensibly because of any male love of power but from a sense of duty. According to St. Augustine, “[i]f any member of the family interrupts the domestic peace by disobedience, he is corrected either by word or blow, or some kind of just and legitimate punishment, such as society permits” (Lentz, 1999, p. 11).

It might not be a total coincidence that until fairly recent times, ordained clergy in all Judeo-Christian faiths were men who might naturally wholeheartedly support the natural primacy of men. The particular Christian denomination did not matter as this attitude did not change between the Catholic writers of the Middle Ages and those of the Protestant Reformation. Martin Luther, although seeking to dispel the primacy of the Catholic Church, had no problem stating in unequivocal terms the man’s right to rule over his wife and other members of his family as authority “remains with the husband and the wife is compelled to obey him” (Lentz, 1999, p. 11).

Violence in the context of a marriage was not recognized historically as abusive at all but, instead, simply one of the religious duties of the husband. A medieval Christian scholar even propagated rules of marriage in the late 15th century, specifying the following:
When you see your wife commit an offense, don’t rush at her with insults and violent blows . . . scold her sharply, bully and terrify her. And if this doesn’t work . . . take up a stick and beat her soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body. . . . Then readily beat her, not in rage, but out of charity and concern for her soul, so that the beating will rebound to your merit and her good. (Hart, 1992, p. 3)

Similarly, the Koran in the 34th Koranic verse (Ayah) of the Al Nisa Chapter contains the following verse, “As to those women on whose part ye fear disloyalty and ill conduct, admonish them, refuse to share their beds, and beat them.” Nawal Ammar (2007) in a well-reasoned article reviews how this seemingly simple passage has been interpreted many different ways both to justify spousal abuse by a family patriarch or conversely in more modern interpretations to show why spouse abuse should not happen in a normal Islamic marriage.

The author finds that some more modern scholars note that the Prophet Mohamed never beat his wife and scorned those who felt it necessary to do so. Still, Ammar (2007) wrote that predominant Islamic scholarly thought holds that beating is still an allowable last resort but only to be used after admonishment and loss of marital cohabitation do not work to correct the error of the wife. In any event, beating would implicitly be preferable to terminating a marriage. Many Muslims believe that

[t]he superiority of men over women . . . is a natural and everlasting one . . . according to this interpretation, [it] is a God given relationship of power and authority that men are granted over women that permits men to discipline women (including wives) by beating them. (Shaïkh, 1997, quoted in Ammar, 2007, p. 519)

So why are ancient biblical or Koranic texts still relevant? First, as we noted above, many people of different faiths still believe in a literal interpretation of the Old Testament, and therefore believe that upholding Judeo-Christian or Koranic-based beliefs allows or even mandates subordination of women, and
therefore husbands have the authority (and, at times, the responsibility) to dominate and use coercion to control their wives’ behavior.

Second, male dominance can be perceived in the more secular traditions through a host of seemingly paternalistic rituals. For example, many people still consider marriage a holy institution. This belief is a concern because interpretations of holy texts often are coupled with a strong belief that marriage is a sacred institution—even if physical abuse occurs or persists.

One key tenet in traditional Judeo-Christian faiths is that marriage is permanent and not dissolvable easily, at least by the woman. The results, when deconstructed, produce an odd language that shows the unequal social views of the responsibility of men and women in basic institutions like marriage.

For example, readers as old as the authors probably remember the vows exchanged in traditional wedding ceremonies. The bride vowed to “love, honor, and obey” her husband, whereas the groom vowed to “love, honor, and cherish” his spouse. Both parties still today agree to remain together “for better or for worse until death do us part,” which in the context of a marriage with domestic violence, if taken literally, could effectively place the attacker and the victim on a similar moral plane.

The difference in marital vows between obeying and cherishing (as a prized possession?) clearly imply that adversity—perhaps including being beaten—could not justify leaving a marriage. After all, children may be cherished by a parent but prior to relatively recent changes in child raising techniques often were indeed physically punished (“spare the rod, spoil the child”). At worst, relaying problems of marital conflict to a priest, pastor, rabbi, or Imam might even invoke stern lectures to the wife as to her biblical responsibility to raise the family and accede to the natural order.
Why Religion Remains Important

One could argue with some validity that historical attitudes toward religion might be largely irrelevant in the context of many modern, pluralistic, and secular societies. In other words, although it might have been true that the historical basis for most of the world’s major monotheistic religions—Judaism, Christianity, and Islam—encouraged, or at least tolerated, violence against married women as part of a patriarchal control system, this attitude largely is irrelevant in today’s world. Indeed, many denominations have undertaken great effort to eliminate (or at least address) physical domination of married women.

Also, it is important to stress that religion can and has been used to try to prevent domestic violence. In virtually all denominations, leaders have denounced any type of relationship abuse. In doing so, they can cite specific references in the Bible that clearly promote tolerance and would seem to denounce spousal violence. For example:

There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus. (Galatians 3:28)

Similarly, even if a literal reading of the Bible gives man authority over woman, this does not mean he has any right to abuse that woman:

In the same way, husbands ought to love their wives as their own bodies. He who loves his wife loves himself. After all, no one ever hated his own body, but he feeds and cares for it, just as Christ does the church. (Ephesians 5:28–29)

From this perspective, a modern reading of the scriptures can lead the faithful to conclude that early church leaders like St. Augustine in their zeal to assert male control over their patriarchy wrongly concluded that giving authority to
the husband meant that the husband has the right to abuse that authority. After all, unless someone likes to beat himself, and God states that he who loves his wife loves himself, there would seem to be a fairly direct prohibition on hitting your spouse even if you are the head of the household.

This recognition, however, does not involve rewriting the scriptures themselves, is of fairly recent origin, and has not fully penetrated popular culture in some denominations. Thus, although we can acknowledge and greatly praise the role of many religious leaders in leading the fight against domestic violence and also in funding many shelters for victims of such abuse, we believe that for many reasons, historically based religious tolerance for abuse continues to some extent.

For example, many within any society retain traditional beliefs regarding the status of women. As discussed in later chapters, often immigrant families retain traditional religious belief systems more in accordance with their country of origin rather than with their country of migration. Similarly, there are many home-grown religious sects that maintain absolute adherence to their sacred text. For these people, modernity and its rejection of the patriarchal family is regarded as an anathema.

Potter (2007, p. 268) noted the following: “Clearly there is a discouraging theme among the followers and clerics of major religious groups in the United States in their perpetuation and response to domestic violence.” Similarly, it has been noted that the continuing role of religion in helping perpetuate domestic violence has not been adequately examined (Ellison, Bartkowski, & Anderson, 1999).
The Effect of Religion on Potential Batterers

Within the United States, some conservative evangelical or fundamentalist groups may fairly explicitly embrace a patriarchal vision of the family emphasizing clear-cut male and female roles in which the woman’s participation in the workforce and public spheres is often limited and traditional feminine pursuits in the home are cherished. This often has the effect of tacitly or even explicitly arguing for the primacy of male authority (Ellison, Bartkowski, & Segal, 1996). Exposure to such teachings and belief in their inherent truth has been associated with both corporal punishment against children and intimate abuse by male spouses (Ellison et al., 1996).

In the case of potential batterers, it has been noted by some researchers that some conservative evangelical and Christian clergy provide advice that in effect supports the male batterers’ activities—but only if it is part of a context of maintaining the primacy of the family and of the man as the head of the family (Giesbrecht & Sevcik, 2000; Horne & Levitt, 2004; Knickmeyer, Levitt, Horne, & Bayer, 2004; Pagelow, 1981; Potter, 2007).

Furthermore, some religious leaders to this day continue to support male supremacy through a literal reading of biblical text. The vehicle used might be the selected use of quotes provided earlier. One author referred to this as “proof texting.” Proof texting, the selective use of a text to support one’s position, is common among those who seek to simply justify their actions (Fortune & Enger, 2005). Today, some religious batterers often quote the scriptures when justifying their activities. Andrew Klein (1993), the former chief probation officer of the Quincy domestic violence court, stated that he often heard batterers defy his state’s domestic violence laws, claiming that “restraining orders are against God’s will because the Bible says a man should control his wife” (p. 1).

In noting this, we do not mean to imply that being a member of a fundamentalist church makes one more likely to be a batterer. In fact, such a pattern does not exist, at least in the United States. Instead, Ellison and colleagues (1999) found that while being a fundamentalist did not of and by itself relate to more abuse, what did correlate with more violence in a family
was that if men were more religiously conservative than their female partners (e.g., believing in the authority of the Bible more than their wives) the possibility of violence increased. Although interesting, and somewhat unexpected, perhaps this is simply because women who match their husbands’ conservative religious beliefs are not predisposed to challenge their family patriarch. While this outcome might be preferable to violent physical attacks, the lack of actual violence might therefore not equate to “no threat of violence” should the woman ever adopt more mainstream beliefs, especially if her husband retains the belief in his rights as the head of the household.

In 2009, former President Jimmy Carter made international news for his decision to publicize his choice to withdraw from his church:

There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus. (Galatians 3:28)
I have been a practicing Christian all my life and a deacon and Bible teacher for many years. My faith is a source of strength and comfort to me, as religious beliefs are to hundreds of millions of people around the world.

So my decision to sever my ties with the Southern Baptist Convention, after six decades, was painful and difficult. It was, however, an unavoidable decision when the convention’s
leaders, quoting a few carefully selected Bible verses and claiming that Eve was created second to Adam and was responsible for original sin, ordained that women must be “subservient” to their husbands and prohibited from serving as deacons, pastors, or chaplains in the military service. This was in conflict with my belief—confirmed in the holy scriptures—that we are all equal in the eyes of God.

This view that women are somehow inferior to men is not restricted to one religion or belief. It is widespread. Women are prevented from playing a full and equal role in many faiths. . . .

Although not having training in religion or theology, I understand that the carefully selected verses found in the holy scriptures to justify the superiority of men owe more to time and place—and the determination of male leaders to hold onto their influence—than eternal truths. Similar biblical excerpts could be found to support the approval of slavery and the timid acquiescence to oppressive rulers. [emphasis supplied]

At the same time, I am also familiar with vivid descriptions in the same scriptures in which women are revered as pre-eminent leaders. During the years of the early Christian church women served as deacons, priests, bishops, apostles, teachers, and prophets. It wasn’t until the fourth century that dominant Christian leaders, all men, twisted and distorted holy scriptures to perpetuate their ascendant positions within the religious hierarchy. . . .

The truth is that male religious leaders have had—and still have—an option to interpret holy teachings either to exalt or subjugate women. They have, for their own selfish ends, overwhelmingly chosen the latter.

Their continuing choice provides the foundation or justification for much of the pervasive persecution and abuse of women throughout the world. This is in clear violation not just of the Universal Declaration of Human Rights but also the teachings of Jesus Christ, the Apostle Paul, Moses and the prophets, Muhammad, and founders of other great religions—all of whom have called for proper and equitable treatment of all the children of God. It is time we had the courage to challenge these views. (Carter, 2009, para. 2–5, 16, 17, 19, & 20)
The Effect of Religion on the Behavior of Domestic Violence Victims

Although potential male batterers might be tolerated or find their beliefs if not their actions reinforced in some religious communities, perhaps the more insidious effect might be on female victims of domestic violence. At times this effect is direct. We know that some faiths teach female adherents that their primary responsibilities are to assume traditional roles such as childbearing, child rearing, and obeying the husband. In this context, simply being battered does not justify leaving an abusive relationship (Knickmeyer et al., 2004; Potter, 2007). When these women seek counsel from religious leaders, some might even be admonished that they deserve “chastisement” by their husbands for not respecting his authority (Horne & Levitt, 2004).

Some, but certainly not all, conservative clergy might be advising battered women to accept God’s mandate to preserve their families. Several studies have been conducted where Christian women were interviewed about their experiences with pastoral counseling in the context of domestic violence. Interestingly, one study reported that approximately 70% were expressly given the responsibility to “save their husbands” spiritually (Alsdurf & Alsdurf, 1989). One woman was even told that she would be saved in heaven for enduring abuse and attempting to save her husband (Rotunda, Williamson, & Penfold, 2004). Not surprisingly, for that reason, it has long been known that religious women tend to remain in abusive marital relationships longer than their nonreligious cohorts (Horton, Wilkins, & Wright, 1988).

Several common beliefs found in Christian literature might influence battered women to accept their subordinate marital status. In virtually all Christian faiths, marriage is considered to be sacrosanct. In many denominations, such as the Catholic Church, divorces still are very difficult to obtain ecclesiastically. Furthermore, some Christian churches often treat the tolerance of suffering as a virtue, and even as an honor, “a cross to bear.” This belief, coupled with the recurring theme of the Catholic Church that a good Christian must forgive and reconcile with those who sin against them,
might encourage some religious women to tolerate abuse that often their more secularly oriented sisters would reject. Collectively, these beliefs might have a profound influence on her tolerance of otherwise unacceptable and illegal behavior.

Many scriptures are interpreted to mean that God’s forgiveness of (the sins of) an individual depends on that person being able to forgive others. When a victim is confronted with scriptures that discourage her from seeking relief from an abusive marriage, she may be likely to stay in the relationship out of a sense of guilt. In essence, the common values of women, which include holding the family together, not wanting to hurt anyone, having faith that prayers will be answered, and not wanting to lose status in church are strong motivators to remain in abusive relationships. (Rotunda et al., 2004, pp. 355–356)

In another example, although there are no passages in the Torah that expressly promote violence against women, several scholars have reported that the concept of “Shalom Bayit” (peace in the home) places the primary responsibility on wives to preserve peace in the family. Thus, many battered Jewish women have been in effect pressured by more conservative and orthodox rabbis to stay with abusers (Graetz, 1998; Kaufman, 2003).

Evan Stark (2007), in his book Coercive control: How men entrap women in personal life, provides a graphic case study of what happens when a particular group finds it difficult to accept laws and norms contradicting religious beliefs:

A devoted Jehovah’s Witness was repeatedly assaulted and emotionally abused by her husband, also a Witness. The woman reported her abuse to the church elders, an all-male body of lay ministers responsible for counseling parishioners on religious and family matters. In response, the elders advised their “sister” to try harder to please her husband and God. One consequence of following their advice—becoming more devout and accepting
responsibility for her problems—was that she began to cut and
starve herself, losing so much weight that she was admitted to the
hospital. When she again brought her complaints of abuse to the
elders, this time showing them the marks from her husband’s belt,
she was “disfellowshipped,” a form of ostracism that prevented
other Witnesses from communicating with her, cutting her off from
her entire social network. As isolated and miserable as these
experiences made her, she only took the elders to court when they
made her abusive husband an elder in clear violation of the church
doctrine in which she still believed. (p. 240)

Similarly, although the American Muslim community has to date not been as
well studied in the context of domestic violence as either Jewish or Christian
denominations, several studies have reported that abuse exists and might in
fact be increasing in the community because of increased community
tensions after 9/11 (Childress, 2003) and because of perceptions that the
community is to some extent “at siege” from racism and xenophobia (Haddad
& Smith, 2002).

Furthermore, female victims of abuse by Muslim mates might be reluctant to
disclose such abuse either to other members of their religious communities or
to their Imams. Researchers have reported that the community does not want
to get involved in the matters of a family, and that many Imams have held
victims responsible for the conduct of their husbands (Alkhateeb, 1999;
Alkhateeb & Abugideiri, 2007). In common with the context of proof texting
noted earlier, another author reported that although the Koran did not instruct
men to abuse female partners, many clergy in effect modified the Koran by
redirecting the women’s attention on verses that dealt with spousal obedience
(Hassounah-Phillips, 2003). On a more global basis, South Asian women,
regardless of religion (Hindu or Muslim), reported that their religious
institutions made it very difficult for battered women in their communities to
Domestic Violence Rates Among the Faithful

While one can easily cite the reasons why religious beliefs shelter violent acts, it should be emphasized that no empirical evidence shows that being religious of and by itself leads to increased rates of domestic violence. Regular attendance at services and other evidence of deeply held religious beliefs are actually correlated to higher levels of marital satisfaction and happiness, as well as less violence. One study reported that those couples attending religious services on a weekly basis were less than half as likely to commit violence as those who attended once a year or less, even in conservatively orientated groups (Ellison et al., 1999). Another study reported that women with high levels of religious activity (strong beliefs, church attendance, and participation in religious activities) experienced lower rates of violent victimization (Raj, Silverman, Wingood, & DiClemente, 1999).

In today’s world, however, is religious commitment always a benign influence? As illustrated earlier, many seminal texts, including the Torah, the Bible, and the Koran, all contain passages that, if literally read, subordinate women, or emphasize family solidarity and the preservation of family harmony to the apparent exclusion of concerns over the wife’s physical safety. The key factors toward the role of certain religious beliefs might therefore be in predisposing some male adherents of some religious groups to be violent and some women in these same groups to be more accepting of such violence.

This should not be surprising. Many modern religious scholars teach that books of such breadth as the Bible, the Torah, or the Koran have many, sometimes contradictory, themes. They understand that although some parts might be literally “written by God,” other parts, such as passages that justify slavery or family violence, merely reflect the social views and historical context of the period when these great books were first written down. Based on this premise, adherents to their faiths should not adopt overly strict interpretations that might seem likely to justify the use of force inside the family. In the same vein, regular attendance at services might provide a family with the services of clergy in pastoral counseling and guidance, none
of which is likely to emphasize a man’s right to commit marital violence.
Can Religion Become Part of the Solution?

As noted above, religion can play a key mediating role in the cultural component of how victims cope with or learn to tolerate an abusive relationship. Potter (2007) reported on a case study of 40 African American women, finding that reliance on spirituality facilitated their tolerance of an abusive relationship. A reasonably high percentage of those women who sought help from their clergy or other people from their religious community were told to “work things out” and remain in the relationship, thereby reifying an abusive relationship rather than seeking to terminate it. Although Potter had only a very small sample, she reported that Islamic clergy and mosques tended to provide more support for the abused women than did Christian clergy. Bowker (1988) also reported that clergy from religions other than from Christianity tended to provide more support for battered women. Not surprisingly, then, Potter concluded a higher percentage of Christian women were either disappointed in advice received from clergy or did not even seek out assistance as a result of their perception that the church would not help. Similarly, Potter (2007) reported that Muslim women were more satisfied, even though overall orientation was quite paternalistic and patriarchal. What is not clear is whether support by Muslim clergy tended to support intervention for the purposes of sustaining a relationship rather than encouraging women to leave violent partners.

It should also be acknowledged that although being active in a religious community correlates with lower levels of domestic violence, at times membership might assist a woman in leaving an abusive relationship. This becomes especially true in more closed communities, such as among recent immigrants, where if a woman is not religious she may have little source of reference and authority other than the abusing partner. As a practical matter, she might be less able to cope with leaving a relationship compared with those with a strong religious background who might have the ties to a belief system as well as to a strong social network that is attuned to providing assistance to victims of abuse.
Muslim Men Against Domestic Violence

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Speaking out against domestic violence among American Muslims is extremely difficult as the community is very diverse and heterogeneous making the adoption of a single stance or ideology fraught with difficulty.

Can we organize, fund, and maintain more shelters just for Muslim women? Can a program to rehabilitate Bosnian-American batterers work for Arab-American men as well? Can a “khutbah” (sermon) in Somali against sexual abuse be simply translated and repeated in Bengali, Spanish, or Hausa? These are just some of the challenges facing domestic violence advocates in the American Muslim community.

The biggest obstacle facing the American Muslim community is the prevalence and dependence on cultural identities, traditions and customs instead of a focus on the Qur’an, “hadith” (traditions of Prophet Muhammad, peace be upon him), and Islamic scholarship. For instance, there is not a single “sahih” (authenticated) hadith that describes Prophet Muhammad (peace be upon him) ever hitting his wives or children. And yet Muslim men originally from Asia, Africa and even South America, to name a few, can be some of the most abusive and destructive men on the planet. Why does this happen? Why do we allow ourselves to be blinded by “spiritual amnesia” where we take only those elements of Islam that appeal to us, as men, but reject those that take away—as we perceive it—from our Muslim “manhood”?

For years, this work has been carried only on the shoulders of our sisters in the movement. But we, as men, are taking more responsibility for our actions and also starting to hold other men accountable. Some of the steps we have taken including asking imams to choose significant topics for the Friday khutbah including domestic violence, keys to healthy marriage, anger management, and so on. We are also starting to become more involved in group counselling and therapy to learn how not to use violent and controlling behaviors in relationships. And we are also finally taking the time to really understand the Qur’an and our traditions regarding the full equality that exists and needs to be enforced between Muslim men and women.

Source: Written by Shyam Sriram.
Do Societies Hold Different Standards for Some Religious Communities?

The final impact of religion is considerably more subtle: Does society turn a blind eye to abuse in minority religious communities? Clearly, some retrograde traditional practices will not be tolerated by any modern society. For example, the use of female circumcision (e.g., genital mutilation) is practiced by some societies to “protect their daughters from sexual promiscuity” by eliminating surgically the areas responsible for her sexual pleasure. This would clearly be treated as a crime in Western societies. However, some members of the majority community tolerate abuse in immigrant communities as a result of their perception that historic religious or cultural history allows or encourages such behavior. In effect, such tolerance condones, tacitly, discrimination against such minority women.

The following is a graphic, although extreme, example of the different standards expected of a specific religious group.

**Judge Tells Battered Muslim Wife: Koran Says “Men Are in Charge of Women”**

Friday, March 23, 2007

BERLIN—Politicians and Muslim leaders denounced a German judge for citing the Koran in her rejection of a Muslim woman’s request for a quick divorce on grounds she was abused by her husband.

Judge Christa Datz-Winter said in a recommendation earlier this year that both partners came from a “Moroccan cultural environment in which it is not uncommon for a man to exert a right of corporal punishment over his wife,” according to the court. The woman is a German of Moroccan descent married to a Moroccan citizen. The judge argued that her case was not one of exceptional hardship in which fast-track divorce proceedings would be justified. When the woman protested, Datz-Winter cited a passage from the Koran that reads in part, “men are in charge of women.”

The judge was removed from the case on Wednesday and the Frankfurt administrative court said it was considering disciplinary action.

Court vice president Bernhard Olp said Thursday the judge “regrets that the impression arose that she approves of violence in marriage.”

Representatives of Germany’s Muslim population were also critical of the ruling. “Violence and abuse of people—whether against men or women—are, of course, naturally reasons to
warrant a divorce in Islam as well,” the country’s Central Council of Muslims said in a statement.

The Social Critique Perspective on History and Religion
The Feminist Perspective

Some writers have drawn on the totality of the extensive history of violence in families and of many societies’ seemingly callous disregard of this problem. They look at that prevalence, the variety of religious, cultural, and legal bases for this and, with some evidence, view the abuse of women and the historically meek societal reaction as a symptom of unequal power between the sexes.

Despite numerous family violence studies also showing high levels of female-on-male violence (if not as severe in physical outcomes), or more recently showing high rates of same-sex intimate violence, many writers do not consider domestic violence to be gender neutral but instead a vehicle by which society, as an adaptive institution, maintains coercive control over all the under classes, such as women, through many generations. This perspective views that virtually all Western societies tacitly condoned economic deprivation, sexual abuse, isolation, and terrorism of women for centuries (Yllö, 1993; Jones & Schechter, 1992; Ptacek, 1999; Yllö, Gary, Newberger, Pandolfino, & Schechter, 1992).

The link between violence toward women and persistent sexual inequality finds support in some cross-cultural research on domestic violence. In one anthropological study of 90 societies worldwide, Levinson (1989) found that violence between family members was rare or nonexistent in 16 societies but prevalent in most others. In his analysis of these cultures, he observed that, in addition to the existence of natural support systems and a societal emphasis on peaceful conflict resolution and marital stability, spouses in the few peaceful societies enjoyed far higher levels of equality in power between the sexes. This was reflected in joint decision making in household and financial matters and in the absence of double standards with regard to premarital sex and other freedoms.

In short, some argue that a holistic view of our faiths, history, and social structures provide a more complete analysis of why violence occurs than any examination of a particular individual offender or characteristic of the family unit. From this perspective, and as previously covered, the study of which
particular men or family units actually succumb to the temptations of using violence is largely irrelevant at best and, at worst, detracting from deconstructing historical and societal institutions and practices, which feminists believe is a necessary precondition to eliminating sexism in society.

Myra Marx Ferree concisely stated the position: “Feminists agree that male dominance within families is part of a wider system of male power, is neither natural nor inevitable, and occurs at women’s cost” (cited in Yllö, 1993, p. 54). In this model, law, religion, and even the behavioral sciences historically have endorsed the husband’s authority and have justified use of violence to punish a disobedient wife (Freeman, 1980; Schechter, 1982; Sonkin, Martin, & Walker, 1985). In a real sense, structured gender inequality existed both in the home and in the institutions designed to maintain Western cultural and family values. Furthermore, women were forced into the role of maintaining home and family in a male-dominated society that did not value such occupations. Both men and women would implicitly recognize the economic dependence that left women effectively powerless to their partners’ domination.

Feminist commentators view American society as part of this pattern. According to them, sexism is merely part of a capitalist-dominated class system based on “successive domination” of one class over another—that is, men dominate women, Whites dominate minorities, and the upper class dominates all those without economic resources. In this context, these commentators reason that all men implicitly use the fear of potential violence to subordinate women (Schechter & Gary, 1988). Although such critiques recognize that most men do not themselves resort to violence, the perception is that men, as the dominant class, have benefited from women’s continued fear of the potential violence of rape or assault by both strangers and intimates.

Although efforts have been made to synthesize the learning of domestic violence to encompass all levels of analysis, many researchers believe that structural impediments to a gender-neutral social structure are unjustifiably minimized by a focus on the family unit. In short, by focusing on the other levels of analysis, the opportunity to change society at the structural level has been thwarted.
These researchers most commonly look at the same history and, with quite a bit of evidence, view abused women and society’s tacit acceptance of male violence against intimates as a symptom of the unequal distribution of power in the relations between the sexes. From this point of view, the concept of domestic violence as primarily one of pathological abusers is rejected. These researchers view all of society as tacitly condoning the power structure benefiting from the economic deprivation, sexual abuse, isolation, stalking, and terrorism of the under classes, including, but not limited, to women as a group (Yllö, 1993).

**Is Domestic Violence Merely an Extreme Form of Social Control?**

A more sophisticated variant of this social critique is that while only a minority of men commit violence, those who do are not noticeably different psychologically from widespread male attitudes toward “scoring” or sexual conquests of women and other socially learned norms of male control and family dominance. These feminists argued that in more intimate relationships, the dominant group is motivated to control the subordinate but not in a manner that expressly uses violence.

After all, in modern society, most men correctly perceive that intimate violence might lead to the subordinate simply fleeing or, in modern terms, seeking a divorce or moving out of a shared dwelling or calling the police (Johnson, 2008). The relationship thus is technically nonviolent, but still controlling, analogous to colonizer–colonies or capitalist–worker dyads. Thus, it is the routines establishing inequality that both parties take for granted that demonstrate the continued reality of male dominance in intimate relationships (Johnson, 2006). From this perspective, the need for violence primarily occurs when the implicit power model has partially broken down and some men/dominants refuse to allow the women/subordinates to act independently, or when a particularly aggressive man refuses to even bother to try control through the “softer” methods.

In short, the feminist critique centers on the belief that by focusing on the other levels of analysis, the opportunity to change society at the structural
level has been thwarted. Although we do not necessarily believe the entire social critique implied in the model as described, everyone should recognize the significant contributions of feminist research. Such works have provided a powerful theoretical framework to understand how a society might be predisposed to domestic violence—more aptly, violence against the less powerful within society, including women as a class vis-à-vis men as well as class-based oppression. It also provides insight into why particular societal responses occur and why social and legal institutions have tacitly tolerated or at times even perpetuated domestic violence.
The Stupid List

When I got here to the shelter, I made myself a Stupid List. You know, all the things he said I was too stupid to do:

I was too stupid to get a job.
I was too stupid to learn to drive.
I was too stupid to handle money.
I was too stupid to make it on my own.

Well, I’ll tell you this. I’ve done all but one thing on that Stupid List, and you know what I found out?

I’m not stupid at all.


Modifications and Challenges to the Theory of a Sexist Society

Feminist theories, almost from their inception, have been criticized as being long on theory and ideology and short on empirical data. As Sugarman and Frankel put it in 1996, “Findings offer limited support for the ideological
component of the patriarchal theory of wife assault.” Those who batter do not seem, at least in attitudinal studies, to be particularly imbued with rabidly male-dominant worldviews. Instead, the reasons why they batter seem to be more related to intrinsic issues of psychological abnormalities or membership in particularly violent families or more violent social groups within society. An expressly misogynist ideology, if there at all, is not openly expressed by many batterers. From this perspective, abnormal psychology, learning theory, and clearly dysfunctional cultural traits seem to furnish a more comprehensive explanation for why most violence occurs.

The feminist movement cannot now, if it ever could, be accurately described as united in beliefs. Some very critical commentators with an otherwise clearly feminist perspective place most abuse in the overall context of American society being based on successive domination of one class over another—that is, men dominate women using implicit threats of domestic abuse, rape, and hateful language designed to keep women in their place. Whites dominate minorities through discrimination in education, jobs, housing, and access to medical care. The upper class dominates all those with lesser resources.

From this vantage point, increasing numbers of feminist writers now distinguish the effects of various forms of oppression in society. They find that although women as a whole share a common bond of being oppressed by men, White women, particularly those in the upper and middle classes, gain from the oppression of minority and poor women by having access to cheaper household labor and the provision of less expensive goods and services throughout the economy. As such, they find that traditional feminist theory in its emphasis on the primacy of sexual oppression to be far too constraining a theoretical model, and one that perversely does not assist those statistically most victimized by domestic violence: poor, urban minorities (Franklin, 2000; Oliver, 1999; Williams, 1999).

A more pointed critique has been raised by Stets and Hammons (2002) and by Felson and Outlaw (2007), who report that wives are more likely to engage in controlling behavior than husbands. Felson and Outlaw (2007) used questions from the NVAWS that asked the respondent about their partners’ controlling behavior. Although the NVAWS reported higher rates
of physical violence among men, they found that many wives were more controlling than husbands. Furthermore, Felson and Outlaw (2007) reported that both male and female perpetrators who are controlling of their partners are much more likely to be physically assaultive (see also Hamel, 2005).

Similarly, most feminist theories really do not work that well in predicting or explaining the relatively high levels of same-sex intimate partner violence. Such violence occurs in gay relationships at rates even higher than in heterosexual couples and is also significant among lesbian couples.

**Can Feminist Insights Be Integrated Into Other Theories?**

Feminists have provided a challenge to working within the context of traditional institutions as currently structured. A great debt also is owed to the feminist movement as a whole because it often has been the primary impetus for social and legal change in this area. Neither the psychological nor the sociological theories explored earlier have provided much analysis as to why society has tolerated generations of domestic violence, nor have their proponents proven to be aggressive agents for change. Although the pioneering work of sociologists from seminal articles by Gelles (1972) and by Steinmetz and Straus (1974) have played a major role in making domestic violence a salient public issue, they remain more active in academic circles and not as vocal in advocating institutional or structural changes as a mechanism to address domestic violence.

Fortunately, many of these deep philosophical rifts described earlier were more characteristic of writings in the late 1980s and early 1990s. Since our last edition, many of the writings of newer authors have combined the insights of both feminist and family researchers to achieve a more synergistic appraisal and far greater consensus on many key issues. With regard to the role of inherent sexism in our society, disagreements are now less common among feminist activists and researchers and those from other perspectives who do not believe gender and power to be the overarching features explaining intimate violence. Attempts are now being advanced to try to examine where feminist control type theories might be more salient than in
other cases.

For example, Michael Johnson’s writings have evolved from a perspective emphasizing patriarchal or intimate terrorism, which is consistent with feminist theories of dominance, into far more complex typologies with greater explanatory power. He now addresses and integrates the batterer typologies he and others first proposed in the 1990s. Most recently, he has suggested there are four types of intimate partner violence, several of which touch directly on feminist themes of unequal power and control.

Johnson’s first type of abuser is the “intimate terrorist” using either psychological aggression or physical violence to directly control a partner. This type of violence is most consistent with feminist theory since the perpetrator retains violence as a potential control tactic while the victim displays no such behavior.

The second type, “violent resistance,” is violence enacted to resist intimate terrorism. This might be the violence that Straus, Gelles, and Steinmetz (1980) have observed from women but put into the context of victims who must use violence to resist intimate terrorism. As such, their violence should be considered as simply a reaction and not as a type of independent domestic violence. It is important to differentiate this violence from a legal definition of self-defense, which requires an immediacy of harm and efforts to retreat from the offender. It instead focuses on the fact that this type of violence is simply a reaction to an overall pattern of male abuse that might occur in a separate incident.

The third type of violence Johnson defines is “situational couple violence,” where violence is in the context of an argument that escalates into violence via rage or an unforeseen reaction. Although severe injury and even homicide can occur unexpectedly, most domestic assaults typically involve less severe forms of violence and might be committed equally by either a man or a woman. We would posit that such violence might be highly correlated with substance abuse but not with psychopathology or not always with feminist theories of coercive control.

Finally, Johnson observes that a certain amount of domestic violence is the result of mutual attempts at control (e.g., the “battling spouses” of old). This
mutual pattern of coercive control becomes, in effect, a battle for control of the relationship. Although the first two types of domestic violence might be fully consistent with feminist theory, the others that Johnson proposes are more consistent with either psychological or family violence theories (Johnson, 2007).
Coercive Control and Domestic Violence

Another more modern integration of feminist theory into mainstream domestic violence has been the growing understanding of coercive control. Intimate partner violence does not solely mean a physical assault as defined in most US domestic violence statutes. Instead, it is the logical extreme outcome of a continuum of conduct centered on a pattern of coercive controls established by a dominant partner. Violence is simply the most visible and, hence, most objectionable way to accomplish these goals when nonviolent methods fail. The theory of coercive control has several elements: First, the dominant partner in the dyad (to feminists, this is the man) makes clear what he wants the other to do. Second, he makes it clear that he can impose a punishment if the subordinate does not comply with his wishes, which can involve not only actual violence but threats to take children, leave an economically dependent woman, report allegations of misconduct to child services, file reports to immigration authorities, and so on. Third, he monitors the activities of the subordinate. Finally, he wears down the target’s resistance:

Another basic element of coercive control is wearing down the target’s resistance, and intimate terrorists use a variety of tactics to undermine their partner’s willingness or ability to fight for freedom from control. This is the source of the emotional and psychological abuse that has been the focus of so much research in psychology and social work. Coercive partners work to convince their partners that they are lazy, incompetent, stupid, oversexed, sexually frigid, bad parents, poor wives—in a word useless. An individual who feels worthless does not have the will to resist. A related tactic . . . is legitimation, convincing the target that the intimate terrorist has the right to control and punish. The legitimation may take the form of an assertion of status as male head of household. (Johnson, 2006, p. 11)

In this model, law, religion, and even the behavioral sciences historically
have tacitly condoned (or at least failed to punish) patterns of coercive control and have largely ignored the occasional publicized use of violence, especially in the upper classes, to punish a disobedient wife. In a real sense, structured gender inequality existed both in the home and in the institutions designed to maintain cultural and family values. Furthermore, women were forced into the role of maintaining home and family in a male-dominated society that did not value such roles. This, in turn, was reinforced by the somewhat solitary existence of housewives in their homes during the latter part of the 20th century because the privatized family structure, or nuclear family, made intimate violence a family or individual problem, not a social concern. Men and women in society each came to recognize how dependency left women effectively powerless to their partner’s whims (Schechter, 1982). The fact is that sustained coercive control can be as destructive to a victim as any pattern of violence (Stark, 2007).

We now find that a more cooperative spirit exists that seeks to understand the psychological, familial, historical, and societal risk markers for domestic violence and that focuses on strategies to ensure victim safety. As our knowledge base grows, perhaps we can focus on the need for policy changes and resources for implementation, rather than on philosophical differences as to the relative contribution of a given approach to the problem of domestic violence.
Conclusion

Clearly, there are still numerous problems with assessing the validity of these various typologies and regarding issues such as appropriate operational definitions of control and violence, as well as the interrelationship between physical aggression and control. At a minimum, we now know that batterers should not be considered a homogeneous group. It seems that life-course events and interpersonal dynamics all tend to influence milder forms of physical aggression, whereas more violent batterers are more likely to display significant psychopathological disorders. For some offenders, these violent tendencies might be limited by control of substance abuse, anger control therapy, or other behavioral modification approaches. For others, the problems are personality disorders that are not easily amenable to rehabilitation.

This perspective suggests that policies attempting a single, generic approach to controlling domestic violence are grossly unrealistic and inadequate. Instead, societal institutions (police, courts, social welfare, and medical establishments) need the resources (and the willingness) to use a variety of interventions appropriately, both punitive and therapeutic, to control domestic violence.

Similarly, it might initially seem that the diverse range of theories and risk markers for domestic violence offenders are totally fragmented. For example, psychologists might state that individual psychopathology or even biochemical characteristics are responsible for serious domestic violence. In contrast, other theories are focused on the sociological basis for abuse, including race, ethnicity, and poverty. Still other researchers have focused on family characteristics and structure that might create an intergenerational propensity toward violent offending (or victimization). Currently, many researchers are attempting to develop and test batterer typologies in which they group risk factors into categories to provide a more comprehensive understanding of offender behavior and dangerousness.

Traditional approaches to the study of batterer behavior clearly have failed to identify patterns of differences in violent relationships. Early writers instead
simply reported that much domestic violence might be categorized as a pattern of destructive escalation of violence between “battling spouses.” Specifically, they thought that much domestic violence by men might be precipitated by earlier aggression or conflicts by their partners. One researcher noted that often the husband is violent as a response to the “provocative antagonistic” behavior of a spouse (Faulk, 1977). The natural difficulty in applying this model to the real world is that virtually all conduct not immediately acceding to the wishes of the other party might be viewed as provocative or antagonistic. In most households, this is rarely followed by violence, so this model does not explain those instances in which violence erupts.
Summary

Historically, domestic violence was considered a normal part of some intimate relationships and a part of everyday life for some women. This historical context of violence against women is neither of a short time span nor of a sporadic one. It often has been explicitly stated in pronouncements and codified into numerous laws, becoming an endemic feature of most societies from the ancient world until very recent times. Religion, being a key component of, and justifying many, social and legal attitudes toward women, has reinforced such history, although in modern times religion has shown that it can be part of the solution. Finally, as noted by many feminists and others that critique social structure, the deeply ingrained nature of domestic violence into society might serve to reinforce battering by some.

Hence, although we might punish the batterer, help the victims, and try to reform dysfunctional families, we must remember the deeply entrenched historical, religious, and societal bases of domestic violence.
Discussion Questions

1. To what extent do you believe early laws contributed to the acceptance of domestic violence?
2. In what ways can you see how the attitudes of batterers and victims relate to their early laws regarding the role of women or religious beliefs?
3. In what ways do religion and spirituality increase vulnerability?
4. In what ways do religion and spirituality increase resilience?
5. How important a role do you believe religion still plays in domestic violence, and how could it help better support victims?

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4 Theoretical Explanations for Domestic Violence
Chapter Overview

In whatever capacity professionals work with victims of domestic violence, they should have a basic grasp of the primary theoretical frameworks and the paradigms that are applied to explain its persistence, dynamics, prevalence, distribution, and consequences. Theoretical orientations, even if not acknowledged explicitly, underlie research, policies, interventions, and allocation of resources in the field. Theories can be global in scope (such as the examples of feminist theory discussed in Chapter 2); synthetic (such as ecological theory), linking macro to micro variables; or they can focus on what sociologists term “middle-range” problems, such as why certain groups are more prone to victimization than others or how best to classify offenders or predict how they will behave when challenged by certain environmental or relationship stressors. Theories can also emphasize biological, individual, group, cultural, or societal variables. Our primary focus in this chapter is on testable theories that help us better understand characteristics, behaviors, and relationships that are likely to increase the probability of battering or victimization in a given society. This chapter moves from societal micro-level to macro-level explanations: (a) biological and genetic predispositions; (b) psychological explanations; (c) family factors; as well as (d) community and neighborhood factors. Next we consider the sociodemographic correlates of abuse, including the roles of poverty, employment, ethnicity, and race. The chapter closes with an extensive discussion of coercive control, a relatively new paradigm that challenges practitioners to look beyond violence to assess the dynamics in abusive relationships. While research testing the tenets of coercive control is limited, coercive control has become the prevailing framework for responding to partner abuse in Europe and is gaining headway in the United States.
The Complexity of Analyzing Intimate Partner Abuse

Since the 1960s, researchers have understood the abuse of intimates as a serious problem for victims, their families, and society in general. One might assume erroneously that the publication of dozens of treatises and hundreds of empirical studies would result in a consensus as to why domestic violence continues to plague society. This has not occurred. Furthermore, many general explanations fail to address adequately why certain individuals are susceptible and others are not, as well as why there exist observed variations among specific subpopulations.

Instead of a synthesis of all approaches, currently we have a rich but disparate body of theoretical and empirical literature, all purporting to address the issue of why some batter or stalk their victims. This might loosely be divided into research that emphasizes the biological and psychological characteristics and life experiences associated with known batterers; studies of dysfunctional family structures; and research on community features that correlate highly with battering. Because we are focused on batterers and victims in the context of societal interventions, a detailed study of all approaches would be beyond the scope of this book. Our primary focus instead is to understand how divergent theoretical constructs might have pragmatic utility in our efforts to stop violence and understand a victim’s tolerance of this behavior. In addition, we focus on the implications for the criminal justice system and for health and social service agencies in their daily interactions with victims and offenders.

In stating this as a goal for this chapter, we understand that if any social structure such as the criminal justice system simply had a goal of punishing offenders, then an understanding of battering might be perceived as immaterial. However, as we will discuss later, most agencies have multiple goals typically far more complex than merely to punish. These include the suppression of future abuse through deterrence of potential offenders, the rehabilitation of those who offend, and the empowerment of victims. To accomplish these divergent goals, it is critical that we determine the reasons
why a particular person or family might have a tendency to become abusive. Successful interventions depend on understanding why someone batters and acknowledging that this reason might vary among batterers.

Simply examining an entire population of offenders and victims without understanding the diversity within that population might blur efforts to understand causative factors, or even variations in the factors promoting violence. Although many victims and offenders share characteristics and behaviors that are similar to those not exposed to violence in the general population, it is the context of the interaction among these characteristics and behaviors that is crucial to identifying those at risk.

Without this basic understanding, criminal justice and social services might easily fail or serious unintended consequences might ensue. Similarly, the ability to identify key markers in an offender’s history, such as criminal record or age at which an individual’s criminal activity was first reported, might prove useful in determining how to allocate limited public resources.

Unfortunately, as in most social science research, researchers are handicapped by the inability to conduct true experiments. As is common with much pathological behavior, domestic abuse and other recognizable socially deviant behaviors do not occur in a vacuum. Complex experimentation on human subjects that might actually lead to violence would be forbidden. Furthermore, research that statistically attempts to tease out individual causal variables is possible and often attempted, but in our opinion, it is rarely conclusive. As a result, we might never identify definitively the root causes of domestic violence because too many factors interact that have a differential impact on the particular individuals involved. This is made even more complex in cases of family abuse because, in some contexts, a strict dichotomy between victim and offender is not an accurate portrayal of individuals over their lifespan. In addition, the labels of victim and offender do not accurately describe all potential intimate relationships, where an easy victim–offender dichotomy describes reality.

In addition to these difficulties, most research in this area is unable to determine the underlying cause or causes of violence. Whether we simply report repeatable correlates of violence or identify risk markers, it is difficult—if not impossible—to establish conclusive causal relationships. One
example can illustrate this. We have long known about the highly significant relationship between alcohol abuse and intimate violence. One might, therefore, conclude that a causal relationship is clear—an abuser becomes drunk and then becomes violent toward their partner. However, might both behaviors—becoming drunk and then, subsequently, abusing one’s partner—stem from social acceptance, an underlying psychological condition, a prior family experience, or a biologically based mental illness? As such, the concept of “causation” throughout this chapter should be approached only with extreme caution even when research seemingly shows a definitive causative connection between two entwined behaviors or conditions.

Despite not knowing the causal relationships, simply understanding risk assessment scales provides a key tool for health-care and social service providers, as well as for criminal justice agencies. As we continue to refine our knowledge of the correlates that predict risk, the use of these indicators is growing rapidly as they might provide a viable mechanism for targeting interventions based on probabilities.
Individual-Focused Theories of Violence
The Role and Use of Batterer Typologies

Early research conducted in the 1970s, as well as the current lay literature of some advocacy groups, tacitly views batterers as a monolithic group. Little effort was made to differentiate, and it was assumed that the only possible deterrent for a confirmed, or even latent abuser, was the threat or imposition of criminal sanctions. As Cavanaugh and Gelles (2005, p. 157) observed, “the stereotypic (if wrong) view of a batterer is that of an out-of-control, violent sociopath who is easily identifiable.” These sociopaths were generally considered to have a deep-seated tendency toward abuse and were highly resistant to change.

During the past 20 years, a growing body of literature has instead recognized that distinctions among batterers exist and that the assumption of a monolithic class of “batterers” who would respond predictably to a specific intervention is inaccurate (Edleson, 1996; Gondolf, 1999; Holtzworth-Munroe & Stuart, 1994; Johnson, 2006; Saunders, 1993; Swan & Snow, 2002).

Some batterers have a generalized history of violence and do not perpetrate violence on a single victim or class of victims. The NFVS studied a large sample (2,291 cases) identifying 15% who had been violent during the preceding 12 months. Of those, 67% were only violent toward their wives, whereas 23% were violent against nonfamily members, and 10% were violent toward both their wives and nonfamily members (Straus & Gelles, 1990).

Furthermore, other researchers reported that roughly half of all batterers in their samples were arrested previously for violence against other victims (Fagan, Stewart, & Hansen, 1983). They refer to those batterers as “generally violent.” Barnett, Lee, and Thelen (1997) referred to these offenders as being “panviolent,” that is, violent both within and apart from family settings. Fagan and colleagues (1983) found that 80% of those reported to be violent with non-partners had prior experience with the criminal justice system, having been arrested for such violence.

An understanding that batterers were not a monolithic group then opened
consideration to different interventions for differing offenders, even if the result of the abusive behavior seemed the same. Although an in-depth discussion of criminal justice and treatment interventions will follow in later chapters, it is essential at this point to recognize that there are multiple ways to categorize batterers, and placement into these groups might be affected differentially by various biological, psychological, and social factors. We will illustrate two typologies that we believe have significant utility. The first typology classifies batterers by the severity and frequency of abuse, whereas the second typology focuses on the generality of violence and psychopathology.
Classifying Batterers by Severity and Frequency of Abuse

In Johnson’s (1995; 2007) typology, most offenders rarely, if ever, intend to injure their victims severely. Instead, they engage in what he terms “situational violence.” Acts of violence arise out of conflicts that escalate to verbal aggression and then physical violence. Violence in these cases was spontaneous and often occurred while under the influence of alcohol or drugs. Such sporadic episodes were related directly to what Johnson described as the stresses of dysfunctional families or “relationship factors.” Although these abusers might act impulsively, they also might be cognizant of society’s historic tolerance of moderate abuse within the family.

The second group of abusers, which includes the distinct minority, is referred to as “intimate terrorists.” These offenders use coercive control tactics to generally dominate their partners and are the most violent and dangerous type of batterer.

The third group of batterer Johnson referred to is one who uses “violent resistance”—that is, is when the victim of an intimate terrorist uses violence as a response to the controlling violence and tactics of the abuser. Violent resistance is primarily used by women since the intimate terrorists are primarily male partners.

What these typologies also clarify is the distinction between situational violence, which is likely to occur equally between the genders, and intimate terrorism, which is almost entirely perpetrated by male offenders. As Evan Stark (2007) noted,

[a] key implication of Johnson’s terminology is that situational violence and intimate terrorism have different dynamics and qualitatively different outcomes and so should be judged by different moral yardsticks. They also require a different response. Abuse should no more be considered a simple extension of using force than a heart attack should be treated as an extreme instance of
heartburn. (p. 104)
Typing Batterers by Their Generality of Violence and Psychopathology

In this typology, most abusers are violent only within the family. They can contain violent aggressive impulses, except for occasional family incidents where—at least in the past—they could lash out on the family with almost total impunity. These offenders are the least violent overall and exhibit few, if any, striking psychological characteristics relative to the general population beyond somewhat lower impulse control and higher rates of substance abuse. Their violence does not tend to increase in frequency, even if there is little societal intervention. However, as we will discuss in later chapters, their violence is the easiest to deter, especially if underlying factors such as substance abuse are dealt with concurrently.

Holtzworth-Munroe and Stuart (1994) estimated that this group constituted approximately 50% of all batterers—although far less of a percentage of total violent acts or severity of injuries. Inflicting severe victim injuries would typically be the exception for this group, and often it occurs accidentally.

These batterers exhibit low levels of violence and criminal involvement and only moderate levels of anger. There is often no discernable motive for violence. They primarily act situationally against partners or dependents (children and elderly parents); incidents involving these offenders often occur after bouts of substance abuse, conditions of extreme stress, or a loss of economic status, such as losing one’s job or experiencing severe work challenges (Straus, 1996). These abusers typically do not otherwise have extensive histories of other generalized antisocial behavior. This subgroup is more likely to be employed, have other vested community ties (Sherman, 1992), and have had few adversarial contacts with law enforcement. Therefore, this group is considered to be most amenable to outside interventions. The actions of this subgroup also might be explained by the “broken family” theory or feminist structural theories of violence based on the reader’s view of the relative merits of a dysfunctional family or a belief in the existence of a patriarchal society that condones violence within the family.
The second group, which consists of approximately 25% of batterers at any one time (Holtzworth-Munroe & Stuart, 1994), is primarily violent toward its family members (both intimates and children) but sporadically engages in violence outside the home. Members of this group can, at times, be described as borderline personalities, ranging from mood disordered to psychotic. They have variously been termed “borderline/dysphoric” by Holtzworth-Munroe (2011) or, far more graphically, “pit bulls” by Jacobson and Gottman (1998).

These batterers tend to engage in more serious violence inside rather than outside the home, but this might not be their only violent behavior. As a group, they tend to exhibit identifiable and easy-to-diagnose psychopathologies including paranoia, jealousy, and other fear-based emotions described later in the chapter. Control of a victim by force is a tactic to prevent losing her as well as to keep the batterer from suffering subsequent feelings of total rejection.

As a result, an analysis of the psychological makeup of these batterers might be critical to understanding the conduct of this group. One observable characteristic we would attach to these men is that of nearly irrational jealousy toward their intimates.

Finally, the third group is more violent to the world at large. This group has been termed by Holtzworth-Munroe (2011) as “the generally violent/antisocial.” Jacobson and Gottman (1998) again succinctly called members of this group “cobras.” We would equally simply describe them as a subset of sociopaths. This group typically initiates criminal activity as juveniles and continues with sporadic explosive acts of rage against a variety of targets. As a group, they assault their intimates, children, friends, and strangers with little provocation. They might disproportionately come from broken families; however, their strongest identifiable trait is a history of violent crime and, when tested, observable psychological abnormalities and rage disorders. These batterers freely use violence, terrorism, and any other tactic necessary to control their social environments to achieve their highly egocentric goals of domination.

A link between violence in general and partner abuse is expected. With minor exception as to the preferred target of their rage, the psychological and criminal profile of a severe batterer also presents an accurate profile of those
who perpetrate violent crimes in general. The development of an antisocial personality might be the key linkage between batterers and the generally violent. Research on batterer behavior has increasingly used research and insights from those offenders who are generally violent (Barnett & Hamberger, 1992; Dunford, Huizinga, & Elliot, 1990; Fagan & Browne, 1994; Fagan et al., 1983; also see discussion by Barnett, Miller-Perrin, & Perrin, 1997). Hotaling, Straus, and Lincoln (1989) noted that such severe batterers typically did not limit their use of violence to family members. They reported that men who assaulted children or spouses were five times more likely than other men to have been generally violent and to have assaulted nonfamily members.

For this group, it is believed that the dysfunctional family is secondary to its pathology. Risk prevention, management, and treatment of these individuals is a societal priority. The proportion of this extremely violent group of abusers varies widely among studies (Johnson, 2006). One study estimated that they were approximately 25% of all batterers (Holtzworth-Munroe & Stuart, 1994).

Why do such well-developed studies show wildly variant results for a key group of offenders? The answer might be twofold. First, in certain societies or even in a subpopulation within a country, “casual” family abuse simply might not be tolerated. Its perpetrators will be subject to ridicule or worse. The result might be societal suppression of many potential family-only abusers.

Second, in some studies, the population studied included only those differentially selected for court-ordered treatment programs. We would expect far higher rates of severe pathologies to be reported in this group, more so than in the general population of batterers, many of whom are never prosecuted because it is their first offense, they did not cause serious injury, or their victims want the case dropped. The group going to court might, therefore, typify a more serious group of offenders. By definition, these individuals have already been arrested and, presumably, present a high risk of subsequent abuse.

Johnson (2006) found that 60% of domestic violence offenders best fit a profile of being generally violent and antisocial compared with the 25%
figure for a general population of batterers reported by Holtzworth-Munroe and Stuart (1994). Similarly, Dunford and colleagues (1990) found that most abusers of women in shelters had serious criminal records. Klein (1994a) reported that most men brought for civil restraining orders had prior criminal records for assaults. In a later publication in 2004, Holtzworth-Munroe and Meehan acknowledged that these typologies are unstable over time and that a minority of offenders might shift from one group to another.

Although there might be overlap and we are uncertain of the actual numbers with categories of offenders, we believe these categorizations remain extremely helpful to our understanding of battering. This was substantiated by Dixon and Browne (2003) in their review of 12 selected studies where they reported that the threefold categorization of (a) situational batterers; (b) those primarily violent in their family but who exhibit some degree of violence outside the family (the borderline/pit bull); and (c) those who are generally violent (the panviolent/cobra) proved to be the most robust model.

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A striking illustration of the carnage brought about by a generally violent batterer can be observed in the case of John Allen Muhammad, the senior member of the so-called DC Snipers:

**D.C. Sniper’s Wife Tells All**

By Nafeesa Syeed, Associated Press

As the ex-wife of the notorious DC sniper reflected during a 30-day fast five years ago, one question tormented her—why did he want to kill her?

Mildred Muhammad wrote about the isolation and torment for years in her journals. She began when her ex-husband, John Allen Muhammad, took their three young children from her nearly a decade ago. She continued when he was convicted of the 2002 sniper attacks in the Washington area and still jots down her emotions as her ex-husband awaits his scheduled Nov. 10 execution.

“The paper don’t talk back,” the 49 year old told the Associated Press in a recent interview. “It just lets you write down your thoughts, and you’re able to express anger, shame, and guilt.”

They were all emotions that Ms. Muhammad had to purge during that 30-day fast in July 2004, just as her ex-husband’s second trial was beginning. She had to understand everything she poured into the journals so she could finally move on. . . .

Ms. Muhammad, who now lives in Prince George’s County, maintains she was the target when her abusive ex-husband and his teenage accomplice, Lee Boyd Malvo, killed 10
people in Maryland, Virginia, and Washington. After their 12-year marriage fell apart in 2000, he secretly took the children to the Caribbean.

“I have come home many times and seen her in a fetal position, not knowing where her children are,” said Maisha Moses, Ms. Muhammad’s older sister, who took Ms. Muhammad in at her suburban Maryland home after the children were taken.

During the 18 months the children spent with their father in Antigua, Ms. Muhammad stayed in a shelter for a time and struggled financially. A Tacoma, Wash., court eventually granted her custody of the children in 2001.

Ms. Muhammad said her ex-husband threatened to kill her and she lived in constant fear that he was after her, until he was caught and convicted. . . .

Her Muslim faith anchored her, and as she cleansed herself by fasting, she was able to forgive her ex-husband, forgive herself, and move forward.

Source: D.C. Area Sniper’s Wife Tells All, by Nafeesa Syeed, Associated Press. September 27, 2009. Used with permission of The Associated Press Copyright© 2010. All rights reserved.
A Case Study of Different Offenders: The Quincy District Court Study of Batterers

Current criminal justice policies and practices tend to treat every batterer monolithically—in many jurisdictions with neglect and in others quite aggressively so. Although a minority of abusers in total, a study sponsored by the National Institute of Justice and conducted at the Quincy District Court demonstrates how the recurrent patterns of violence in high-risk offenders can lead to their dominating court dockets.

Researchers found graphic evidence of early offender involvement in the criminal justice system (Buzawa, Hotaling, Klein, & Byrne, 1999). Although this research was limited to offenders reaching court, they found that at least 25% had juvenile records and that an additional 36% began offending by the age of 20 years. In all, more than 60% had drawn criminal charges before the age of 21 years; 90% of this sample had a first offense by age 35 years.

Research in different courts serving other Massachusetts communities also studied by Buzawa and Hotaling (2000) found that the suspect had at least one prior criminal charge at the time of the incident in most cases (58% overall). In fact, the average number of prior criminal charges of suspects was 5.9 per offender and ranged from 0 to 96 incidents per offender. The only prior criminal areas not heavily represented by the suspects were prior sex offenses, averaging only 1 per person with a range of 0 to 6, and restraining order violations, averaging 0.1 with a range of 0 to 5.

The Buzawa and Hotaling (2006) research also examined reoffending of abusers for an 11-month period after the study incident. Reoffenders of domestic violence against female partners in this sample were more likely to be young, unmarried, unemployed men with long and extensive criminal histories of personal offending. Their profile matches that of the criminal offender in general that is developed in the criminological literature.

The most important predictor of future offending against female partners was the most recent pattern of offending against female partners: The past served as a good predictor of the future. Male domestic violence offenders who were involved in two or more domestic violence incidents with the same victim were more than eight times more likely than others to reoffend during the 11-month period. Reoffending in this context seems to be another instance of offending in a continuing pattern of multiple incidents within a short period of time that was not deterred by arrest.

Reoffenders of domestic violence also were more likely to be persons with extensive personal crime histories. Reoffenders with four or more personal crime charges were more than three times more likely than the less criminally active to have reoffended. The dangerousness of this group does not seem to be directed at only one victim. Reoffenders were almost four times more likely to have had multiple individuals take out restraining orders against them over the years.
Who Is Most at Risk of Battering?
Biology and Abuse: Are Some Batterers “Pre-Wired” for Abuse?

Although many in the social sciences might find this subject disquieting, biologically based theories of domestic violence have long been asserted. It is generally acknowledged that some genetic component might predispose violence in certain individuals. Studies of adopted male children whose biological fathers were convicted of crimes found these children more likely to commit crime than in cases where their adoptive parents had been convicted, despite the far higher degree of familial intimacy and modeling behavior that we would associate with the adopted parent (Mednick, Gabrielli, & Hutchison, 1987). As more fully discussed in the next section, one possible explanation for such a disparity is the largely inherited level of serum testosterone. One rigorous study of twins separated at birth found that 66% of the differences in testosterone levels were attributed to heredity, not environment, which in turn was associated strongly with self-reported levels of verbal aggression and physical violence (Soler, Vinayak, & Quadagno, 2000). Although the relative strength of the genetic linkage between higher levels of testosterone and increased rates of violence has not yet been fully explained, both theoretical (Wilson & Hernstein, 1985) and some analytic studies (Walters, 1992) have concluded that such a relationship exists.

It is unclear currently whether this relationship is simply a result of genetics or whether other more subtle factors are at play and, if so, what these factors are. One possible mediating factor predisposing some to violent behavior is an abnormally high level of the hormone testosterone, levels of which often are inherited. As discussed previously, it has been established empirically that although both genders commit acts of domestic violence, men commit far more serious violence than women. Sociobiologists have hypothesized that higher natural levels of testosterone predispose many to a general latent predisposition of aggression and violence. Although men as a group have far higher levels of testosterone than women, research also has reported that higher levels of testosterone in men are associated with higher rates of committing violent crimes (Dabbs, Carr, Frady, & Riad, 1995; Dabbs & Dabbs, 2000).
The theoretical basis for a linkage between testosterone levels and violence has been proposed by Lee Ellis, in what he terms the evolutionary neuroandrogenic (ENA) theory. It can be summarized briefly as follows: First, women within the context of a whole host of other selection criteria (presumably including regularity of features and intelligence) differentially prefer mates on the basis of their ability to provide for offspring. Second, men exhibit their ability to be good providers by employing “aggressive acquisitive behavior” exemplified by hunting and, more important, competing with other males for tangible supremacy within their communities. This preference directly linked the status in the tribal pecking order to their ability to find a mate and pass on their genes. Third, comparatively higher testosterone levels increased the males’ desire and capability to compete successfully, and thus more aggressive males passed on genes of ever higher testosterone levels (Ellis, 2005).

The seismic shift from prehistoric to modern society has resulted in the behavioral traits correlated with higher levels of testosterone, having far less survival value and instead becoming more problematic for society. Survival no longer depends on the ability to fight off wild animals—or, in most cases, other males—using mere physical strength. Competitive aggressive behavior, if not mediated and channeled by intelligence and opportunity into societally sanctioned business or legal (or academic!) careers, might leave some males with a tendency to act impulsively and often violently whether in the context of criminal behavior in general or violence in the family.

This finding is not surprising given that chronic higher exposures to androgens such as testosterone have been associated with sudden bursts of rage, whether termed “episodic dyscontrol” (Kandel & Freed, 1989), “psychotic trigger reaction” (Pontius, 2004), or, more colloquially, “’roid rage,” which is the misuse of anabolic steroids that are chemically similar to testosterone. Increased levels of testosterone also emphasize brain functioning in the right hemisphere (spatial functioning and risk-based calculations) and away from the left hemisphere, which is said to be the center of language abilities, empathy, and moral reasoning (Moll et al., 2002). Since moral reasoning, language facility, and empathy all tend to check aggressive behavior and violent criminality, higher levels of testosterone in some men might predispose acts of impulsive violence if they
perceive provocation (Ellis, 2005).

Criminal behavior studies documenting differences in patterns of criminal behavior based on testosterone levels, although not directly applicable to the commission of domestic violence, are suggestive of a testosterone link to violence. In one study relating types of crimes committed by male juvenile offenders with tested testosterone levels, more than 80% of the offenders with high testosterone levels committed violent crimes, whereas more than 90% of juvenile offenders with lower testosterone committed nonviolent crimes (Dabbs, Frady, Carr, & Beach, 1987; Dabbs, Jurkovic, & Frady, 1991). Similar disparities in testosterone levels and rates of violence also were found among women (Dabbs, Ruback, Frady, & Hopper, 1988), and another study found that testosterone levels were higher among violent sex offenders than others (Bradford & Bourget, 1986).

A study by George and colleagues (2001) examined comparative testosterone levels of batterers along with the neurotransmitter serotonin. They found abnormally high levels of testosterone in the population of batterers as well as a lower blood serum level imbalance of serotonin, which is the so-called contentment hormone. George, Phillips, Doty, Umhau, and Rawlings (2006) later concluded that malprocessing of serotonin and testosterone metabolism could contribute to excessive fear reactions and overreactivity to environmental stimuli, such as easily taking offense and, therefore, reacting with rage to looks, slights, or tones of voice.

Batterers with such chemistry might be prone to overreacting to normal stresses in their interactions with their partners and literally reach a point where they cannot listen to reason or stop potentially violent rages. It also suggests why certain selective serotonin reuptake inhibitors (SSRIs) that increase the blood serum level of serotonin might reduce aggression with some batterers. However, evidence also suggests that randomly treating abusers with Prozac does not seem to be of value (Lee, Gollan, Kasckow, Geracioti, & Coccaro, 2006).

In presenting this linkage, we must emphasize that no one has asserted that a simple measure of testosterone (or serotonin) could be responsible for all, or even most, acts of domestic violence. In many, if not most, cases, higher levels of testosterone might simply lead to socially positive competitive
behavior, such as the desire to excel or otherwise achieve a positive outcome, as predicted in Ellis’s ENA model. Moreover, the theory loses some explanatory power when we recognize that some women with lower rates of testosterone than males commit serious acts of violence. However, perhaps the best use of these data would be to recognize that the largely inherited aspect of comparatively higher levels of testosterone might interact with a person’s subsequent social experiences. Learned behavior, conditioned responses, and social control might suppress the negative features of high hormone levels, whereas other environments might strengthen a hormonal predisposition for aggression.

In short, biological theories might be valuable in providing an understanding of why family, social, and community variables impact individuals differentially. The acknowledged limitation of sociological explanations is their inability to provide insight into why two similarly situated individuals behave differentially. Thus, the integration of biology into the other paradigms discussed next might contribute to the overall understanding of why some commit domestic violence.
A Question of the Mind?

A growing body of research has added to the biological analysis of the effects of hormones in predicting likely domestic violence offenders. This research is based primarily on insights into general behavior and on neurological development made by experimental and clinical neurologists.

Although a detailed discussion of the neurobiology is far beyond our skill set, the analysis is as follows: Epinephrine and norepinephrine are hormones produced by the adrenal glands, typically in response to fear or anxiety. They are the key hormones responsible for evolutionary survival because they help the mind focus on the basic survival options of fight or flight in connection with perceived threats.

These hormones are especially important in activating the hypothalamus, which is an area within the brain. This structure, along with the adjacent limbic structures—the hippocampus and the amygdala—often is referred to as part of the primitive brain because it developed earlier in evolution than the higher cognitive areas of the cerebral cortex. These structures are still disproportionately larger in less-advanced species where survival is more dependent on quick, reflexive action in response to threats. Although the cerebral cortex, which is the most recently developed and largest part of the human brain, is commonly thought to process logical thoughts and act as the primary center of who we are as individuals, the primitive brain handles the essential issues of satisfying food needs, determining whether the fight or flight reflex is needed, and maintaining the overall emotional state of mind.

Experimental research on nonhuman subjects has shown that when the hypothalamus, hippocampus, and amygdala are overstimulated by electrical impulses, extreme aggressive behavior can result. The same has been found clinically in human patients where a tumor or trials of electrical stimulation to correct abnormal behavior have resulted in “sham rage,” which is extremely aggressive impulsive behavior even in the absence of any deep-seated anger toward the person who is the object of the aggression.

When the adrenal glands continue to perceive repetitive threats, they start
producing high levels of cortisol, which is another hormone closely related to epinephrine. The effects of these adrenal hormones might be extreme, and over time they have more insidious consequences. In the extreme form, a sudden large jolt of adrenal hormones in response to something that the mind perceives as a threat might provoke a person into uncontrollable rage (i.e., the fight part of fight or flight). Hence, although seemingly a paradoxical finding, fear might actually cause violent behavior in some highly susceptible people. Those who have that condition have been referred to as having explosive anger disorder; when activated by these biochemical signals, these individuals might be unable to control their emotions and lash out at victims with violence extremely disproportionate to the stimulus. This might be one mechanism that causes a “normal” argument with a spouse to be perceived as such a threat that a violent reaction is, at the moment, the only recourse of a batterer.

We do know now that children who observe violence in their household—whether against them, their siblings, or their parents—have markedly higher rates of cortisol in their developing brains. Such prolonged exposure to cortisol has been demonstrated in some neurological studies to affect the architecture and the chemistry of the brain permanently, weakening cognitive development, lessening emotional control, and even, if prolonged enough, reducing the actual size of the brain itself. Neuroscientists and developmental psychiatrists have long noted that the developing human brain has an extraordinary ability to adapt and respond to its environment. In normal development, exposure is an environment where rational problem solving and verbal expressions of one’s needs and desires is stressed. The brain reacts to this and develops the ability to accomplish these tasks. However, exposure to violence or trauma might subvert these normal processes.

It seems that some individuals, through prolonged exposure to cortisol, especially during their brain’s early development, seem to be markedly less able to control their emotions overall. This makes their behavior predictably erratic and potentially violent—characteristics of many violent offenders, including domestic abuse perpetrators. Similar findings with victims of PTSD have been observed. Furthermore, these traumas do seem to have an effect on adult behavior, as stated in the following quote:
The chronic over activation of neurochemical responses to threat in the central nervous system, particularly in the earliest years of life, can result in lifelong states of either dissociation or hyperarousal (anger). (Balbernie, 2001, p. 247)

How does this apply to domestic violence? Can we say that we have unlocked a key to violent behavior? Not yet; the research simply is not that well developed. We do know that neurologists have found that childhood exposure to severe stress from either child abuse or witnessing domestic violence causes structural changes in the brain and in the brain’s chemistry (Lehmann, 2002). We also know that many domestic violence offenders report exceptionally higher levels of fear and anxiety relative to the normal population.

If such childhood neurological–behavioral connections are valid, then society might have a difficult problem in rooting out domestic abuse. Research indicates that between 3.3 and 10 million American children are exposed to domestic violence or child abuse annually (Carlson, 1984). These children are at a high risk for onset of later long-term mental health disorders, including “impulse control issues, anxiety, decreased attention span, and inability to express one’s self adequately” (p. 147). Violent behavior as a symptom of childhood exposure to violence has been well chronicled (Fantuzzo & Fusco, 2007). We also know that there are sex differences in the response to such early childhood trauma. Women are likely to withdraw or disassociate, whereas men will tend to become far more aggressive later in life (Perry, 2001).

As we shall discuss in the next section of this chapter, psychologists often relate exactly these attributes to entire categories of domestic violence perpetrators. Hence, it is possible that biochemical triggers, especially during development, might lead people toward a path of subsequent domestic violence in later generations.
Chimpanzee Study

A recent study asserted that the behavior of chimpanzees might help explain human domestic violence. A team of researchers led by Martin Muller, a biological anthropologist at Boston University, spent 7 years in Kibale National Park in Uganda tracking aggression in wild chimpanzees. They recorded every act of aggression, along with every act of copulation and pregnancy. They reported that male chimpanzees were highly aggressive toward female group members, even using branches as clubs to beat them. Male aggression was triggered by sexual coercion. Males were most aggressive toward the most fertile females and subsequently mated with those toward whom they had been most aggressive. Their conclusions might have some relevance to domestic abuse in humans: “[M]ale–female aggression represents an evolved strategy to constrain female sexuality, which in chimpanzees has evolved to favor promiscuous mating. . . . Chimpanzee females are highly promiscuous, and they seem to want to mate with all the males in their communities. Most of the aggression that we observed in our studies seemed to be directed toward females to prevent them from mating with other males. Thus, sexual coercion in chimpanzees more commonly involves males using force to constrain female sexuality, rather than to overcome female reluctance. Males are basically trying to force females into exclusive mating relationships. This is thus much more similar to wife-beating in humans.” (Highfield, 2007, para. 5, 7, & 8)
Biological- and Psychological-Based Fear and Anxiety

Violence, especially against intimates and other family members, is regarded most easily as a blatant tactic to establish absolute control over the victim. For some, that might indeed be the case. However, one recent study of abusers reached a somewhat different conclusion, finding that a common trait was excessive fear, to the point of having an identified Axis I anxiety disorder as defined in the *DSM-III-R* (the *Diagnostic and statistical manual of mental disorders* [DSM], published by the American Psychiatric Association, 1987). Typical abusers were found to have extraordinary levels of anxiety with “racing thoughts, heart palpitations, posttraumatic stress disorder,” and a “compelling need to defend themselves” against an enemy (George et al., 2006, p. 346). Many offenders who acted in the moment without regard to future consequences could not understand the fact that their reaction was typically not warranted or at the least was far disproportionate to the potential threat. These offenders fit most of the criteria for intermittent explosive disorder as defined in the *DSM-III-R* (with the exception that many might have self-medicated with drugs or alcohol—an exclusionary criterion to the formal diagnosis). Perhaps this is why many offenders without self-awareness try to shift blame to their victims. It is also wholly consistent with the observation that many severe batterers are frantic about possible rejection and will use violence to control their partner, if necessary (Widiger & Mullins-Sweatt, 2004).
Can Psychology Explain Domestic Abuse?

Psychologically based theories of domestic violence focus on personality disorders and early experiences that increase the risk of violent behavior (Gelles & Loseke, 1993). In the context of trying to differentiate degrees of criminality, it is not surprising that research on the effects of legal sanctions for batterers often has been based on psychological typologies or on profiling (Andrews & Brewin, 1990; Holtzworth-Munroe & Stuart, 1994). This remains a popular perspective both for its commonsense explanatory power (“bad people do bad things”) and because our society generally believes an individual can, or at least is legally required to, control their conduct.

Psychologists understandably have long studied idiosyncratic factors that predispose someone to batter. Unfortunately, a single personality attribute or defect has never been identified that adequately and completely explains battering. Instead, research has shown that a complex constellation of factors predisposes some people to batter. This finding is important because the genesis of a particular problem affects the likelihood that it might be remedied easily by societal intervention, including sanctions imposed directly by the criminal justice system or the prospects for successful rehabilitation through court-ordered counseling.
**Personality Disorders and Mental Illness**

Strong relationships between domestic violence and a wide variety of personality disorders and mental illness have been reported. Although such linkages have been questioned, especially by those who view domestic violence as originating largely from a dysfunctional family or culture of acceptance, many studies have suggested that most male batterers have some degree of deeply rooted mental and personality disorders. Hence, for decades, severe battering has been correlated with several conditions including depression, schizophrenia, severe personality disorders, and other cognitive or profound behavioral abnormalities.1

Of particular significance are the findings of the Dunedin Multidisciplinary Health and Development Study (Moffitt & Caspi, 1999). Researchers investigated a representative birth cohort starting as infants during a 21-year period with periodic reassessments. Eighty-eight percent of male perpetrators of severe physical abuse met the criteria for disorders listed by the American Psychiatric Association (1987; *DSM-III-R*). Male offenders were 13 times more likely than nonoffenders to be mentally ill. Illnesses included depression, anxiety disorders, substance abuse, antisocial personality disorder, and schizophrenia. Similarly, a study of persons who commit generalized acts of violence (not specifically limited to domestic abuse) found a high correlation between violent activity and thought disturbances, negative affect (lack of ability to respond emotionally), and earlier psychiatric hospitalization (Crocker et al., 2005).

Although these studies report significant correlations between certain psychiatric conditions and domestic abuse, at least one other study of psychological characteristics of batterers has failed to disclose any singular profile of most men who batter (Koss et al., 1994; Ross & Babcock, 2009). For this reason, trying to present a unified psychological theory as the model for understanding batterers grossly simplifies reality. Instead, we find it more viable to focus on the actual, observable traits that tend to correlate with domestic violence.
Anger Control and the Failure to Communicate

Perhaps the greatest marker for the potential of abuse is the presence of generalized anger and hostility. Although studies on batterers are not always conclusive (see Sellers, 1999), it seems that generalized feelings of anger or lack of self-control (or both) constitute common precursors to subsequent violence (Barnett, Fagan, & Booker, 1991; Maiuro, Cahn, Vitaliano, Wagner, & Zegree, 1988; Prince & Arias, 1994). This also can be true for offenders who express anger and violence toward children (Saunders, 1995; Straus, 1983). Naturally, if the anger is triggered specifically by the victim’s real or perceived acts of rejection (Dutton & Strachan, 1987), abandonment (Holtzworth-Munroe & Hutchinson, 1993), or jealousy (Pagelow, 1981), then the likelihood that the man will target his intimate partner greatly increases.

Moffitt, Robins, and Caspi (2001) aggregated several personality traits that we might define as anger or hostility into a more generalized construct that they defined as “negative emotionality.” This included negative reactions to stress, how a person experiences emotions, a person’s expectations of other people’s attitudes and behaviors, and his or her attitudes toward the use of aggression to achieve certain ends. They confirmed earlier research that these attributes are more prevalent among batterers. Individuals who scored high on negative emotionality described themselves as “nervous,” “vulnerable,” “prone to worry,” “emotionally volatile,” “unable to cope with stress,” and having a low threshold for feeling tense, fearful, hostile, and angry; they feel callous and suspicious, expect mistreatment, and see the world as being peopled with potential enemies; they admit they seek revenge for slights, could enjoy frightening others, and would remorselessly take advantage of others. (Moffitt & Caspi, 1999, p. 7)

In this context, violence against an intimate partner might be a reaction to the batterer’s inability to work through anger control issues. The interaction between anger control and the overall process of male socialization during
and after puberty explains much of the tendency for male violence. In many subcultures within the United States, the ability to identify and express anger in a constructive manner is not generally stressed among male teenagers nor, for that matter, is it even highly valued in boys during their formative years (Dutton, 1998; Hamby, Poindexter, & Gray-Little, 1996; O’Neil & Nadeau, 1999).

The broader context of potential batterers being unable to communicate effectively, especially when angry, also has been regarded as a strong factor predicting a violent outcome. An inability to argue effectively might cause the party without such skills to lash out violently to win or possibly to overcome a humiliating defeat (Infante & Wigley, 1986; Olsen, Fine, & Lloyd, 2005). Truly this is an example of the aphorism “Violence is the last resort of the inept.” Interestingly, this can be predictive of both a verbally inept individual becoming violent and of violent couples where each of the parties resorts to violence because they cannot make their points understood verbally (Ridley & Feldman, 2003).
Low Self-Esteem

Another frequently observed characteristic of batterers is a pattern of low self-esteem, which often is compounded by a perceived or real power imbalance in relationships (Barnett, Lee, & Thelen, 1997; Green, 1984; Hamberger, Lohr, Bunge, & Tolin, 1997). The negative impact of low self-esteem might actually have intensified in recent decades as growing numbers of women have entered the workforce and have assumed management and professional positions. Some men with low self-esteem might feel threatened with a relative loss of social position compared with women who historically could not aspire to equality in the workforce, let alone to management authority directly over men. A power loss by individuals with low levels of self-esteem and little self-control might invite physical retaliation against any target of opportunity. Violence in this context would merely be an inappropriate effort to maintain the appearance of control, especially if the abuser is unable, as a viable alternative, to express himself verbally or against the real targets of his anger. In this context, the easiest targets of opportunity are his intimates or children because any acts of violence in public or at the workplace are more likely to be met with punishment.

Some research confirms this theory indirectly. Domestic violence has been reported to increase when measurable attributes of power between the couple are more evenly balanced (Coleman & Straus, 1986; Kahn, 1984; Yllö, 1984) or when the man expresses that he feels threatened by his spouse’s career or income success. Not surprisingly, for some people, subjectively feeling powerless in a relationship might serve as a precursor to violence (Goodman, Koss, Fitzgerald, & Puryear-Keita, 1993). Similarly, the loss of self-esteem might be a key intermediate step in some batterers’ decisions to retaliate against a particular victim, either directly by physical attack or passive-aggressively through stalking, when a woman has challenged him by leaving the abuser or has already sought societal intervention to restrain actual physical abuse.
Conflict Resolution Capabilities and the Failure to Communicate

Obviously, most adults frequently confront circumstances that evoke anger without resorting to physical acts of aggression. Why do some individuals become violent, whereas most others resolve conflicts through alternative, socially appropriate strategies? One possibility is that batterers have poorly developed conflict resolution strategies (Hastings & Hamberger, 1988; Holtzworth-Munroe & Anglin, 1991). In fact, a growing body of evidence suggests that batterers generally are less capable or adept at argumentative self-expression (Dutton, 1987; Hotaling & Sugarman, 1986) or tend to misperceive grossly a partner’s efforts at communication as constituting an outright verbal attack (Barnett, Lee, & Thelen, 1997; Holtzworth-Munroe & Hutchinson, 1993; Langhinrichsen-Rohling, Smutzler, & Vivian, 1994).

In contrast, traditionally, women have been socialized to value communication and “sharing” and to work through conflicts. Although the point can be overgeneralized, especially in light of recent research showing that female-on-male violence is far from uncommon, gender role socialization might make women as a group more comfortable with handling loss of control and anger without physical violence. Therefore, they might be more skilled at using and expressing emotions and feelings to shape and indirectly control interpersonal relations. They also might be more adept at the use of verbal and even psychological aggression as an alternative to physical aggression during partner conflicts. In this context, many batterers have stated that they fear the woman’s “feminine” capabilities of “twisting words” and manipulation. Susceptible men might express this fear inappropriately through violence.

The interaction of poor conflict resolution capabilities, fear, frustration, and an inability to control or even readily express feelings might increase the propensity of physical aggression toward a “threatening” intimate partner in times of stress or anger. From this perspective, the act of violence for some batterers might relieve otherwise unacceptable stress and forestall emasculation of self-image. The paradox is that the manifestations of such
insecurity might be violent acts that from an outside perspective often seem to be controlling tendencies.

A partial, but nevertheless intriguing, confirmation has been reported in one study in which certain severe batterers unexpectedly demonstrated a *decrease* in heart rates during extremely belligerent verbal behaviors, such as yelling, threatening, and demeaning their partners. This finding indicates that expressions of verbal attack served to provide a calming effect for these individuals. This physiological response contrasts with normal individuals who, in the midst of similar behavior, typically experience increased heart rates, evidencing a strong emotional reaction. It even differed from a third, far more dangerous, group that was diagnosed as having antisocial personality disorders, for whom virtually no heart rate variation was observed after these batterers expressed verbal violence (Hare, 1993). This study provides tantalizing, albeit indirect, evidence that violence and aggression relieves or resolves anger control issues on a physical as well as a psychological level for many batterers.
“Immature” Personality

Batterers often display classic aspects of immature personalities. This includes a well-developed propensity to blame shift or to minimize the impact for their criminal actions. Many assailants immaturity externalize blame for violence to the victim with comments such as “she provoked me,” thereby rationalizing otherwise inexcusable conduct. Blame shifting is common with many assailants, who repeatedly cite asserted victim provocations that they must know are irrational at best. These include such classics as “I told her I wanted a hot meal,” “she knew she was not supposed to mouth off to me,” and “she was casting eyes on another man.”

A considerable amount of empirical evidence indicates that victims and offenders do not agree on the frequency and severity of violent tactics that male partners use, and this discrepancy is a result of the offender profoundly underestimating the frequency of his violent conduct (Edleson & Brygger, 1986; Sonkin, Martin, & Walker, 1985; Szinovacz, 1983; Wetzel & Ross, 1983). Polling results from one study published in 1997 show a tendency for abusers to understate the extent of abuse (Klein, Campbell, Soler, & Ghez, 1997). Perhaps this might be best understood as a maladaptive effort to reduce the cognitive dissonance of perceiving himself or herself as a victim while, in reality, acting as the aggressor.
Is Substance Abuse the Linkage Among Sociobiological, Psychological, and Sociological Theories?

Substance abuse has long been known to lower inhibitions to violence and is associated with offender behavior (Anderson, 2002; Chermack, Booth, & Curran, 2006; Lipsey, Wilson, Cohen, & Derzon, 1997). In fact, many comprehensive studies demonstrated that acute intoxication preceded battering.

The timing of the use of the alcohol and drugs seems to be related closely to assault. An in-depth study of the correlates of domestic violence in the city of Memphis reported an overwhelming concurrency of substance abuse and domestic violence. This research reported that almost all offenders had used drugs or alcohol the day of the assault; two thirds had used a dangerous combination of cocaine and alcohol, and nearly half of all assailants (45%) were reported by families as using drugs, alcohol, or both daily to the point of intoxication for the past month (Brookoff, 1997, p. 1).

Another investigation found that 70% of the abusers, at the time of attack, were under the influence of drugs, alcohol, or both, with 32% using only drugs, 17% using only alcohol, and 22% using both (Roberts, 1988). A more recent study reported that male perpetrators entering domestic violence treatment were eight times more likely to have used violence against their partner after drinking (Fals-Stewart, Golden, & Schumacher, 2003).

Most researchers have reported that high numbers of domestic violence offenders use illegal drugs or consume excessive quantities of alcohol at rates far beyond those found in the general population (Coleman & Straus, 1986; Kantor & Straus, 1987; Scott, Schafer, & Greenfield, 1999; Tolman & Bennett, 1990). Alcohol and drug abuse are among the most important variables that predict female intimate violence (Kantor & Straus, 1989). In several studies that statistically controlled for several sociodemographic variables and for hostility and marital satisfaction, the relationship of alcohol to violence remained highly significant (Johnson, 2001; Kaufman Kantor &

The method of alcohol use also strongly impacts the likelihood that abuse will result. Individuals who have a pattern of consuming excessive amounts of alcohol at one time, but not on a consistent basis (binge drinking), are far more likely to engage in domestic violence than individuals who engage in other patterns of sustained alcohol consumption (e.g., heavy drinkers). Specifically, the NFVS reported that domestic violence rates for high moderate drinkers were twice as high, and the rates for binge drinkers were three times as high, as nondrinkers (Kaufman Kantor & Straus, 1990). The NVAWS estimated that binge drinkers are three to five times more likely to be violent against a female partner than those who do not drink (Tjaden & Thoennes, 2000).

In addition, substance abuse seems to be a factor in reoffending for offenders with a criminal history and without a criminal history, with one recent study of approximately 2,000 domestic violence offenders reporting reoffending rates of 58.8% and 41.2%, respectively (Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007). These findings suggest that this group of offenders might not be career criminals but instead more closely aligned with Holtzworth-Munroe and Stuart’s (1994) typology of “domestic violence only” offenders who act situationally in the family and often have problems including substance abuse.

The age at which an individual begins abusing substances is highly correlated with the risk of violent behavior, and the probability of a drug or alcohol arrest declines as individuals age. In fact, an arrest for drug or alcohol abuse is an indicator that this substance abuse will persist and that there is an increased likelihood of a victim seeking a restraining order, the commission of violent crimes, and the probability of receiving a jail sentence (Wilson & Klein, 2006).

The use of alcohol and drugs seems to be even more common among those committing more serious acts of violence. For example, one study found that more than half of prison inmates convicted of violent crimes against intimates were drinking or using drugs at the time of the offense; the same study found that approximately 40% of intimate partner homicide offenders reportedly were drinking at the time of the incident (Greenfield et al., 1998; Willson et
Other studies maintain that the evidence to date provides inadequate empirical support for the conclusion that alcohol and drug use are causally related to domestic violence (H. Johnson, 2000; Kantor & Asdigian, 1997; Mears, Carlson, Holden, & Harris, 2001; Miller & Wellford, 1997; Schaefer, Caetano, & Cunradi, 2004; Schwartz & DeKeseredy, 1997; Testa, 2004). In fact, a Canadian study reported that if all attitudinal and behavioral measures that predict violence against women were controlled, then the simple correlation with alcohol abuse would largely disappear (Johnson, 2001).

In support of this position, it has been suggested that the relationship between alcohol and domestic abuse is indirect and is a function of attitudes supporting the use of violence. Kaufman Kantor and Straus (1990) reported that rates of domestic abuse by men who supported the idea of hitting a partner but who rarely consumed alcohol had higher rates of actual violence than men who were heavy drinkers but did not approve of violence toward a partner. The highest rates of violence, however, were among men with attitudes supportive of violence against women and who also were heavy drinkers, indicating that attitudes toward violence strongly mediated any effect that the consumption of alcohol might have on committing violent acts. This finding suggests that alcohol might reduce inhibitions in people who are already attitudinally prone to violence but who in a sober state can control such behaviors.

Holly Johnson (2001) examined the role of alcohol abuse and reported that although half of assaulted women said their male attacker had been or usually was drinking at the time of assault, only 29% of victims believed alcohol was the precipitating factor in the incident. In fact, when controlling for attitudes toward the acceptability of male dominance and violence toward women, alcohol abuse was not related to violence. Nonetheless, most research reports that there is a high correlation between alcohol abuse and the perpetration of domestic abuse (Scott et al., 1999; Testa, 2004).

Part of the problem is that it is becoming clear that people react to alcohol in markedly different ways—based, once again, on brain chemistry, previous experiences, and ingrained psychological characteristics. Although it is widely believed that aggression and alcohol use are strongly related, most
people who consume alcohol do so without acting aggressively. As Higley (2001) summarized, alcohol consumption increases aggressiveness in some individuals but decreases it in others. Such mixed findings might be related to researchers’ lack of focus on differences among individuals. For example, research indicates a stronger relationship between alcohol consumption and aggression in subjects with certain traits, including antisocial personality, impaired cognitive functions, previous aggressive episodes, and low levels of the brain chemical serotonin in the central nervous system (Higley, 2001). Unfortunately, as we reported previously, in studying brain chemistry and psychology, these traits predict that a person will become a spouse abuser.

Hence, although a causal relationship has not been found, the fact remains that the two phenomena are correlated closely. In addition, substance abuse is associated closely with higher rates of recurrent battering. However, defining and proving a causal relationship might not be necessary for treatment. The reality of treatment is that a batterer with substance abuse problems might need concomitant help with long-standing issues of substance abuse, as well as behavior modification therapy to address his abusive tendencies, as the two behaviors do coexist and reinforce each other. Unfortunately, many court-ordered batterer treatment programs disaggregate these factors and do not provide a sustained, two-pronged treatment approach or might even disqualify substance abuse–affected offenders.

Similarly, victims of violence might need substance abuse assistance to avoid being revictimized. The role of alcohol and drug use is also a risk marker for domestic violence victims. Binge drinking by either the offender or the victim seems to place victims at increased risk (Fals-Stewart, 2003; Kantor & Straus, 1989).

Research suggests that rates of substance abuse among women with histories of victimization are higher than among women in the general population (Kaysen et al., 2007). Many studies have demonstrated that the use of alcohol and drugs by women could place them at increased risk for domestic violence (Brady & Ashley, 2005; Breslau, Davis, Andreski, & Peterson, 1991; Kantor & Straus, 1989). According to victim reports or those of family members, approximately 42% of victims used alcohol or drugs on the day of the assaults and 15% had used cocaine.
It is interesting to note that approximately half of those using cocaine said that their assailants had forced this use (Brookoff, 1997, pp. 1–2). Also significant is the increased risk for women’s use of alcohol and drugs after abuse (Gilbert, El-Bassel, Rajah, Foleno, & Frye, 2001; Kilpatrick, Acieno, Renick, Saunders, & Best, 1997). This relationship was significant even after controlling for a victim’s substance abuse and assault history (Kilpatrick et al., 1997).

In this manner, a victim’s alcohol or drug use might not be a cause of domestic violence but merely a consequence of repeated abuse; that is, it might simply be a reaction or a coping mechanism for abuse (Kantor & Asdigian, 1997). For example, one study reported that women’s drinking was twice as likely to occur among victims compared with perpetrators after the abusive incident (Barnett & Fagan, 1993). Such substance use, in turn, also could increase the likelihood of revictimization, resulting in the continuation of a cycle of substance abuse (Kilpatrick et al., 1997) and in the creation of a pernicious feedback loop between violence and victim substance abuse.

Substance and partner abuse might spring from a personality or physiological disorder, such as a chemical imbalance in the pleasure centers of the brain, or from increased testosterone levels in men, which lead to the misuse of alcohol or illegal substances and to the inability to control violent tendencies (Scott et al., 1999). Hence, although Holly Johnson (2001) and others have not reported a causal relationship, substance abuse is highly correlated with intimate partner violence among both batterers and their victims. However, the reason—and even the causal direction, if any—for the correlation between alcohol and substance abuse and battering is unclear.

Regardless of whether a causal relationship exists or whether substance abuse reduces inhibitions to violence or subverts the effectiveness of batterer intervention programs, the implication for treatment might simply be that offenders with substance abuse problems need help with both its use as well as their abusive behavior. This finding is important because many court-ordered batterer intervention programs fail to understand the importance of addressing both issues. Batterers with substance abuse histories often are disqualified from batterer intervention programs and, therefore, remain at high risk for reoffending. Similarly, victims of violence ultimately need
substance abuse assistance to reduce their long-term risks for revictimization.

The pernicious effects of substance abuse and other patterns supporting abuse are not spread equally throughout the entire population. For a variety of reasons, African American, Latino, and Native American populations have been found to be at increased risk for heavy drinking, dramatically increasing the risks of domestic violence (Bachman, 1992a, 1992b; Hampton, 1987; Kaufman Kantor, 1996; West, 1998). For example, one study reported that Latinas with partners who were binge drinkers were 10 times more likely to be assaulted than those with low-to-moderate drinking partners (Kaufman Kantor & Straus, 1990).
Are Certain Families Violent?

Sociological theories might, if properly used, provide a powerful tool for understanding domestic violence or, if inaccurate, might hinder effective solutions. When the general public begins to understand the familial and social conditions that breed violence, society might decide that such conditions are both intolerable and changeable. As such, prevention efforts might be targeted to those families in which violence is likely to erupt.

Traditional sociological approaches to the study of batterer behavior prior to the 1980s were not particularly helpful. Early writers instead simply reported that much domestic violence can be categorized as a pattern of destructive escalation of violence between battling spouses. Specifically, they thought that domestic violence was precipitated by earlier aggression or conflicts by their partner—the victim of the physical abuse. One researcher noted that often the husband was typically violent as a response to the “provocative antagonistic” behavior of a spouse (Faulk, 1977). The difficulty in applying this model to the real world is that virtually all conduct that does not immediately accede to the wishes of the other party might be viewed as provocative or antagonistic. Since this is rarely followed by violence in most households, this model is a poor predictor of violent families, and in any event, it assumes that a malevolent patriarch is the rightful family leader.

Sociological theorists helped both in identifying those families with a potential to commit violence and in suggesting which factors can be changed to prevent future violence—or at least to keep the violence from being duplicated by the next generation. Therefore, before we discuss these theories in detail, we will note that sociological research in families tends to be based more on surveys and less on the experimental designs often used by psychologists. This is natural given that ethical and legal issues surround a nonpunitive, rehabilitation-oriented intervention before the eruption of violence occurs.

In addition, as the unit of analysis being examined grows larger, the potential for confounding variables grows exponentially whether it is sociobiologists studying brain patterns and chemistry, psychologists studying individual
behavior, or family theorists studying family units.

Family-oriented research, often conducted by sociologists, uses many individual variables to explain why a particular family unit might explode into violent behavior. Although most sociologists are highly cognizant of psychological insights in explaining domestic violence, they believe this is not the sole, or even the primary, factor in predicting domestic violence. Gelles (1993a) stated that only 10% of abusive incidents might be labeled as primarily caused by mental illness, whereas 90% were not amenable to psychopathological explanations (Steele, 1976; Straus, 1980).

Part of the argument might be definition. Many personality dysfunctions, such as low impulse control, are not considered pathological as they do not always lead to a negative outcome but to a personality disorder in which an individual with such a trait is considered at greater risk for violent behavior with certainly family structures. For this reason, many sociologists believe that psychologists, by concentrating on certain psychologically disturbed individuals, are significantly underestimating the importance of family and other social structures.

Gelles (1993b) argued that by broadening the framework to encompass social and family structures, the sociologist or family theorist should be holistic and neither exclude nor minimize the contributions of psychological or social psychological variables; instead, one should place these variables within a wider explanatory framework that considers the impact of social institutions and social structures on what is defined as socially unacceptable violent behavior.
Social Control—Exchange of Violence

Sociologists also provide insight into when and where admittedly aggressive tendencies are likely to be expressed as unacceptable violence rather than being directed into socially acceptable activities such as sports or being a great trial attorney (apologies to one of our coauthors). Few individuals are walking time bombs, potentially exploding at any passerby. The exchange/social control theory first promulgated by Richard Gelles in 1983 posits that most individuals, even if prone to violence, carry out their aggression in settings where they are likely to escape serious repercussions for violence.

Gelles observed that violence and abuse tend to occur when the largely psychologically driven rewards are greater than the perceived costs, including the potential offender’s fear of social approbation or the prospect for social sanctions. In this theory, domestic violence is a low-risk way for people to express violent tendencies as it is viewed as a private crime not subject to social intervention. Also, even those highly susceptible to violent tendencies because of psychological makeup simply never need to commit acts of physical violence if they have the economic or political resources to impose their will without such action. Following this perspective, those without economic, social, or personal resources (e.g., the poor and especially the poor from disadvantaged minority groups) would predictably be more likely to carry out violence than those who have the same tendencies but can express them in more socially acceptable ways. Those with a stake in society are more likely to conform and be deterred from acts of violence.
Family-Based Theories

Family-oriented theorists and sociologists place their primary research focus on the determination of characteristics of the family structure that most predictably lead to high levels of domestic violence. In this regard, the family is viewed as a unique social grouping with a high potential for frustration and, hence, violence (Farrington, 1980; Straus & Hotaling, 1980).

These researchers often comment on the irony of a family model that tends to generate conflict and violence while being, at least theoretically, designed to maximize nurturing love and support. This might be a result of the assignment of family responsibilities and obligations based on age and gender rather than on competency or interest. Researchers also have cited societal trends of family structure as contributing to increasing levels of domestic violence. For example, the increased social isolation of families in modern society is said to neutralize those inhibitive and supportive agents like close extended families, strong ties to a neighborhood, and membership in churches, which might otherwise inhibit someone with violent tendencies. Therefore, those families that most lack close personal friendships, typifying a stable relationship, are considered at greater risk of domestic violence (Steinmetz, 1980).
The Violent Family

We are uncomfortable with an overarching acceptance of a violent household as it might easily be misused to foster social acceptance of violence in certain households and, hence, to diminish social support for protecting these individuals. However, ideology aside, we recognize that additional research on violence by other family members is needed. For example, one study has shown that if the husband had not previously assaulted the wife but she had assaulted him (however mild the assault), there was a 15% probability that he would seriously assault her the next year—far higher than normal. Furthermore, increases in recidivism among male offenders have been correlated to the actions of their spouses. A recidivism rate of 6% has been reported when the female partner abstained from violence compared with a rate of 23% when the wife used minor violence and 42% when the wife engaged in severe violence (Feld & Straus, 1989).

Research by Michael Johnson (1995, 2000) proposes a typology of violent relationships that accounts at least partially for the impact of a violent family structure on subsequent acts of domestic violence. He believes that there are distinct causes, developmental dynamics, and probable requirements for different types of interventions. His typology of domestic violence is based on the dimensions of physical aggression and coercive control. Intimate terrorism (which he labeled “patriarchal terrorism”) is perpetrated by a partner who is the generally violent offender described previously. In contrast, common couple violence is committed by both partners, either or both of whom might be individually violent but neither of whom is controlling. The violence might be a product of the couple’s behavioral relationship. Hence, the same offender might not be abusive in a different relationship.

Johnson is careful to separate this category from violent resistance, in which a victim’s violent behavior is committed against a partner who is both violent and controlling. In his research, Johnson (2000) found that only 11% of violence fit the terrorism category. Although we might not agree with the relative importance of a mutually combative family structure, it is clear that at least in some cases, the dynamics of the family unit might be the chief
cause of the violence.

In an examination of Johnson’s typologies, Felson and Outlaw (2007) provided empirical data that did not totally agree with these typologies. However, Johnson’s description of intimate terrorists as highly controlling has been questioned by both Stets and Hammons (2002) as well as Felson and Outlaw (2007), who did not find an increased likelihood for controlling husbands to engage in more serious forms of violence, as well as unprovoked, frequent, and injurious violence. Instead, they found that more serious violence was associated with motivation, regardless of gender.
Learning Theory

Childhood socialization also has been studied as a predictor of future domestic violence. Children growing up in violent homes learn that specific types of abusive behavior, including attitudes and belief systems justifying the use of violence, are acceptable. A basic premise of this theory is “modeling”—children learn their behavior from those around them.

Straus (1973) and Giles-Sims (1983) examined how particular family structures recurrently lead to suppressed or alternatively increased levels of violence. The extent of familial violence within a family is typically measured by well-designed, neutrally applied conflict tactics scales designed to rate empirically the conditions under which family violence is likely.

Families in which violence is taught at a young age are likely to have children who model this behavior. Indeed, one study reported that 45% of male batterers had witnessed their father beating their mother (Finkelhor, Hotaling, & Yllö, 1988; Sonkin et al., 1985). From this perspective, family violence should become the chief focus of research, as it would best predict how violence will occur and how severe it will be in particular families. We should note that learning theory is gender neutral and encompasses violence against women by their intimates and violence by women against men.
Is Domestic Violence an Intergenerational Problem?

Sociological theorists have long reported that there are groups within most societies that develop a subculture of violence with reinforcing values and norms that make violence much more likely. This insight could be applied to explain why domestic violence might be concentrated in some communities and why different subcultures within a particular society have different overall rates of violence (Wolfgang & Ferracuti, 1967, 1982). It also serves as a basis for exploring why family violence seems to be transmitted across generations.

Consequently, the experience of violence in childhood and children’s witnessing of violence both within and outside the family have been explored as factors in predicting both subsequent violence and victimization in later adult intimate relationships, and it is referred to as the intergenerational transmission of family violence. Learning theorists suggest that the process of learning a power abusive interactional style where the only strategy for handling negative feelings and anger is for the more powerful to act aggressively toward the less powerful might be the direct link to why violence travels between generations. Children learn that relationships consist of two roles: victimizer and victim. As a result, these children tend to view other, more nuanced and socially acceptable relationships as frightening, undependable, and insecure. Several studies have reported a powerful association between childhood observations of violence, particularly parental violence, and the child’s subsequent potential to become a batterer. Some even maintain that witnessing violence better predicts future violence than direct victimization.2

As we have discussed previously in examining the sociobiological bases of abuse in the development of children’s brains, sociological findings also have raised questions about whether children who witness domestic violence are themselves in need of protection (Jaffe, Wilson, & Wolfe, 1986).

A considerable body of research addresses the long-term consequences
confronting these children. They often experience many of the emotional problems that affect victims, including psychosomatic complaints, depression, and anxiety. Children who witness violence are also at greater risk for adult victimization, mental health problems, educational difficulties, substance abuse problems, and employment problems.3

The cycle of violence or intergenerational transmission of violence thesis has been advanced in many policy arguments for effective intervention in domestic violence. Interventions that limit or curtail domestic violence also will have indirect consequences, limiting the exposure of children to violent role models.

Why is this true? One theory is that childhood acceptance of aggression as normal within a family interacts with common childhood personality traits among boys (impulsive and immature behavior, self-esteem doubts, a tendency to take offense easily, and anger control issues) to increase a tendency toward battering (Hotaling & Sugarman, 1986; Riggs & O’Leary, 1989, 1992; Straus, 1980). Straus observed that batterers seem to have developed a long-term association between love and violence, perhaps caused by physical punishment from caregivers or others in the family starting in infancy (Straus, 1980). In this manner, parental violence seems to be related closely to repetitive spousal aggression (Simons, Wu, & Conger, 1995).

Nonetheless, although there are clearly adverse effects to witnessing violence, the strength of relationship across all types of batterers is not clearly established. Many children witness violence in the family; of those children, only a minority actually become abusive themselves, whether to their children or to their intimate partners. We do know that most people placed in the same situation seek and achieve nonviolent relationships throughout their lives.

Also, since existing research models have not been experimental, they tend to lead to messy data sets. For example, when studying the effects of exposure to violence on a child who comes from a violent family, what constitutes exposure to abuse? Should it not be measured in terms of frequency and severity? It would seem intuitively reasonable in terms of long-term consequences, to assume that one-time exposure to one parent slapping another might differ from witnessing regular severe beatings.
Second, children are exposed to violence from a variety of sources. Therefore, identifying the role of exposure to violence in the family compared with witnessing violence in the community, or being a direct victim of violence, is difficult to determine. The NatSCEV conducted in 2008 reported that “more than 60% of children age 17 and younger were exposed to violence either directly or indirectly during the past year.” However, slightly fewer than 10% of these incidents involved witnessing violence in the family (Finkelhor et al., 2009). Their overall exposure was broken down as illustrated in Figure 4.1.

Third, how are these events affected by the specific characteristics of the child, such as age, personality, and other risk factors in their life such as poverty, parental substance abuse, or exposure to violence in other settings? These interactions are frequent and likely to be complex. For example, children exposed to parental violence also are far more likely themselves to be physically abused and neglected—the likelihood is estimated to be as high as 15 times the national average (Osofsky, 1999). They also are more likely to be at greater risk for exposure to sibling violence, violence in the schools, and street violence (Finkelhor, Ormrod, & Turner, 2007; Finkelhor et al., 2009; Osofsky, 1999).

Finally, other aspects of maladaptive family structure also have been implicated, including separation and loss events (Corvo, 1992), aggressive parental shaming and guilt inducement (Dutton, 1998), and socialization into accepting male entitlement to power and the use of physical dominance to achieve control (DeKeseredy, Saunders, Schwartz, & Alvi, 1997).
Sociodemographic Correlates of Violence and Underserved Populations
Poverty and Unemployment

Many battered women’s activists and organizations, naturally seeking to develop consensus for aggressive domestic violence policies, have noted that domestic violence crosses all economic boundaries (Moore, 1997; Swanberg, Logan, & Macke, 2005; Swanberg, Macke, & Logan, 2007). The observation that victims are drawn from all socioeconomic classes and ethnic groups has been based on ideological beliefs and the desire to push universal policy changes rather than on empirical research rigorously examining the correlates of abuse.

**Figure 4.1** Past-Year Exposure to Selected Categories of Violence for All Children Surveyed


*Figures for dating violence are only for children and adolescents age 12 and older.*
Unfortunately, such studies often have relied on unrepresentative samples of a few highly vocal middle- and upper-middle-class suburban White women. Many of these women have become spokespersons for battered women or were the focus of the press, perhaps because the media find their plight more newsworthy or shocking than that of more representative abused women (i.e., those who are poor, minority, and economically or socially disempowered).

In contrast, most empirically based survey research in the United States consistently reports that domestic violence is disproportionately concentrated in poor populations and in certain ethnic subgroups. Violence is not only more prevalent among those who are economically disadvantaged, but also it helps trap them into a life of continued poverty (Kaufman Kantor & Jasinski, 1997; Moore, 1997; Renzetti, 2009; Straus & Smith, 1990; Yllö & Straus, 1990).

The lack of family income increases the potential for violence. Many intuitively believe that financial stress and feelings of powerlessness negatively affect behavior. Behavior also is impacted by the increase in alcoholism, separation, and divorce that are more prevalent within families undergoing economic stress (Benson & Fox, 2004; Romero, Chavkin, Wise, & Smith, 2003).

One can examine the evidence supporting this argument in four ways. However, the empirical data collected seems only to examine male rates of domestic violence against female partners.

First, while there has been increased poverty worldwide, if the two phenomena are related, it should correlate with increases in domestic violence. In its most direct form, domestic violence homicide rates have a
staggering correlation with unemployment. Many cities have reported dramatic increases in domestic homicides. For example, in Philadelphia, nondomestic homicides decreased by 9% from 2008 to 2009. In contrast, domestic violence homicides increased from 35 to 60 in the same year.

Second, recent evidence strongly suggests that nonfatal domestic violence rates also increase with high male unemployment. The results of a 5-year study reported that the rate of domestic violence in cases where the male partner is always employed is 4.7% compared with 7.5% in cases where the male partner experiences one period of unemployment and up to 12.3% for men with two or more periods of unemployment. Therefore, women with male partners who experienced two or more periods of unemployment were almost three times as likely to be victims of domestic violence compared with women whose partners remained employed (Benson & Fox, 2004; National Network to End Domestic Violence, 2009).

Third, evidence suggests that victim requests for assistance have increased dramatically. This can be measured by calls to the National Domestic Violence Hotline, which dramatically increased as the economy deteriorated in 2009. In addition, the Mary Kay Charitable Foundation reported in May 2009 that 75% of the nation’s domestic violence shelters reported an increase in women seeking help since December 2008. Their study attributed this increase to financial issues.

Clearly, financial strain seems to be associated with higher rates of domestic violence. One study reported rates that were approximately 3.5 times higher than those with low levels of financial strain (2.7% of couples reporting low levels of financial strain compared with 9.5% for couples reporting high subjective perceptions of financial strain). They also reported more than twice the rate for repeat violence (less than 2% compared with a little more than 5%; Benson & Fox, 2004).

One obvious factor is the greater stress of making ends meet without the financial safety net that most have. Minor emergencies, medical bills, or other mishaps can create a strong feeling of being powerless to control their destiny. Loss of a job or an increase in mortgage or rental payments might make the risk of homelessness a reality. Therefore, stress clearly increases with a lack of money and familial problems, and it is a strong predictor of
subsequent domestic violence.

In addition, domestic violence can produce the conditions that breed subsequent violence. Domestic violence often is a barrier to employment (Moe & Bell, 2004). Batterers actively interfere with a victim at her place of employment; attempt to disable her vehicle or take money used for public transportation; use threats against her, her children, or pets if she goes to her place of employment; inflict facial cuts and bruises; or even physically restrain or incapacitate her so that she cannot leave her residence. Therefore, victims are at far greater risk for frequent periods of unemployment and welfare dependence than nonvictims (Renzetti, 2009; Walker, Logan, Jordan, & Campbell, 2004).

The theory behind financial strain and increased domestic abuse seems to be well established. Recent research focused on domestic violence in the case of sudden natural disasters graphically shows that domestic violence as well as violence in general increase after any major disequilibrium. The “pressure and release” model posed by Wisner, Blaikie, Cannon, and Davis (2004) demonstrates how root causes in the political and social system (such as a patriarchal society) can interact with existing poverty and result in acts of antisocial behavior in cases where disequilibrium occurs. This model has been applied to domestic violence by many studies that show that service demands for victims of domestic violence dramatically increase after natural disasters such as Hurricane Katrina (Jenkins & Phillips, 2008) and various earthquakes (Wilson, Phillips, & Neal, 1998) that have affected the families’ income and resources.

In the previous statement, we are not indicating that affluent women are not subject to battering. As we discussed previously in this chapter, some batterers have deep-rooted biological or psychological predispositions toward aggression and violence. Those types of batterers increase in all kinds of social strata, and as incidents have demonstrated, they can become violent under a variety of circumstances without any financial strain.

In fact, for these types of batterers, the relationship between family income and the potential for abuse might be minimal. In some cases, the potential for violence might increase as family income increases, especially if that increased income is from earnings of the potential victim. For these batterers,
the victim’s participation in the labor force, even though it increases total family income and ostensibly removes the family from the lowest economic strata, might actually increase risks for abuse by symbolically threatening her partner’s position of economic power (Kaukinen, 2004).

It might be that for this subclass of batterers, the total level of family income is not as important as the batterer’s perception that his income and social status is lower than the victim’s. If the victim earns more or has a higher-status position than her spouse, then violence might be more likely to occur because some men are highly threatened by female partners who outrank them in social measurements (Melzer, 2002).

Victims who live with such psychologically impaired batterers might, of course, be empowered by creating the means and support networks needed for her ultimate independence (Gibson-Davis, Edin, & McLahanan, 2005; Kaukinen, 2004).
Ethnicity and Domestic Violence

As discussed in Chapter 3, domestic violence differentially impacts women in the United States. Coker (2000) discussed how research has tended to simplify the diverse experience of women in this country. She observed that many studies purporting to examine women of color have relied primarily on African American women and that, in contrast, research on White women became the de facto surrogate for all women. Even when such studies tried to expand their scope, results are sometimes difficult to interpret. For example, Coker noted that in perhaps the largest study examining domestic violence rates among Latino women, the study included only women who spoke English (Coker, 2000).

The following sections attempt to highlight what we know about some of the additional risk markers that each of these groups face. In the following discussion, we need to emphasize that higher rates of domestic violence in any racial or ethnic group are not inevitable. Rather, race might be a risk marker, increasing the likelihood of violence compared with the population as a whole.
Domestic Violence in the African American Community

As discussed in Chapter 1, many minority groups, including African Americans, seem to be at an increased risk for abuse. It would be overly simplistic to state that this is because of some inherent features of the African American family structure. Instead, to some extent, the higher observed rates of domestic violence among some ethnic and racial minority groups is simply attributable to higher rates of poverty.

It seems that both environmental stress and family pathologies—including poverty, social dislocation, unemployment, and population density—all play a role in increasing the rate of violence in this community (Bent-Goodley, 2001). The effects of poverty as well as other related factors are highlighted by the fact that these differences diminish (but are not totally absent) when other sociodemographic and relationship variables are controlled (Tjaden & Thoennes, 2000). Therefore, by itself, differential data in rates of domestic violence between African Americans and others support a race-based explanation for crime (e.g., a “Black subculture of violence”). Instead, it is more consistent with arguments supporting an association between violence with populations characterized by economic and social isolation, which is a life situation found more typically in the Black community (Sampson & Wilson, 1995).

For example, M. P. Johnson (2000) found that unemployment was a significant predictor of violence. He suggested that some men might perceive employment as a critical component of their masculine identity and resort to violence in an effort to regain lost status. In addition, urban poverty differentially affects African American women who are more likely than White women to live in neighborhoods with high rates of poverty overall. This is likely to have a disproportionate impact on the availability of services for African American victims of domestic violence (Coker, 2000).

The effects of differences in social structure also might encourage more domestic violence among African Americans. The fact is that middle-class
African American women also are more likely to experience domestic violence than White middle-class women. It has been suggested that the lifestyle behaviors or traditional cultural values that govern relationships are maintained (at least for one generation) even when social class changes (Bell & Mattis, 2000; Bent-Goodley, 2001). Employment might still be a factor in middle-class African American households. In addition, as noted previously, some men feel extremely threatened when their domestic partners earn more or have a more prestigious career. They might feel psychologically threatened and use violence to reassert power in their relationships (Yllö & Straus, 1990). This might partially account for the higher rates of domestic violence among middle-class African American women since African American women have higher rates of college education and often better (or at least steadier) job prospects than their partners. A rationale for why domestic violence might have increased in the African American community in the 1960s and 1970s might be that minority women began to challenge the position of African American men economically and politically (West, 1999).

To some extent, relatively higher rates of domestic violence in the African American community also can be viewed simply as maladaptive behavior in response to continued actual or perceived societal oppression, racism, and discrimination (Oliver, 1999; Williams, 1999). It also has been argued that slavery created the expectation of strong African American women as they were expected to perform the same work as men (Weisz, 2005).

The experience of powerlessness, anger, and distrust of a dominant community might be responsible for increasing the potential for abuse between intimates of color (Bent-Goodley, 2001). One author posed the intriguing hypothesis that American society has allowed African American men to become the “head of the household and given him physical control over African American women in tacit exchange for the men’s avoidance of confrontations with the White power structure” (Franklin, 2000, p. 61). The development of a strong African American political culture in the 1980s and 1990s meant that minority women—even those who knew of extensive domestic violence problems in their community—remained silent for a far longer period than their White counterparts to support their community as a whole and together challenge the negative stereotypes of African American society (Bent-Goodley, 2001; Weisz, 2005).
It has been questioned whether there is an ecological disparity between races. Middle-class African American women are still far more likely to experience domestic violence than their White counterparts (Hampton, Carrillo, & Kim, 1998). At this point, no one can be sure why this is true. It might simply be a result of the transition in social class from the lower socioeconomic classes to the middle class. It also has been suggested that former lifestyle behaviors or traditional cultural values and norms encourage women to maintain even a fatally flawed relationship (Bell & Mattis, 2000; Bent-Goodley, 2001).

It also might be possible that poverty differentially affects African American women. African Americans are far more likely than White women to live in neighborhoods with high rates of poverty and overall violence (Coker, 2000). Research in New York City suggested that 70% of poor Blacks compared with only 30% of poor Whites living in New York City resided in predominantly poverty-stricken and crime-prone neighborhoods (Sampson & Wilson, 1995). This is likely to have a disproportionate impact on the availability of services for Black victims of domestic violence (Coker, 2000). In addition, the stress of living in a neighborhood with an omnipresent threat of drugs, gang violence, and other social pathologies might increase family levels of stress dramatically. Furthermore, the well-studied mutual antipathy between much of the African American population and the police might mean that, realistically, police are only going to be called after more severe violence has occurred, making arrest in today’s environment nearly inevitable.

Cultural norms implicit in many recently arrived immigrant groups often define the “appropriate treatment” accorded women by male intimates. Although a true definition of culture is ambiguous, referring to a group’s social doctrines varying by gender, class, religion, race, ethnicity, and other variables, we do know that the cultural norms among immigrant groups often clash with the behavior demanded by our legal system. As is generally known, many ideologies from immigrant cultures marginalize and intentionally limit, if not totally marginalize, women’s economic and social power in a relationship. That factor alone places them at an increased risk for victimization (Raj & Silverman, 2002b). In one direct example, the use of physical force to control or discipline women is acceptable or encouraged in some South Asian and Northern African Muslim immigrant communities.
Schwartz and DeKeseredy (1997) examined the significance of a male peer-support model as a factor that might coexist in the context of traditionally male-dominated environments (e.g., ethnically centered bars as well as cultural and athletic events) with cultural norms that support male control of women. This model suggests that the link between alcohol and violence is a result of perceptions of masculinity that link heavy drinking and violence to control of a woman or children. This equates to a masculine or macho self-image in some immigrant communities.

Furthermore, Bowker (1983) suggested that male peers in many subpopulations still feel justified in violence against partners and accept, if not outwardly approve of, such conduct. He found that the frequency of contact and interaction with male peers was related to both the frequency and the seriousness of domestic assault.

Many such cultural differences and ideologies can place women at greater risk of intimate partner violence. For example, in Asian and Middle Eastern immigrant communities, role expectations for women often are far more rigid, and the right of men to discipline their wives physically often is explicitly accepted (Raj & Silverman, 2002b).

It is interesting that women in these communities often are acculturated more easily to new societal norms than their male partners and are more willing (if not eager) to adopt American expectations for their behavior (Bui & Morash, 1999; Kulwicki & Miller, 1999; Raj & Silverman, 2002b). The result of this conflict in role expectations increases the woman’s risk of violence. Their partners will prefer to maintain the type of control their past culture granted to males. Numerous studies indeed report that intimate partner violence is more likely in relationships in which the male partner holds more culturally traditional role expectations for women (Bui & Morash, 1999; Morash, Bui, & Santiago, 2000).

Finally, in a somewhat different situation, many recent immigrant victims of domestic violence might be socially isolated. They often do not have the traditional family supports available in their home country, and they might effectively be isolated from outside contacts by the offender (Abraham, 2000;
Raj & Silverman, 2002b). As such, these victims might be less likely to receive available support because of cultural expectations (Raj & Silverman, 2002b).

These women often are deterred by their lack of familiarity with the legal system and, if they are here illegally, fear that they will be deported if they report abuse. Research on Latina victims of domestic violence has reported the high levels of fear of abuse by undocumented women. These victims often are afraid that police involvement will lead to their deportation and to possible separation from children (Coker, 2000).

Some abusers are known to take advantage of this situation. It has been reported that many batterers deliberately fail to file the necessary immigration papers to legalize the victim’s immigration status (Teran, 1999).

Finally, as described in Chapter 2, the greater impact of traditional conservative religious beliefs in recent immigrant families might make husbands more likely to assert their control and their victimized wives to tolerate abuse without leaving or contacting authorities.
Native Americans

Given the long and ignominious history of White–Native American relations, it is not surprising that social problems that are closely associated with widespread social disorganization emerged shortly after tribal relocations. Many Native Americans live on reservations in miserable conditions. The numbers and statistics pertaining to poverty levels, unemployment, and infant mortality—to name but a few of the social problems Native Americans on reservations face—clearly demonstrate dire living circumstances. This is compounded by relatively high rates of substance abuse, which is a strong correlate with domestic violence, as discussed earlier in this chapter. For these reasons, it is not surprising that American Indian and Alaska Native women report far higher rates of intimate partner violence than women of any other racial background (Tjaden & Thoennes, 2000).
Coercive Control

We conclude this chapter with a discussion of coercive control, a paradigm of partner abuse that challenges the current criminal justice approach by portraying domestic violence as only one among many tactics deployed by offenders and not necessarily the most important or most salient for victims. Coercive control may be defined as a strategic course of gender-based abuse in which some combination of physical and sexual violence, intimidation, degradation, isolation, control, and arbitrary violations of liberty are used to subjugate a partner and deprive her of basic rights and resources. The coercive control model emphasizes the roots of partner abuse in sexual inequality, highlights the gendered nature of the tactics deployed and their consequences, and complements the prevailing emphasis on the physical and psychological trauma associated with victimization by identifying constraints on women’s “personhood” as the major harms inflicted by partner abuse, including harms to their autonomy, dignity, and liberty as well as to their rights to physical and psychological integrity.

Since the first shelters were opened in the United States in the 1970s, advocates have relied on an inclusive definition of abuse that resembles coercive control to help victims appreciate the breadth of their oppression (Schechter, 1982). This inclusive approach was formally conceptualized only recently, however, and its claims have been subjected to only limited empirical test. To date, there is no single tool to measure coercive control comparable to the CTS for measuring domestic violence. Moreover, claims about the prevalence, dimensions, and consequences of coercive control rely on studies that employ very different definitions and measurement tools. Despite these limits, we believe the coercive control model of abuse merits serious attention. As we show in Chapter 9, coercive control has become the prevailing model of abuse in Europe, is rapidly becoming part of common parlance in discussions of abuse by researchers and practitioners in the United States, and presents an important framework for reforming the current response. Students and professionals should have a working familiarity with coercive control.

After reviewing the limits of a criminal justice model of domestic violence
and the background of the alternative model, we describe the “technology” or tactics that typify coercive control, including empirical research on the prevalence and significance of these tactics. The section ends with a brief assessment of what adapting a coercive control model implies for reforming policy and practice.
The Limits of Equating Partner Abuse With Domestic Violence

As we suggest in Chapter 2, rape and then domestic violence became focal points for an important segment of the feminist movement in the 1970s that considered these crimes as the cutting edge of male domination or patriarchy. Within a decade of the first shelters opening, however, it became apparent that the survival and growth of the shelter movement depended on federal and state funding, a concomitant reliance on criminal justice and the courts, and the utility of survey data gathered by mainstream sociologists for whom family violence was the major issue, not sexual inequality. The movement’s interdependence with government, criminal justice, and mainstream social science helped make it one of the most successful grassroots movements for change in US history. But this very success also inhibited the early militancy of the movement and set the stage on which many local shelters, once linked closely to local activism, took their place alongside an array of other services that were part of America’s safety net.

One result of these changes was a shift in the shelter movement’s official strategic goal, from approaching domestic violence as one among many means of male oppression to ending violence against women. Abbreviated as “ending domestic violence,” this was a goal that could be shared by the constituencies with whom the shelter movement interacted on a daily basis—particularly policy makers, traditional service providers, police, and the courts. The original notion of violence against women as an expression of male power and control remained alive in shelter work with victims, but it was rarely articulated in public forums. Instead, with criminal justice as the lead partner, a working consensus emerged around the definition of partner abuse as domestic violence, a subtype of assault.

In criminal justice parlance, violence is any act “carried out with the intention or perceived intention of causing physical pain or injury to another person” (Gelles, 1997 p.14). Incorporated into domestic violence law and policing, this definition conflated partner abuse with discrete assaults and implied that the seriousness of abuse could be assessed by applying a calculus of harms to
these assaults and allocating justice and health resources accordingly. Perpetrators who repeatedly assaulted their partners were considered recidivists and various typologies sprung up to classify offenders based on the nature, frequency, and targets of their violence. Court protections, BIPs, and many other interventions were predicated on the belief that there was sufficient time between assaultive episodes (termed “time to violence” in the treatment literature) for victims and perpetrators to contemplate their options and make self-interested decisions to end their abuse or exit the abusive relationship (Stark, 2007).

According to Stark (2013; 2012; 2007), Johnson (2008) and other critics, this violence model misrepresented the nature of partner abuse in three ways primarily: it abstracted discrete acts from their historical context, collapsing what was almost always a course of conduct into separate episodes; it exaggerated the importance of injury at the expense of other harms caused by abuse; and it missed the multifaceted and gendered nature of the oppressive tactics that complemented violence in most abusive relationships. The focus on discrete acts and injury also masked the most devastating outcome of partner abuse, the experience of entrapment that was the cumulative result of a victim being deprived of basic rights, resources, and liberties as well as being frightened or hurt physically. While the experience of entrapment could not be captured in a police photograph, it was often more salient for victims than physical or psychological trauma, a fact reflected in the frequently heard insistence that “violence wasn’t the worst part.” In practice, critics contended, interventions based on the violence model fragmented, trivialized, and normalized the oppression abused women experience and did little to improve their long-term prospects or to hold the most persistent offenders accountable.

The evidence on the nature of domestic violence assaults is reviewed in the chapter on health (Chapter 14). Suffice it to say here that, although the all-too-common acts of serious or fatal domestic violence may capture the public imagination, the significance of partner assaults for victims typically derives less from their severity than from the frequency, duration, and cumulative weight of relatively minor assaults. It has been well established for decades that domestic violence rarely occurs as an isolated incident (Stark & Flitcraft, 1996); that at least at third of victims experience “serial” assaults once a
week or more; and that a significant proportion are assaulted daily (Brokoff 1997) Conversely, the vast majority of abusive assaults, well over 95%, are noninjurious (Stark & Flitcraft, 1996; Stark, 2013). If abusive relationships last between 5 and 7 years on average, as some research suggests, then a high proportion of victims have experienced dozens, even hundreds, of noninjurious assaults (Stark & Flitcraft, 1996; Campbell, Sullivan, & Davidson, 1995) whose cumulative effect can be devastating even if they are not punctuated by more severe attacks.

An appreciation of this reality can be gleaned from a recent population survey by the CDC to which the abused women reported experiencing the following types of assault between 11 and 50 times or >50 times: choked (10%; 5%); kicked (18%; 7%); “hit with a fist or an object” (19%; 10%); “beaten” (21%; 18%); and “slapped, pushed, or shoved” (22%; 21%; Black et al. 2011).5 Not surprisingly, much higher proportions of victims questioned at shelters or other service sites report experiencing these types of assaults “often” or “all the time” (Rees, Agnew-Davies, & Barkham, 2006; Tolman, 1989). Any survey method, screen, or assessment that equates “real” abuse with injurious incidents will miss the vast majority of these cases, let alone the cumulative effects of being subjected to this ongoing physical abuse on individual victims.

According to the critics, these episodes look relatively trivial in isolation. When police, prosecutors, judges, and other service personnel treat each as a separate offense, the response is likely to be minimal, few sanctions are applied, and few resources are offered. The attrition from a domestic violence complaint to actual conviction and punishment differs dramatically depending on the threshold the law sets for an arrest. Where the threshold is high, as in Massachusetts, a low proportion of incidents lead to arrest but a high proportion of those arrested are punished. In the neighboring states of Connecticut and New Jersey, where domestic violence is treated as a second-class misdemeanor akin to a traffic offense (indeed, New Jersey hears many domestic violence cases in traffic court), a high proportion of reports lead to arrest but only a tiny proportion culminate with punishment, between 1% and 5%. In both scenarios, the vast majority of domestic violence receives no serious response. Nor are repeat offenders any more likely to be sanctioned than offenders arrested for the first time.
The police response in the United Kingdom illustrates the current situation. Research teams from the University of Bristol and The Home Office followed 692 offenders arrested between 2004 and 2005 in Northumbria (Hester, 2006; Hester & Westmarland, 2006). The ratio of arrests to calls was 91%, far higher than similar ratios in the United States. Because the incidents were treated as discrete and injurious assaults were rare, offenders were primarily arrested for breach of the peace and were charged and convicted in only 120 (5%) of the 2,402 incidents of domestic violence reported, indicating an attrition rate from report to conviction of 95%. Even in the few cases of conviction, the most common penalty was a fine. As is true generally, so here too was abuse in these relationships often chronic. Exactly half of the offenders were re-arrested for domestic abuse crimes within the 3-year period covered by the study and many were arrested multiple times. However, again because each episode was treated as distinct, there was no correlation between the likelihood that a perpetrator would be arrested and either the number of his domestic violence offenses or even whether he was judged “high risk.” The risk posed by an offender was assessed at each incident. Thus, the same offender might be classified as high risk when he strangled his wife and low risk a week later, when he slapped her. Neither the likelihood that offenders would be punished nor the punishment itself were related to previous offenses. Thus, an offender was no more likely to be charged, convicted, or punished after his 50th reported assault than after his first. Interviews confirmed that the absence of sanctions sent a clear message to the arrested men that their domestic assaults would not be taken seriously.

This response is ineffective in protecting victims. According to Stark (2007), this response pattern also creates a negative feedback loop which, over time, can reduce the probability that victims will receive the services they need and increase their vulnerability to entrapment and further abuse.

The ongoing nature and cumulative effects of domestic violence prompt a large proportion of battered women to make repeated calls for help. Given the narrow, incident-specific frame through which these reports are received, however, police and the courts often reframe a victim’s persistence as a form of frustrating and unwelcome demand for time and resources that could be better applied to other, more serious cases. Over time, this frustration is manifested in a process of more or less explicit labeling by which certain
victims, offenders, and families become “well-known” to police, courts, and other providers. Concern shifts from stopping or managing the repeated offenses to managing their case. Mounting fear is a common effect of experiencing ongoing abuse, even if the frequency or severity of the assaults has lessened. Set against the proximate incident to which the authorities are responding, however, heightened fearfulness can appear exaggerated, eliciting the suspicion that the victim is “crazy”—the same view the abusive partner is conveying. According to Stark (2007; 2013), the tragic irony here is that police, courts, and other providers normalize a woman’s abuse even as her entrapment becomes more complete, and effectively withdraw from her case. Even though they continue to respond to calls for help, their response is increasingly perfunctory, erratic, and even hostile.
The Theory of Coercive Control

The characteristics of domestic violence described above have been well documented for decades, even if their significance was masked. But the critics of the violence model also point to another reality of victim experience that was less well known: the fact that, for a majority of the female victims who sought outside assistance because of partner abuse, the chronic physical abuse was accompanied by sexual assault, coercion, and a range of other oppressive tactics designed to frighten, isolate, degrade, subordinate, and control them (Stark, 2007; Tolman, 1989; Rees et al., 2006; Buzawa & Hotaling, 2003). This pattern has been termed psychological or emotional abuse, patriarchal or intimate terrorism (Tolman, 1992; Johnson, 2008), and coercive control (Stark, 2007), the term we prefer.

Some of these tactics identified with coercive control are criminal offenses, such as marital rape, but rarely charged in domestic violence cases. Some of the tactics are only considered criminal when committed by strangers or persons living separately (such as taking a partner’s money, confining her to the house, or stalking her). And some of the tactics are not criminal offenses, but significantly aggravate the harm victims suffer when they are part of a pattern of other coercive and controlling behaviors. Such tactics include emotional abuse; making a partner account for her time or expenses; prohibiting contact with friends, family, or coworkers; and regulating how a partner dresses, cooks, cleans, or carries out other activities of daily living. Apart from sexual assault and explicit threats, few of these tactics are included in official definitions, domestic violence laws, media portrayals, institutional assessments, or research on domestic violence and so their existence as well as their prevalence long remained largely anecdotal. It was only in the 1990s, as the gap between the realities of partner abuse and the official response became ever more apparent, that theorists reached back into the clinical and advocacy literature to retrieve a model of abuse that could more accurately capture the historical and multifaceted nature of the oppression women were reporting.

As a description of VAW, coercive control was not new. In the late 1970s, feminist psychologists observed that perpetrators of abuse employed
techniques of “coerced persuasion” that resembled those used with American POWs during the Korean War (Serum, 1979; Singer, 1979). Another psychologist, Lewis Okun (1986), drew an extended analogy between coerced persuasion, the experience of women being conditioned to prostitution by their pimps, and the experiences recounted to him in his counseling work with abusive men and battered women. Okun described the breakdown of the victim’s personality in the face of the abuse and the extreme emotional and behavioral adaptations to this process. But his major focus was on structural and systemic components of the abusive relationship such as isolation and the pattern of control by which batterers constricted the victim’s decision-making powers, prohibiting all independent decisions in some cases; limited women’s access to information (including censorship of mail and phone calls); exhausted them physically (e.g., by keeping them awake at night); and constrained their movement, even forcibly confining them.

Other important contributions to the theory of coercive control were made by feminist advocates. In Next Time, She’ll be Dead, Ann Jones (1994) drew an extended analogy from the human rights literature between the control skills men deployed in battering and similar techniques used with hostages, juxtaposing the Amnesty International chart of coercion and comments by shelter residents to illustrate such methods as isolation, monopolization of perception, induced debility and exhaustion, threats, occasional indulgences, demonstrating omnipotence, degradation, and enforcing trivial demands. Jones was the first to point out that the psychological effects of abuse could be produced without use of physical violence.

Other pioneers in the battered women’s movement also embraced a definition of woman abuse as controlling behavior that created and maintained an imbalance of power in the relationship. David Adams (1988), founder of Emerge in Boston, one of the nation’s first counseling programs for violent men, defined battering as “controlling behavior” and as including within the definition of violent any act “that causes the victim to do something she does not want to do, prevents her from doing something she wants to do, or causes her to be afraid regardless of whether assault was involved” (p.191). Importantly, Adams shifted the emphasis from physical harm to restrictions on women’s autonomy and independence. He also described a propensity for
abusers to replace violence after arrest with less visible forms of intimidation and control. Under the leadership of Ellen Pence, the Domestic Abuse Intervention Program (DAIP) in Duluth, Minnesota, used video portrayals to sensitize men to their control patterns, reasoning that control tactics were learned and so could be unlearned when sanctions and re-education were combined. In When Loves Goes Wrong, Ann Jones joined with Susan Schechter (1992), a well-known advocate, to define abuse as “a pattern of coercive control that one person exercises over another in order to dominate and get his way” (p.13). Sandwiched among their lengthy list of control tactics, they included restrictions not only on material necessities such as access to money or means of transport or communication, but also over aspects of women’s lives linked to how they enacted their roles as partners, mothers, and housekeepers, such as “picking out your clothes,” “telling you what to wear,” or “forbidding you to shop.” In this analysis, abuse was gendered by the substantive focus of rules on enforcing gender stereotypes, themselves the result of sexual inequality—not by empirical differences in male versus female partner violence.
Power and Control Wheel

The most vivid representation of the structural dimensions of battering is the wheel developed by the DAIP in Duluth and adapted for use in hundreds of service settings.

The following description of coercive control draws heavily on the work of Evan Stark (2013; 2012; 2007).
The Technology of Coercive Control

Like Johnson (2008), Stark recognizes that the abuse in a significant proportion of relationships is limited to physical violence and emotional abuse. Where Johnson refers to these situations as “common couple violence,” Stark divides them into those he calls “fights,” where the violence is mutual or neither party considers themselves a victim; and “partner assaults,” which more closely resemble the conventional understanding of domestic violence. Stark insists, as do Johnson and others, that scenarios involving control as well as coercion are both far more common and more devastating than those involving domestic violence alone.

Coercive control has identifiable temporal and spatial dimensions, typical dynamics, and predictable consequences. Evan Stark (2007) subdivides the tactical components of coercive control into those used to hurt and intimidate victims (coercion) and those designed to isolate and control them (control). Perpetrators adapt these tactics through trial and error based on their relative benefits and costs. The “generality” of coercive control refers to the features it shares with other forms of subjugation and constraint. Isolation and intimidation are features of hostage taking as well as coercive control, for instance. Unlike violence, where the tactical repertoire is limited, the tactics used to intimidate, isolate and control the victim are often tailored to exploit a partner’s peculiar vulnerabilities. Schneider (2000) contrasts the characteristics coercive control shares with hostage taking, harassment, and other capture crimes, to its “particularity”—the unique tactical combination an individual abuser deploys in a given relationship based on the privileged access intimacy affords to personal information about the partner. The configuration of the four tactics is distinct in each abusive relationship and depends on the personalities involved, their culture, the relative share of resources available to the parties, and situational factors such as their visibility to a larger community. For example, if a husband depends on income from his wife’s high-profile job, he may be less likely to inflict visible injuries than to use indirect means of control. Obviously, this information can only be gleaned from interviews that include a complete history of abuse.
Coercion

Coercion entails the use of force or threats to compel or dispel a particular response. In addition to causing immediate pain, injury, fear, or death, coercion can have long-term physical, behavioral, or psychological consequences.
Violence

Partner assaults frequently involve extreme violence: beatings, choking, burning, rape, torture, and the use of weapons or other objects that cause severe injury, permanent disfigurement, and even death. As we have emphasize previously, however, the violence in coercive control is typically characterized by low-level assaults that are frequent, even routine, and extend over a significant time period. Johnson (2008) reported that men using coercive control assaulted women six times more often on average than men who used physical violence alone. In a Refuge UK sample, 58% of the women reported they were “shook or roughly handled” often or all the time; 65.5% were pushed, grabbed, shoved, or held “too hard”; 55.2% were slapped, smacked, or had their arm twisted; and 46.6% were kicked, bit, or punched with this frequency (Rees et al., 2006). Contrary to a common belief that abusive violence occurs during conflicts, violence in coercive control is mainly used to punish disobedience, keep challenges from surfacing, express power—with 10% of victims reporting they were beaten in their sleep—and as part of a routine, much more like using the toilet or eating than the angry outbursts we may imagine.

Importantly, there are at least two well-designed studies that show that violence is not always a component of coercive control (Lischick, 2009; Piispa, 1992).
The Continuum of Sexual Coercion

No single fact about coercive control illustrates better the gap between the current response and the criminal behavior of offenders than the co-occurrence of sexual assault and domestic violence. The detailed evidence of the overlap is reviewed in Chapter 14. An estimated 14% to 259% of women in the general population are sexually assaulted by their partners (McFarlane & Malecha, 2005); partners or former partners account for 51% of all rapes (Black et al. 2011); and between 43% and 55 percent of abused women are sexually assaulted by their partner (Wingood, DiClemente, & Raj, 2000.). A distinguishing characteristic of partner rapes is that they are repeated. In a large sample of women in shelter, 27% reported they had been forced to have sex against their will often or “all the time.”

In coercive control, sexual assault is the extreme end of a continuum of sexual coercion that extends from forced anal sex to forced pregnancies or abortions, sabotage of birth control, sexual inspection, sex trafficking, exposure to pornography, and what Stark (2007) calls “rape as routine,” where women comply to their partner’s demands because they are afraid to refuse. In a study of men in a batterer intervention program, 33% of those who sexually assaulted their female partners admitted doing so when the women were asleep (Bergen & Bukovec, 2006). Male abuse victims also report sexual coercion by male and female partners, though in far smaller numbers than women (Black et al., 2011).
Intimidation

As a part of coercive control, intimidation is used to instill fear, dependence, compliance, loyalty, and shame. Offenders induce these effects in three ways primarily—through threats, surveillance, and degradation. Intimidation succeeds because of what a woman believes her partner has or will do or is capable of doing to her or others for whom she cares, what is termed the “or else” proviso. If violence raises the physical costs of resistance, intimidation deflates the victim’s will to resist.

Literal threats run the gamut from threats to kill to threats that are only understood by the victim and may seem caring to outsiders, such as when a partner assures a doctor that he will oversee his wife’s medical regime. In the UK Refuge study, 79.5% of the women reported that their partner threatened to kill them at least once, and 43.8% did so “often” or “all the time.” In addition, 60% of the men threatened to have the children taken away at least once, 36% threatened to hurt the children, 32% threatened to have the victim committed to a mental institution, 63% threatened their friends or family, and 82% threatened to destroy things they cared about (Rees et al., 2006). Credible threats are criminal offenses, but few are reported.

Another class of threats involves withholding or rationing critical resources such as food, money, medicine, or access to a phone or car in order to extract information or confessions or to win compliance. Thirty-eight percent of the men in the UK Refuge sample stopped their partner from getting medicine or treatment they needed, and 29% of the US men did so (Rees et al., 2006; Tolman, 1989, 1992).

Another class of threats involves anonymous acts whose authorship is never in doubt. This is illustrated in Sleeping with the Enemy (1991) when Julia Roberts realizes that her husband has tracked her down when she discovers that her cabinets have been meticulously reorganized. At the other extreme, abusers exploit secret fears to which they alone are privy. A variant on these acts are “gaslight” games, named after the 1944 film Gaslight in which Charles Boyer created visual and auditory illusions to convince his wife she was insane. In the UK Refuge sample, 75% of the women reported that their
partners had tried to make them feel crazy “often” or “all the time” (Rees et al. 2006).
The Softball Star: Invisible Threats that Look Like Love

Mary D. had been a star athlete in high school and now was a star pitcher for her factory softball team, the Stratford Queens. After an incident of physical abuse, Mary agreed not to do anything that would make her husband Steve jealous. Of course, he was judge and jury in enforcing this “rule.” Steve came to all Mary’s games, something for which he earned praise from Mary’s teammates. One night, after Mary had gotten some cheers for striking out the side in three successive innings, Steve began to feel jealous, believing she was deliberately drawing attention to herself. Steve approached Mary when she returned to the dugout and, in front of her teammates, gave her his sweatshirt, telling her, “Put this on. You’re cold.” Even as the teammates envied Mary for having such a caring partner, she began to shake and was unable to complete the game. Mary clearly understood what her teammates could not, that Steve was letting her know she had done something wrong and would have to “cover up” the bruises he would inflict when she got home. The threat had its effect even if he didn’t touch her.
Surveillance

Stalking is the most dramatic and most common example of the surveillance techniques used in coercive control. We describe and discuss the evidence on stalking elsewhere (see Chapter 2). Among the abused women identified by the recent CDC population survey, 28% reported being stalked as well as physically abused (Black et al., 2011). Conversely, 81% of the 4.8 million women in the United States who reported being stalked by present or former partners were also physically assaulted and 31% were sexually assaulted (Tjaden & Thoennes, 2000). And importantly for our purposes here, 57% of the stalking behavior reported by abused women began while the couple was still together, behavior that is almost never considered criminal.

The aim of surveillance tactics is to convey the abuser’s omnipotence and omnipresence and to close off a victim’s access to what Stark terms “safety zones,” where she can safely consider and discuss her options. Abusive men monitor or time their partners’ calls; monitor their coming and going or insist on “check ins” when they arrive somewhere or return; go through their mail, handbags, bank records, e-mail, Facebook pages, and so on; and set up global positioning devices or video cameras that track a partner’s movements. Eight-five percent of the women in the US study and more than 90% of the UK Refuge women reported that their abusive partner monitored their time (Tolman, 1989, 1992; Rees et al., 2006).
Degradation

Degradation is another commonly employed form of intimidation, designed to deny self-respect to partners and undermine their self-esteem. Virtually all of the women in the UK Refuge survey reported that their partners called them names (96%), swore at them (94%), brought up things from their past to hurt them (95%), “said something to spite me” (97%), and “ordered me around” (93%). In more than 70% of these cases, this happened “often” or “all the time” (Rees et al., 2006). As part of coercive control, insults are particularly hurtful because the fear of retaliation inhibits any response and because the areas of gender identity targeted—her weight, looks, intelligence, cooking, cleaning, work, or child care—are areas in which she has already made compromises due to abuse, about which she feels shame or ambivalence, or are facets of her life from which she draws vestiges of esteem amid the larger pattern of subjugation. Degradation rituals extend from marking (such as with burns or tattoos) to let others know the woman is owned to shaming techniques that involve regulating a woman’s toileting, hygiene, or other facets of her life from which she derives a sense of pride.
Control

In contrast to coercion, which is administered directly, perpetrators use control tactics to compel obedience indirectly by isolating victims, depriving them of vital resources, exploiting them, and micromanaging their behavior through rules for everyday living that remain in play even when the perpetrator is not present. Control extends through social space to work, school, and other potential sites where victims might find support and can make victims feel their abuse is all-encompassing and their partner is omnipresent.
Does Popular Culture Encourage Domestic Violence?

Some of today’s “hook-up culture” at times glorifies the use of violence and coercive control to achieve male sexual conquest. In one particularly revealing and admittedly extreme example, Julien Blanc, a 25-year-old self-described “pick up artist,” “dating guru,” and cofounder of a company called Real Social Dynamics has become very well known for employing coercion and harassment to achieve dating conquests. He has been marketing “pick-up artist” seminars in many countries to participants that pay up to $3,000 a person (Pleasance & Evans, 2014).

At the risk of further publicizing something abhorrent, among his various seminar techniques to secure a reliable hook-up include such gems as:

- grabbing a woman by the neck, termed “The Choke Opener” (Corbin, 2014)
- threatening to commit suicide
- injuring her pets
- and, in one video captured in a seminar in Tokyo, suggesting that White men can do anything they want in Tokyo and suggesting that “men grab women’s heads and thrust them towards their crotch.”

Shockingly, Blanc modified and adapted the Duluth Domestic Abuse Intervention Project’s “Power and Control Wheel,” which correctly is employed to describe coercive control, as a “checklist for making her stay” (Pleasance & Evans, 2014).

Mr. Blanc has faced widespread protests in Australia, forcing tour cancelations, and the Home Office of the British Government has barred him from entry to their country (Reuters, 2014).

He has subsequently apologized. “I would like to apologize to anyone I have offended in any way. Those girls were girls I was hanging out with. I did place my hand around their neck. I did not physically choke them. I wanted to create a horrible attempt at humor and promote a shock—which it did, but for all the wrong reasons.”

Blanc, who says he regrets posting “a lot of stupid stuff online,” admits that he is re-evaluating what the future holds (Barrett, 2014).

Obviously, this is an extreme example. However, we note that Mr. Blanc, at least as of this date, still has an active Web site promoting his advice to get a “perfect 10” and getting a “deadbeat. . . . trash W. . . .” to become an F. . . . buddy” and there are apparently 24,000,000 results when his name is entered as a search on the Google Web site.
**Isolation**

Perpetrators of coercive control use isolation to keep abuse secret, deprive victims of support, and ensure that a victim’s sense of reality becomes a function of their own, a condition known in the hostage literature as “perspecticide.” Isolation extends from immediate family, friends, and coworkers to all the moorings of a victim’s identity and sense of self. In a study of women in shelter, 36% had not had a single supportive or recreational experience during the previous month (Forte, Franks, Forte, & Rigsby, 1996). Backed by the “or else” proviso, isolation tactics include literal prohibitions against contacts with significant others; denying access to money, transport, or other means needed to communicate with others; and “harassment through the network,” wherein the abusive partner literally or figuratively follows a partner through her social world or enters it using harassment, embarrassment, slander, and unwanted personal, telephonic, or digital intrusion to poison her relationships and prevent her from establishing independent relationships. Victims are not only isolated from significant social relations but, through continued intrusion, also at their workplace and other sites, a process that is reinforced when they try to placate their abusive partner by withdrawing voluntarily from relationships he distrusts. Eighty-one percent of the UK Refuge sample reported they had been kept from leaving the house with almost half (47%) reporting this happened “often” or “all the time.” More than a third of women in the US and UK samples were prohibited from working (Tolman, 1989; Rees et al., 2006). Because they may have limited social contacts or knowledge of local resources and fear deportation if they report abuse, immigrant women are particularly susceptible to isolation.
The Materiality of Control

What is termed the “materiality” of coercive control refers to the process by which abusers exploit, control, regulate, or ration a victim’s use of and access to the necessities for daily survival and living, including money, food, housing and transportation, sex, sleep, toileting, medicines, personal hygiene, and access to outside assistance. While all control is designed to subjugate a victim and make her dependent, abusers derive direct material, psychological, and social benefits from these activities, much in the way a master might from an indentured servant. Offenders take their partner’s money, keep them from carrying checks or credit cards or from having their own accounts, and put them on a strict budget, forcing them to get preapproval or to account for and justify all expenditures. Seventy-nine percent of the UK Refuge sample and 58% of the US sample were denied access to money or had it taken from them through threats, violence, or theft (Rees et al. 2006; Tolman, 1989). Among a population of men charged with assaulting their partners, 54% acknowledged they had also taken their partner’s money (Buzawa & Hotaling, 2003). Illustrating the scope of these material controls is a widely publicized “Contract of Wifely Expectations” retrieved by police in an Iowa kidnapping and sexual assault case. In the contract Travis Frey forced his wife to sign, he agreed to exchange “good behavior days” (GBDs, i.e., days when he would not abuse her) if his wife scored a sufficient number of points by complying with his sexual demands. For instance, anal sex was worth 7 GBDs, and fellatio only 3 (NBC News, 2006). While written contracts like this are obviously rare, the imposition of rules governing the allocation and use of basic necessities in abusive households is not.

If control begins by making women dependent on their partner for basic necessities, it often extends, as Jones and Schechter (1992) were the first to recognize, to what have been termed “arbitrary deprivations of liberty,” expectations laid out behind the “or else” proviso for women who already must enact their devalued roles as women, wives, housekeepers, and mothers. With varying degrees of explicitness, controllers micromanage everything from how their female partners emote, dress, drive, wear their hair, clean, cook, make love, toilet, and care for their children to when, where, and what they watch on TV. In the Frey contract (NBC News, 2006), his wife was “not
to argue (about anything with me or to me),” complain, cry, sob, whine, pout, show displeasure, raise her voice, be “condescending,” ask for anything, or “be distracted from me by other things.” In Coercive Control, Stark (2007) reprints an even more explicit contract that goes into incredible detail about how the victim must organize each room in her house (e.g., “CDs in alphabetical order,” “clothes color coded in the closet”).

Rules that extend to the trivia of everyday life—such as how high the bedspread or toilet paper must be from the floor—appear to have no rational purpose. In fact, Stark (2007) argues, the very lack of any rationale give such rules their effect—namely, to shame the victim into recognizing that her obedience is purely a function of her partner’s power and her own fearfulness. Indeed, he observes, there is an inverse relationship between the arbitrariness of the rule and the degree of self-loathing women experience when they comply. As Mrsevic and Hughes (1997, p. 123) put it, “As men’s control over women increases, the infractions against men’s wishes get smaller, until women feel as if they are being beaten for nothing.” Some women take their resistance underground by internalizing the rules and drawing a vestige of esteem from obeying them to the letter, an example of the Stockholm Syndrome. Even this strategy fails, however. Since the abuser’s goal is blind loyalty and obedience, not to keep the rug cleaned, he continually changes the rules or reinterprets compliance, leaving victims in a state of chronic anxiety.
Coercive Control and Risk of Fatality

Stark (2012, 2007) contended that the level of control in a relationship puts victimized women at risk for serious or fatal injury independent of the prior level of violence. This is because a woman’s vulnerability to injury or death in an abusive relationship is a function not only of an offender’s capacity for violence, but also of her own capacity to effectively resist or escape when violence is threatened or used. By constraining a victim’s access to money, transport, communication, or other vital resources, control tactics undermine this capacity and make effective resistance or escape more difficult, if not impossible.

Since there is no gold standard in measuring coercive control, studies that assess the risks associated with control are not strictly comparable. However, there is compelling evidence that the combination of coercion and control is the most devastating form of abuse as well as the most common. In a large, well-designed study, Glass, Manganello, and Campbell (2004) found that, along with a recent separation and the presence of a weapon, the level of control in an abusive relationship increased a victim’s risk of being killed by her partner by a factor of nine, while neither the severity nor the frequency of the violence was predictive. A similar contrast between the relative risks of control versus violence was demonstrated among couples involved in divorce or custodial disputes. Beck and Raghavan (2010) studied 2,030 persons who had been separated for an average of 6 months and court ordered to attend mediation in Arizona. A majority of the women in their sample reported experiencing violence or coercive control in the past 12 months, with 25% reporting coercive control “a lot or all of the time” and 10% reporting moderate or high physical abuse. Most importantly, more than 80% of the women who reported physically forced sex, escalating violence, or threats to her life after separation were in the group reporting moderate to high coercive control during their marriage but little or no physical violence.
Implications of Coercive Control for Changing Policy and Practice

Since the late 1970s, the absence of physical violence has become a litmus test for the integrity of relationships, a major achievement of the domestic violence revolution. There is no such consensus about the range of tactics deployed in coercive control.

Throughout the text, we raise many questions about the current criminal justice response to domestic violence in the United States. Even so, we believe it has prevented tens of thousands of injuries and several thousand deaths. At the very least, the criminalization of partner abuse has challenged the normative approval of violence against women. These are significant achievements, particularly given the pervasive role of violence in male socialization and identity and the continued legitimacy politicians, cultural icons, and the mass media derive from appealing to and reinforcing this socialization process.

As this chapter makes clear, however, current policies, laws, and other interventions designed to combat domestic violence fail to directly address coercive control, which possibly is the most prevalent and devastating context for partner abuse. This, we believe, reflects the adaptation of the criminal justice equation of partner abuse with discrete assaults and the concomitant emphasis on injury as the overall framework for intervention. We believe that the failure of current interventions to significantly improve the long-term prospects for battered women and their children is a direct result of the divide that separates this framework from the realities of coercive control experienced by a majority of victims.

A first reform is to incorporate coercive control into working definitions of partner abuse at all levels of protection, support, counseling, and accountability. In Chapter 9, we review some of the reforms in the European approach to VAW elicited by adding coercive control to the definition of domestic violence and reframing partner abuse in a way that recognizes its historical dimension—that is, that fact that it is typically a course of conduct.
or pattern rather than a single incident or series of discrete episodes; encompasses a far broader range of abusive behaviors, extending from physical, sexual, economic, and psychological violence and abuse to arbitrary violations of liberty such as the control tactics we have described; and identifies the harms caused by VAW as violations of human rights because of their links to inequality. Although the European reforms instigated by this new definition are too recent to assess, they include greatly enhancing the minimum penalties for domestic violence crimes; charging sexual assault in domestic violence cases; charging historical abuse as a distinct offense; adding isolation, psychological abuse, and control to risk assessments; prosecuting offenders for stalking-like behaviors while the relationship is ongoing; emphasizing economic support and compensation for victims; and changing prevention strategies, including school curricula, to address intimidating and controlling behaviors as well as violence.

More immediately, the new definition changes how cases are investigated; risk is assessed; suspects are questioned, charged, and prosecuted; cases are presented; resources are allocated; protection orders are crafted and enforced; and programs for abuse offenders are counselled. Only by exploring the historical context of a particular episode can police distinguish an incident that is part of the hostage-like pattern of coercive control from a simple assault. Recognizing that partner abuse has more in common with a chronic than an acute problem helps police, prosecutors, and courts appreciate a victim’s persistent help-seeking and why her level of fear may seem out of proportion to the proximate assault as well as to reinterpret “staying” as a measure of entrapment rather than as a failure of will. Just as coercive control is ongoing, so must a broad array of support services anticipate an ongoing relationship with victims. Conversely, interventions must follow the pattern of abuse to all the social sites at which coercive control is being used, including the workplace, school, church, or shopping center.

The basis for criminalizing the harms caused by coercive control begins with a person’s right to be protected from physical harm (or the constitutional right of “equal protection” from partners as from strangers). Because its aim is subjugation and it proceeds by systematically violating our most basic rights and liberties, the offense also rests on the same “anti-subordination” principle at the basis of criminalizing other capture-crimes, such as hostage-
taking, that no one has a right to subjugate or entrap an independent adult. The reasoning behind this principle is that persons should be treated as ends in themselves whose individual sovereignty deserves our fullest protection. Of course, applying this reasoning to personal life is not as straightforward as it is when strangers are involved.

Adapting a coercive control model also shifts how we respond when women assault or kill their abusers, even when they are not under a direct attack. Set against the abuser’s attempts to quash a woman’s freedom, dignity, and autonomy, her retaliatory violence can be reframed as a liberating response to progressive entrapment similar to the response we would expect from a man who had been subjected to a similar regime of coercion and control. Indeed, given the fact that the harm inflicted on women by coercive control is hard to appreciate unless we grant them full status as persons, it is often helpful if police, prosecutors, attorneys, and counselors ask “how would we expect a man to react if someone took his money, forced him to undergo sexual inspection, and repeatedly insulted his dignity by ordering him about like a child?”
Summary

Why is sociobiology and the study of personality traits important? Simply put, if such correlative factors can be identified in an offender, then the subsequent potential for establishing a successful therapeutic resolution is increased. Of course, recognizing biologically or psychologically based pathologies does not mean society has the capacity to treat them. Successfully addressing a hormonal influence or devising an effective psychological cure for abusive behavior might accommodate society’s goals for rehabilitation. At present, however, this is far beyond the capacities of court-sanctioned batterer intervention programs. These programs tend to rely on generic group counseling and education models that are unlikely to succeed with offenders with the specific biologically or psychologically based profiles discussed here or whose violence is generalized far beyond intimate partners.

In addition, it may be possible to predict patterns of abusive behavior across generations based on the pre-existence of certain familial patterns or pathologies. Here as well, the complexity of these links makes it unlikely they will respond to the quick fix society hopes to find when it triages offenders to treatment rather than to arrest and punishment as preferred by the criminal justice system.

Despite these reservations, identifying individual, familial, and demographic risk markers can have an important role in prevention efforts as well as when and if policy makers decide to complement generic, behaviorally based offender programs with the more expensive, but perhaps more effective, individual and family treatments.

Reframing partner abuse as a pattern of coercive control can fundamentally change the discussion about its causes, dynamics, consequences, and appropriate societal response. For example, biological, personality, and familial models that may help explain a predisposition to violence are not designed to address the much more nuanced use of nonviolent, but no less oppressive, tactics used to intimidate, isolate, and control female partners, as well as to hurt them physically. Nor do these theories help us explain the
focus of control tactics on enforcing stereotypical gender roles. Indeed, we may speculate, coercive control provides a model of partner abuse as a “normal” pathology—that is, as a dynamic of power and control that may have far-reaching dysfunctional consequences, but that is rooted in societal and cultural norms such as those that govern male and female socialization and tolerate high rates of sexual and socioeconomic inequality.
Discussion Questions

1. What types of policies or policy changes would a psychologist concerned with batterer personalities advocate compared with a feminist who believes that society is basically supportive of male violence?
2. How should biology affect our policies and intervention strategies toward batterers?
3. Consider Johnson’s typologies or the Holtzworth-Munroe typology discussed in the chapter. Should we be intervening in common couple violence? Should we intervene differently in these types of incidents than in cases of terrorist violence?
4. How does adapting the coercive control model change how we think about and intervene in partner violence?

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1For further discussion, see Coates, Leong, & Lindsey, 1987; Costa & Babcock, 2008; Dutton, 1998; George et al., 2006; Hamberger & Hastings, 1986, 1993; Hotaling & Sugarman, 1986; Maiuro, Cahn, & Vitaliano, 1986; Margolin, John, & Gleberman, 1988; Ross & Babcock, 2009.


3See especially Buzawa, Hotaling, Klein, & Byrne, 1999; Finkelhor et al., 2009; Gilbert et al., 2009; Hotaling & Sugarman, 1986; Hurt, Malmud, Betancourt, Brodsky, & Giannetta, 2001; Short, 2000; and Widom, 1992.

4Exposure for the purposes of the survey included children who (a) were witnesses to a violent act; (b) learned of a violent act against a family member, neighbor, or close friend; or (c) received a threat against their homes or schools.

5Because these data are cross-sectional, there is no way to know the average rate of assault in these relationships. Undoubtedly, many are short-term and others are long-standing.
Part II The Criminal Justice Response
5 Selective Screening Barriers to Intervention

She sits upon the floor
Curled up in a ball
Remembering the fight
Her body smashed into the wall
Knowing she must go
Somehow she must leave
But she thinks it’s futile
After all, who’ll even believe?
So through the years she waits
Trembling, beaten, alone
Needing help but doubting anyone will believe her crying moans
Yearning to tell the police
To all them on the phone
Wanting to tell them all the things he has done,
That by their ignoring they have condoned.
Once sure, determined, and proud
She is now a shadow compared to the past
Now timid, shy, and unsure of how much longer she will last
So she sits upon the floor
Curled up in a ball
Trying to get help
But doubting anyone will care at all
Beaten, bruised, but undefeated
She waits for that one day
When it won’t be unsafe to go
And even worse to stay.
—Laura Buzawa
Chapter Overview

Domestic violence, in its extreme form, clearly should be addressed by criminal statutes. After all, the victim knows she (or, on occasion, he) has been attacked, the crime if reported to the police is relatively straightforward, and no detective work is needed to determine the suspect. In most cases, the offender remains on the scene, or if not, the victim can easily assist police to his probable location, or the police can wait a short time until he returns.

Despite this potential for intervention, until fairly recently, most victims did not seek police assistance, and when it occurred, it often was perfunctory and designed to divert the case from the criminal justice system. Many victims have misgivings about calling the police and, correctly or incorrectly, perceive their complaints will be dismissed or the police will be unable to prevent future violence. To the extent these perceptions exist and deter calls for assistance, they are reality.

To a large extent, the police antipathy toward domestic violence calls discussed in this chapter has changed over time as a new generation of officers and police administrators have matured. However, remnants of the traditional pattern of nonintervention linger. They typically are not present as official policy but are in the form of standard operating procedures that effectively limit intervention or officer cynicism that diminishes police willingness to intervene aggressively or to change dramatically street-level behavior.

In addition, there is now a new dilemma emerging. Both the UCR and NCVS reported that reporting for both domestic violence and intimate partner offenses did not significantly increase between 2004 and 2012 despite the increased funding and support given to criminal justice agencies for more aggressive intervention (Truman & Langton, 2014).

While such findings might suggest that a subset of victims may prefer alternatives to criminal justice intervention, it does not appear that increasing support of victim service agencies is necessarily the solution. We do know that victims who access services find that they increase their social support
(Hart & Klein, 2013). What is less certain is whether they are being fully utilized. Findings from the NCVS indicate that, despite the increase in publicly or privately funded agencies available to assist victims of violence, there was no significant corresponding increase in victims accessing these services from 2004 to 2013. While data separating out domestic violence and intimate partner violence victims from victims of violence overall are not available, only 10% of violent crime victims received assistance from a victim service agency (Truman & Langton, 2014).
Victim Case Screening
The Failure to Report Crime

The process of systematic reduction of agency involvement in domestic violence starts with substantial screening by victims who fail to file reports. This has long been a known phenomenon to sociologists who ascribe “relational distance” as a reason for lower domestic assault reporting rates compared with other assaults (Black, 1976). Relational distance refers to the relationship between the victim and the offender—intimate partners, in this case. We also now know that many victims, as a result of societal norms, fear of retaliation, or economic or psychological dependence, do not report domestic violence. These cases, for whatever reason, are therefore self-screened out of the criminal justice system without ever being known or recorded.

Estimates prior to the enactment of new domestic violence legislation were that only an insignificant number of victims (2%) ever called the police (Dobash & Dobash, 1979). Then, 14 years after passage of the first of the universal state statutes targeting domestic violence, a large-scale survey stated that only 7% of cases were reported to the police (Kaufman Kantor & Straus, 1990).

This is a key area of controversy when examining statistics regarding domestic violence, which has major implications. Currently the extent of victim reporting of such crimes depends markedly on the instrument used to measure nonreporting. Ongoing discrepancies might be partially explainable based on the different definitions of domestic violence and data collection we covered in Chapter 1. Official statistics might have a built-in bias and not notice unreported domestic violence incidents. This can artificially increase the percentage of potential victims who might call the police and for whom conclusions might be drawn. Other studies might use more culturally appropriate, if more difficult to aggregate, data and, in some cases, add extreme coercive control to their definitions of abuse. These studies consistently show higher rates of nonreporting. For this reason, we will discuss both official and nonofficial data.

Official statistics that are based on the NCVS are collected by the Bureau of
Justice Statistics and report a growing willingness to call the police. Until its revision in 1992, selected respondents were contacted by telephone and screened for interview by simply asking whether they had been the victim of a crime within the last year. If they answered “no,” the interview ended. Many domestic violence victims might have not viewed themselves as the victim of a crime or could not easily talk because the offender was present.

Data from the revised telephone survey during the period from 2003–2012 indicated that about 55% of domestic violence was reported to police. The percentages of intimate partner violence and violence committed by other family members was reported to police. What is interesting is that smaller percentages of violence committed by acquaintances (39%) and strangers (49%) were reported.

While there was a significant increase in victim reporting that occurred during the 1990s, the increase in reporting was not greater than for other assaults, which suggests that this increase may be part of an overall trend of victims to be more forthright in reporting crime, rather than a reflection of the impact of specific policy changes in the response to domestic violence (Felson & Paré, 2005). However, this appears to have leveled off in the last 10 years.

As can be seen from Table 5.1, 69.7% of serious domestic violence and 69.1% of serious intimate partner violence were reported to police in 2004. However, this figure actually decreased in 2012 to 60.9% serious domestic violence and 55.4% serious intimate partner violence, although it increased somewhat in 2013 to 65.3% and 60.4%, respectively. Overall, domestic violence reporting has remained surprisingly stable since 2004: 56.6% domestic violence and 56.4% intimate partner violence in 2004, to 56.9% and 57%, respectively, in 2014 (Truman & Langton, 2014).

These data suggest that there has been a leveling off of domestic violence reporting to police. There clearly has been a substantial increase in reporting since the 2% rate reported by Dobash and Dobash in 1979, indicating that the criminal justice system has made remarkable strides in its ability to support victims. At the same time, despite the continuing growth in public support for criminal justice intervention, there does not seem to be a continued increase in the willingness of victims to use the criminal justice system as a primary
resource, at least for immediate assistance. As we will discuss in later chapters, these data do not mean that the criminal justice system is necessarily ineffective, but do suggest the need to support alternative strategies for victim intervention and support.

Unofficial, but well-executed, studies consistently show much higher rates of underreporting. In one of the largest such studies, a 1985 sample of more than 6,000 households, the NFVS stated that only 6.7% of incidents were reported to the police overall and that only 14% of those experiencing serious violence reported the assault (Kantor & Straus, 1987; see also Dutton, 1988). This figure, although dated, is typical of the more than 100 studies examining reports to the police of conflicts. In these studies, the percentage of victims reporting a domestic assault is almost always less than 20% (Kaufman & Straus, 2000; also Hutchison & Hirschel, 1998; Kaukinen, 2002).
There naturally are limitations to official data sources. First, there are funding constraints. The primary problem of the current official survey source for victimization data, the NCVS, is that it costs too much to conduct in current economic times (Groves & Cork, 2008). Second, even with the 2010 revision, and into the foreseeable future, the survey relies on contacting participants via landline telephone numbers only. However, a high percentage of the population now uses cell phones, many exclusively—especially younger individuals who are at greater risk for all forms of victimization. In addition, people in the lower socioeconomic strata might not have any phones or be living in a shelter or on the street. Third, as mentioned, there is always the risk that a respondent denies victimization because the offender is present when the survey call is made.
Finally, many smaller studies such as those in specific communities reveal striking dissimilarities among people who are victimized, including recent immigrants who state that they fail to report because of language difficulties or for cultural reasons, including disapproval within their community and fear of deportation of the abuser. When these data are not shown on official surveys, we are unclear the extent to which substantial underreporting exists.

In other words, individual definitions of an assault might be dependent on whether the behavior is considered part of a study on how people resolve conflict, such as the “unofficial” but widely followed NFVS, as opposed to an individual’s experiences with self-defined crime, as in the officially sponsored NCVS. The discrepancy between official estimates showing more than half of cases being reported and private studies showing only a small percentage of reports might at first seem trivial, but actually it is highly significant. If the police truly receive calls from fewer than 20% of abused women, then these cases are the exception, and the criminal justice system, although an important element of societal control, might realistically be relegated to the periphery of measures of social control.
Who Reports and Who Does Not

Studies analyzing official data have now released the demographics of reporters. One analysis of the Violence Against Women Survey reported the following information:

- Women were more likely to report than men, but this was largely confined to the Black community.
- Victims who were drinking or using drugs were less likely to report.
- Older victims were more likely to report.
- Black female victims reported more frequently (70%), whereas Black males were least likely to report (47%), and White victims both female and males were almost equally likely to report (58%), whereas reporting rates for Hispanics were unusually high, 86% for men and 66% for women.
- Victims where the offender used a weapon had higher rates of reporting.
- If the victim was injured, she or he was more likely to report.
- Neither education nor income was related to the likelihood of reporting (Felson & Paré, 2005).

It is known that the Black subculture historically disapproves of law enforcement involvement because of cultural norms and expectations and their dislike for police intervention (Bent-Goodley, 2001). Furthermore, studies report similar biases against reporting crimes among other subpopulations, including Hispanics.

For different reasons, including distrust of the motives of the police, community pressure not to involve outsiders, and fear of gaining the attention of immigration authorities, the number of calls might be depressed in groups ranging from Appalachian Whites to recent immigrants.
Why Has Victim Reporting Increased?

We know that in the past many victims feared physical or economic reprisal if they reported domestic abuse (Dobash & Dobash, 1992; Frieze & Browne, 1989; Hanmer, Radford, & Stanko, 1989b). These might involve additional beatings, stalking, and threats of loss of income or even of losing children because of retaliatory reporting of child neglect or substance abuse.

That sense of innervating fear might be dissipating, and it has been argued that women’s fear for their safety is more likely now to motivate them to contact the police rather than to deter them (Felson, Messner, Hoskin, & Deane, 2002). This coincides with the NCVS finding that only approximately 12% of women and 5% of men gave this explanation for nonreporting (Catalano, 2007).

As we will describe in later chapters, most jurisdictions now aggressively enforce domestic violence statutes. Paradoxically, such aggressive enforcement might deter some remaining victims from reporting. We know that women often omit information about abuse in discussions with relatives and friends for fear of them taking action that the victim cannot later control (Dunham & Senn, 2000).

It would seem logical to infer that many victims would be even more reticent to contact police when their control over agency action is far more limited. A key to recent reforms is that police now often provide an aggressive response to domestic violence assaults by arresting offenders. Although this addresses the immediate risk to the victim, it also effectively removes her control. As we explore in depth later, this trend toward mandatory arrest policies, especially when coupled with a highly publicized policy of aggressive case processing by prosecutors and the judiciary, might deter some victims.

This is evidenced by responses to the NCVS survey where the most common reason given for not reporting domestic violence is the belief that it is a “private or personal matter” (Catalano, 2007). It is interesting that almost twice as many men as women gave this as the reason. Furthermore, many victims are concerned with protecting the offender. The most recent NCVS
data reported that 14% of women and 16% of men cited this as their rationale for not reporting (Catalano, 2007).

Victim characteristics also differentially affect their reaction to criminal justice intervention. Although their past experiences with the criminal justice system might provide a “rational” basis for future reporting behavior, other life experiences might affect their likelihood to report new violence. These include prior history of victimization both as a child and as an adult.

Victims who experienced violence as a routine part of their lifestyle might be prone to accept violence and, hence, are less likely to report abuse. Some, especially those raised in families where domestic violence was an ever-present reality, might not perceive physical violence as a crime or even as abusive. A domestic assault in that context might not even be thought of as a crime or threat to personal safety (Straus, 1999). Hence, although acts such as “slapping,” “kicking,” “pushing,” or “shoving” are obviously legally termed an assault, it might remain problematic for many victims to consider them worth reporting to the police (Ferraro, 1989a; Langan & Innes, 1986; Straus, 1999).

Even if victims recognize that domestic violence is unacceptable, many might still believe it is purely a personal or family problem. This also helps to explain why much higher rates of assaults by former partners are reported to police compared with assaults by current partners. In one study, the NCVS found former partners reported 25 times more assaults in the previous year compared with current partners (Bachman & Saltzman, 1995). Although some differences are to be expected as victims disproportionately leave abusive relationships, the extent of the disparity suggests some suppression of victim reporting in cases of ongoing relationships. In addition, recent research suggests that victim attitudes and belief systems toward domestic violence will impact their reporting. In a survey of high school and university students found that beliefs and attitudes toward domestic violence will likely impact their willingness to report (Sulak, Saxon, & Fearon, 2014). Specifically, the more likely the respondents disagreed with statements such as, “Domestic violence is a private matter and should be handled in the home,” the more likely the individual would be to report to police (Sulak et al., 2014, p. 170).
It also is possible that many victims might seek help from sources other than the police, including medical professionals, social welfare agencies, and religious institutions. Invoking the law is the most formalistic type of help-seeking behavior. As researchers and advocates, we might consider this the preferred victim strategy. However, many victims might desire informal approaches, or at least those that do not involve the police. Indeed, despite widely adopted reforms, many victims are still unwilling to report their victimization to the police and seek assistance from family, relatives, and friends (Hutchison & Hirschel, 1998; Kaukinen, 2002).

Victims also might take into consideration the various costs—economic and emotional—of legal intervention. They might believe their complaint will not be taken seriously; family, friends, or relatives might blame them for their victimization; or they might lose custody of their children—a fear that is not irrational given increasingly aggressive intervention by child service agencies into “troubled families.” There are personal costs to victims in terms of time, emotional energy, and stress that are associated with the criminal justice process. In addition, victims might believe reporting to the police jeopardizes their ability to work on improving an obviously already troubled relationship.
Does Social Class Affect the Decision to Report?

There might be a different economic profile of reporting compared with nonreporting victims. It has long been theorized that social factors cause a far greater percentage of unreported violent crimes among intimates to exist among the middle and upper classes. For this reason, the police disproportionately saw domestic violence in lower socioeconomic groups. Although the extent of underreporting has reduced markedly over time, studies have reported that poor women were more than twice as likely to report abuse to the police as their higher-income counterparts (Bowker, 1982; Hamberger & Hastings, 1993).

Researchers have advanced many explanations for past nonreporting by the middle and upper classes. Black (1976, 1980) more fully attributed this to the then prevalent model of a single-income family resulting in the economic dependency of middle-class women. Black (1980) stated this succinctly:

[A middle class white woman is more likely than a lower class black woman to live in a condition of dependency. . . . She is more likely to live on the earnings of her husband, in a dwelling financed by him . . . “a housewife.” . . . Such a woman is not readily able to leave her situation one day and replace it with an equivalent the next. . . . Frederick Engels long ago pointed to the relationship between “male supremacy” and the control of wealth by men: “In the great majority of cases today, at least in the possessing classes, the husband is obliged to earn a living and support his family, and that in itself gives him a position of supremacy without any need for special legal titles and privileges. Within the family he is the bourgeois, and the wife represents the proletariat (1884, p. 137).” (Black, 1980, p. 125)

From this perspective, Black (1980) concluded:
It is therefore almost inconceivable that a totally dependent woman would ask the police to remove her husband from his own house. If he beats her, she is unlikely to invoke the law . . . middle class people are unlikely to call the police about their domestic problems. (p. 125)

An alternative to Black’s (1980) hypothesis was suggested decades ago in terms of social status rather than economic chains of dependency. Although domestic violence seemingly existed in all classes, violence in the middle to upper classes was more likely to be diverted to doctors, the clergy, or other family members (Parnas, 1967; Westley, 1970). They theorized that these victims preferred to bring their problems to social equals rather than to the police, who were presumed to be from a lower working class.

This dynamic, although an interesting theory, might again be a relic of past times. There has been tremendous growth in the amount and range of services available at no cost to victims. Furthermore, Black’s (1980) observation at the time was a powerful predictor of reporting. However, modern empirical research both conducted officially and by private research has failed to substantiate this theory. It is entirely possible that the advent of dual-career families and the realistic possibility of getting child support and enforceable restraining orders has eliminated any such class distinctions.

Moreover, this trend has occurred in other countries at the same time. A recently published study using Canadian national data found that income, education, and income status did not seem to impact a victim’s decision to report (Akers & Kaukinen, 2009). Instead, they found that living in a cohabiting relationship, having children, and experiencing severe injuries were the key factors affecting reporting.

By understanding that the overall pattern of social class distinctions might no longer be valid, it also might be true that aggregate data could mask some important predictors of who calls the police. Among poor victims, some victims who lack an extended family structure or close ties to community organizations might find their only realistic source of immediate help is to call the police. However, a subset of poor women that might be least likely to report are poor women who have had prior experiences with the criminal
justice system for their own criminal behavior, including substance abuse. Furthermore, substance abuse is far more prevalent among poor victims of domestic violence and often starts after the abuse begins (James, Johnson, Raghavanm & Woolis, 2004; Renzetti, 2009).
Bystander Screening

As a result of victim screening, calls from nonparticipants including neighbors, friends, relatives, and bystanders have become one of the primary methods by which social agencies are made aware of domestic violence. Such calls might, however, provide their own differential screening. They are not necessarily motivated by the seriousness of the assault but by the disruption to the reporter’s activities as a result of noise or property damage, morbid curiosity about the incident, to see how the police would react, or because, as relatives of the victim, they really care.

Bystanders also implicitly screen cases by ethnic group and class and might explicitly screen them on the basis of marital status, often implicitly allowing married couples to settle such issues privately regardless of overheard violence. When outsiders observe disputes, these couples often become known as the neighborhood “problem family” and the disputes as a simple “family disturbance” or as an expected neighborhood occurrence. Such incidents were far less likely to elicit calls to the police than those perceived to be threats to the public order.

In contrast, cases involving girlfriends and boyfriends or former cohabitants more likely involve incidents outside a residence that are more likely to be observed and reported than those involving married or currently cohabiting adults. The significance of witnesses and bystanders in reporting acts of domestic assault also might increase the conception of the problem as being almost exclusively found among the lower socioeconomic classes. Because of urban congestion in poor neighborhoods, such cases are more visible to neighbors, are more likely to receive attention, and therefore might be the source of a subsequent call to the police.

The net effects of victim and bystander call screening are threefold. First, for whatever reason, criminal justice agencies disproportionately see indigents, especially in certain minority groups and urban neighborhoods. As a result, both they and the public tend to view domestic violence primarily as a problem for these groups. This conception makes it easier to ignore, as is done with many social pathologies of the poor. If the public realized the
extent to which all social classes are affected, to at least some degree, a more effective response might be demanded.

Second, the most severe cases of domestic assault might not necessarily be the ones to reach the criminal justice system. Instead, those most disruptive to public order and thereby known to others outside the family are disproportionately reported. For this reason, disclosure rates do not seem to be closely related to incident severity—at least as measured by injury to the victim. Although Kaufman Kantor and Straus (1990) reported that 14.4% of incidents involving major violence were reported to police compared with 3.2% of minor violence, Pierce and Spaar (1992), basing their study on comparative police and emergency room data, reported that the most severe cases of violence resulted in calls for medical services rather than for police referrals. Few of these were subsequently reported to the police as victims refused to cooperate or the physicians did not recognize the underlying problem.

Third, regardless of the study or the statistical techniques used, it seems that a substantial unfilled potential demand exists for community services.
The Police Response

There are two primary characteristics to the classic police response to domestic violence. First, the police did not desire intervention in domestic violence incidents. Second, there was a strong, and often overwhelming, bias against the use of arrest in cases of domestic violence.
Police Screening

In addition to the failure of victims and bystanders to report domestic violence, police departments as organizations have historically limited reported domestic violence cases. One primary method used to reduce the number of police responses to domestic violence was call screening. To maximize allocation of scarce resources and to avoid responding to low-priority calls in times of high demand, many police departments make call screening a routine practice. Call screening is an essential practice in many departments allowing them to assign priorities to all incoming calls requesting police services. Those with low priorities, usually including simple assaults, do not receive authorization to dispatch a police unit until a unit becomes available, if it ever does.

The importance of call screening is that it operates as a filter, effectively determining what the criminal justice system views as a problem. In an organizational sense, those citizen problems that are screened out simply do not exist. This action, although seeming unbiased, poses a severe challenge to the historic treatment of domestic calls.

Why has this supposedly neutral standard operating procedure disfavored victims of domestic violence? Call screening in most urban departments occurs only during peak periods of demand for service—typically weekends and nights. These periods are an exact overlap to when domestic violence calls are most likely to occur.

In a more covert manner, call screening has had the effect of discouraging certain callers from demanding a police response because during the busy night hours, such callers often have been referred to social service agencies, which are typically closed during the weekends. If police intervention was still requested, dispatch would occur only when time permitted, often after the offender had left, preventing any real chance of an arrest.

Call screening might simply be considered an adaptive organizational response to help overworked organizations limit environmental demands, which is functionally similar to triage in a medical setting. Decisions
concerning the immediate dispatch of a unit are primarily predicated on the dispatcher’s long-distance determination that commission of a felony is imminent. Although such an explanation seems both rational and unbiased, in practice, it is neither (Manning, 1988). When responding to typically ambiguous and volatile domestic violence calls, there is always the possibility of a negative interaction that prevents an effective response.

Regardless of the reason, studies in the 1980s suggested that call screening greatly limited police intervention in cases of domestic violence. Pierce, Spaar, and Briggs (1988) observed that 50% of the 3.2 million calls for police assistance in Boston were for service calls, including approximately 80,000 for “family troubles.” Police dispatchers, however, reported an additional 24,400 calls that could have been included in that category but were reclassified by the police dispatch to a “no response” status.

One study in Great Britain reported a variant on this theme. Officers would be actually dispatched, but if they heard nothing from outside the residence, they would exit the premises and report “all quiet on arrival” or “no call for police action,” thereby effectively screening the case from the system with virtually no police commitment of resources. The author of this study reported that fully 60% of all domestic calls were never processed past this point (Sheptycki, 1991).

The negative effect of call screening also has been cited in many other studies during the 1980s. For example, Ford (1983) reported that in Marian County, Indiana, between two thirds and three quarters of all domestic violence calls were “solved” without officer dispatch. The reasons for such a high rate of case disposal might be related to the known tendency of police personnel to denigrate domestic offenses. Consequently, a call that seemed to be a serious felony assault with a dangerous weapon could merely be termed a “family trouble” call, afforded very low priority and often effectively was screened out.

Clearly, call screening in the past presented serious ramifications. An ostensibly unbiased method of allocating resources effectively eliminated many domestic violence calls. The department’s failure to respond or the delay of an officer’s dispatch could be so lengthy that the call’s emergent nature became lost, the threatened violence had already occurred, or the
offender had left the scene (Ford, 1983). Victims often received no attention from police officers who might have prevented new injuries or have officially documented past criminal activity. The failure to respond to complaints denied the victim’s status, discouraging her from reporting further abuse and perhaps encouraging an assailant to believe abusive conduct was tacitly condoned.

When police intervention occurred, it was criticized as inappropriate. In the context of domestic violence, police response had long been viewed as being perfunctory in nature, dominated by the officer’s overriding goal—to extricate him or her from dangerous and unpleasant duties with as little cost as possible and to reinvolve himself or herself quickly in “real” police work.
Why Police Did Not Historically Consider Domestic Abuse “Real” Policing

To understand how police responded when a call was screened in, it is imperative to know how officers perceived their own role and mission as well as their organizational culture. The police culture clearly prefers law enforcement functions in which prospects for action and resulting arrest are higher. In contrast, they almost uniformly dislike non–law enforcement tasks. Officers perceive their job in the legalistic sense: as law enforcers. As a result, although laws and department policies have historically provided the officer with extensive guidance concerning the technical basis for deciding to make an arrest, they generally did not formally address order maintenance. The fact, of course, is that police officers have always had a variety of non–law enforcement tasks in which an arrest clearly would be inappropriate or at least highly unlikely. These duties include traffic control, performing rescues, providing transportation to hospitals, and delivering subpoenas and warrants. Police officers also performed a variety of tasks in low-level dispute resolution such as toning down loud parties, taking care of the drunk and homeless, and intervening in most family disputes. In these tasks, regardless of whether an assault has been alleged, arrest powers were only infrequently used—a tool of last resort. The dichotomy between the reality of the police experience and the mythology of the police officer as crime fighter and law enforcer created by the occupational culture has been repeatedly cited. Researchers long have noted that arrests for any crime are rare for officers even though symbolically important in an occupation in which the daily activities tend to be dull and repetitive (Berk & Loseke, 1980–1981; Reiss, 1971; Van Maanen, 1974).

Regardless of reality, it has been a truism that police were socialized from their earliest training into a culture that did not highly value social work. A new recruit, to be an accepted member of the police or as “one of the boys,” was required to adopt this occupational code. Key elements of this cultural norm included the protection of other officers, admiration of a “good pinch” or a “good collar” by a fellow officer, and explicit acceptance of the same normative framework as other officers as to what constitutes serious crime.
The bias against social work still existed among law enforcement as recently as the late 1990s (Gaines, Kappeler, & Vaughn, 1999; Kappeler, Blumberg, & Potter, 2000; Manning, 1997).

The importance of police self-image, therefore, lays less in reality than in the efforts made by many police officers to conduct themselves in a manner consistent with this self-image. As a corollary, most officers judge each other’s competence on the basis of performing crime-fighting tasks, such as the apprehension of criminals. They simply do not value highly or even see as positive those instances of successful intervention in private disputes (Stanko, 1989). The impact of this occupational code is important to understanding police practices. Obtaining and keeping informal prestige or status with peers was, and still is, imperative to most officers. As stated in the following manner: “His most meaningful standards of performance are the ideals of his occupational culture. The policeman judges himself against the ideal policeman as described in police occupational lore and imagery. What a ‘good policeman’ does is an omnipresent standard” (Manning, 1978, p. 12).

This attitude is reinforced in many departments where rank-and-file officers have maintained a closed, internal culture with strong antipathy toward the public at large, toward politicians, and often even toward their own command (Manning, 1978; Punch, 1985; Radford, 1989). Using this frame of reference, responding to domestic violence calls had until recently little occupational value to an officer. Many officers trivialized such offenses, and arrests were typically infrequent. Because the offender was known and domestic violence was a minor misdemeanor offense, any arrest that resulted would be considered a “garbage arrest,” not worthy of recognition (Stanko, 1989).

However, this did not adequately explain why most police still considered responding to domestic violence calls among their worst duties. Instead, it is necessary to examine additional factors that have reinforced negative police attitudes.
Organizational Disincentives

Police departments historically have provided few formal organizational incentives for good officer performance in responding to domestic violence assaults. To the extent that civil service and not the whim of superior officers affected an officer’s chances for promotion, typical practices measured easily quantifiable skills, including arrest rates and subsequent clearances or convictions. Similarly, written tests for promotion still heavily emphasized textbook knowledge of law enforcement tasks such as substantive criminal law, criminal procedure, and departmental policies regarding arrests and case documentation. Meanwhile, at a minimum, officers were expected to incur no blemishes on their record by exposing themselves or the police department to civil suits or citizen complaints.

Perhaps inadvertently, these evaluation criteria provided a major disincentive for performing domestic violence and sexual assault tasks. If an officer spent the necessary time handling a domestic assault case, assisting a victim with referrals to shelters and making follow-up calls, he or she decreased the chance for responding to a call involving a major felony arrest. From an organizational perspective, the officer used his or her time unproductively.

Even worse, by taking an activist approach, the officer further increased the likelihood that the offender, or at times even the victim, might file a complaint based on claims of overzealous or overbearing police conduct.
Are Domestic Violence Calls Extraordinarily Dangerous to the Police?

Officers still overwhelmingly cite their extreme danger when responding to domestic violence calls. They often are vaguely aware of statistics that demonstrate that officers responding to disturbance and assault calls often are killed or injured. Of more impact are the frequently heard “war stories” circulating in most departments recounting incidents in which a victim, whom officers have sought to help, has turned on and bit, slapped, hit, stabbed, or even shot the officers as they tried to arrest the attacker.

Until the mid-1980s, the FBI actively reinforced such fears by publishing statistics reporting the category of “responding to disturbance calls” as responsible for most officer deaths (Garner & Clemmer, 1986). Not surprisingly, then, both police and family violence researchers have emphasized the potential danger to officers in handling domestic cases (Bard, 1970; Parnas, 1967; Straus, Gelles, & Steinmetz, 1980). Similarly, police training has certainly emphasized the prospects of danger. With few exceptions, training programs have emphasized the inherent danger of the call to the police. They also make frequent exhortations to the effect that if an officer does not follow standard procedures, he or she dramatically increases the chance of injury or death. Police training placed its first priority on officer safety, rather than on the protection of battered women (Buzawa & Austin, 1988; Eigenberg, 2001).

However, the methodology first used in the composition of the FBI’s UCR statistics was flawed and overstated the real rate of police injuries and deaths related to domestic violence efforts by approximately three times. This is because the category used for disturbances included gang calls, bar fights, and any other general public disturbances, as well as responding to domestic disturbances. Although the FBI-reported data now separate fatalities resulting from domestic homicides, they continue to include the broader category of disturbances when reporting injuries. Therefore, although data for 2005 indicate that 30.5% of assaulted officers were assaulted in a disturbance call, we still do not know what percentage of these calls were domestic in nature.
The figures on deaths of officers do demonstrate that handling domestic violence might be dangerous, even if not as dangerous as initially thought. The FBI/UCR reports of the causes of officer deaths are probably far more accurate than those for injury. Deaths of sworn personnel during the course of duty are obviously going to be very well screened. The last available statistics provided by the FBI are for calendar year 2005. During that year, 5 of the 55 officer deaths were in response to domestic incidents. Although individual annual statistics varied, in the 10-year period between 1996 and 2005, there were 59 domestic-related officer homicides out of the 575 total slain officers. Significantly, the overall fatality trend did not seem to be affected either by the growing police willingness to make domestic violence arrests or by the greatly improved domestic violence training now provided to officers.

There seems to be a consistent trend of approximately 10% of overall officer deaths in recent years related to responding to domestic calls. However, unlike homicides, data on injuries resulting from domestic violence incidents are not separated out from general disturbances such as bar fights. Part of the reason for the high numbers of domestic violence–related officer injuries is that there is simply a high number of domestic violence calls, especially when full enforcement has become the norm. Consequently, a high percentage of officer time is spent in responding to domestic calls. It is not surprising, then, that such activities do constitute one of the highest sources of officer injuries.

Given the disproportionate amount of time that officers spend responding to domestic violence calls compared with other incidents in the disturbance category, responding to domestic violence calls might not be as intrinsically dangerous as other police activities. Nevertheless, many officers have perceived physical risks dramatically increasing when they abandon neutrality to make an arrest. Therefore, regardless of reality, the effect of such perceptions is clear: Continued fear of death or injury has reinforced officer dislike of handling domestic calls. When officers respond to a domestic violence call, not surprisingly, many emphasize a defensive-reactive strategy, with a foremost priority on protecting their own safety. Under such circumstances, it is not surprising that innovations in police responses or a more activist approach were discouraged unless mandated by law or an actively enforced and monitored policy.
Structural Impediments to Police Action

Traditionally, there were several structural impediments to an aggressive police response. One severe handicap had been long-term statutory restrictions that gave officers the authority to make arrests for misdemeanors only with prior issuance of an arrest warrant. In effect, this required a prior action by a magistrate or justice of the peace or allowed action only in those relatively few cases in which a misdemeanor was committed in the officer’s presence. This contrasted with statutory authorization of warrantless arrests in felonies, for which an officer needed only probable cause to believe that the suspect had already committed the crime. Domestic violence until recently was almost inevitably characterized as simple assault, which is a misdemeanor.

Until domestic violence statutes were first enacted in the 1980s, police officers were legally unable to make warrantless arrests unless the violence continued in their presence or a previously existing warrant had been issued. Officers could rarely rely on warrants because, at that time, police information systems were usually nonexistent or at best rudimentary, meaning that officers did not typically know whether there was an outstanding warrant when they responded to a violent family. Information systems and record keeping for dispositions short of a conviction frequently did not exist in any acceptable, readily accessible form. Therefore, when there were new convictions, incidents of family violence or disturbances were not systematically recorded by police departments so that they could track repeat offenders or victims (Pierce & Deutsch, 1990; Reed, Fischer, Kantor, & Karales, 1983).

Second, a department’s priorities might have effectively discouraged arrests for a low-status misdemeanor with relatively poor chances of conviction (Buzawa & Buzawa, 1990). In this context, officers often believed that victims of domestic assault are inherently unreliable and unpredictable and, as a generality, do not make arrests based merely on complaints of assault. Although Stanko (1985) believed the unreliability of victims was simply a self-serving, if pervasive myth, Sanders (1988) argued that such claims do in fact have legitimacy. The evidence of discrimination is not clear, or is at least
inconsistent, because at least some early studies of police practice demonstrated that police did not differentiate domestic violence victims from equally problematic complainants for other types of crime (Sanders, 1988; Sheptycki, 1993).

Third, some have argued that failure to make domestic arrests simply validated the observation that the police culture does not care about victim rights—especially when the victim is a disenfranchised woman, a woman of color, or when she complains of domestic abuse (Ferraro, 1989a; Stanko, 1985).

Clearly after the initial reforms were enacted, police behavior did not automatically change. Early studies after initial reforms favoring arrests, where appropriate, demonstrated that even if departmental policy officially required officers to adopt presumptive arrest policies, officers circumvented such a policy, even to the extent of implicitly defying the orders of their police chief (Ferraro, 1989a). From a less critical perspective, many officers whom we have interviewed over the years seem to believe sincerely that arrest is not always the appropriate solution and that violence could increase if they made an unnecessary arrest—even if that was the policy favored by their department.

Finally, the sheer volume of domestic violence cases has been cited as creating an organizational challenge to understaffed and overworked departments. As noted earlier, disputes and disturbance calls as a class are the largest category of calls that police receive. They tend to occur at night or on weekends when criminal activity and traffic responsibilities simultaneously invoke their greatest organizational demands. Apart from other factors we have noted here, it is not surprising that recurrent spouse abuse calls received lower response priority, at least absent of knowledge of past violence or imminent threats to a potential victim’s life.
The Classical Bias Against Arrest

The foregoing factors contributed to the perception that police disproportionately discriminated against domestic violence victims by failing to arrest. Indeed, until the later 1990s, literature reporting data from many locations seemed to document that relatively few domestic violence incidents resulted in arrest, especially if not accompanied by serious injuries (e.g., a nonaggravated assault).

To understand the impact of this, we need to recognize that the primary coercive sanction available to police is to make an arrest, and this power is predicated on the officer’s belief that there is probable cause to support that a suspect has committed a crime. Therefore, it might be assumed that legal variables, such as the strength of the case, should predominate in the arrest decision. In domestic violence cases (as in all cases of misdemeanor assault), instead, there was, and in some departments remains, a persistent, if now unwritten, bias against arrest. Within this context, the decision to arrest remains problematic, dependent on victim and offender characteristics, situational determinants, and patterns of decision making that are not consistent among individual officers or police organizations.

Legal variables, such as finding probable cause that all elements of a crime have occurred, are prerequisite to all but abusive use of arrest powers. Domestic violence crimes, however, lack common barriers to charging a defendant. Unlike many other offenses, the perpetrator and location of a domestic assault is known, injuries or potential danger are often obvious, and at least one witness—the victim—is usually available. Therefore, if we were to view this solely as whether the officer were to find probable cause, a high arrest rate in domestic cases should be expected. However, historically, the closer the relationship between offender and victim, the less likely an arrest.

Empirical measurements of arrest rates have varied depending on the crime’s definition and the officer’s estimates of probable cause. Regardless of measurement techniques and the definitions of the crime chosen, arrests in incidents of domestic violence were infrequent until the 1990s, with estimates varying from 3% (Langley & Levy, 1977), to 4% (Lawrenz, Lembo, &
Schade, 1988), to 7.5% (Holmes & Bibel, 1988), to 10% (Roy, 1977), and to 13.9% (Bayley, 1986).

The bias against arrest crossed national boundaries. Although most empirical research analyzed US arrest practices, other studies confirmed this practice. For example, in one Canadian city, London, Ontario, prior to a new mandatory arrest policy, the police charged domestic violence assailants with the crime of assault in only 3% of the cases that they encountered. This was despite the fact that in 20% of the cases, victim injuries were sufficient to have police advise the victim to seek medical attention (Burris & Jaffe, 1983). Similarly, studies in Great Britain (Freeman, 1980; Hanmer, Radford, & Stanko, 1989a), the Netherlands (Zoomer, 1989), Australia (Hatty, 1989), and Northern Ireland (Boyle, 1980) consistently have observed and criticized police refusal to make arrests in domestic violence cases.
Prosecutorial Screening Prior to Adjudication

Once a victim’s case enters the judicial system, barriers to further prosecution continue. We discuss this not only for its historical significance, but also because this is still the response in many jurisdictions.
Traditional Patterns of Nonintervention by Prosecutors

Evidence suggests that although the responsiveness of prosecutors has been growing, there remains a bias to drop cases in many jurisdictions. Unlike the national surveys on reporting domestic violence to police, there is a lack of research examining overall prosecution rates. A recent review of research conducted in 26 jurisdictions addresses prosecution rates. These researchers reported a rate as low as 4.6% in Milwaukee in 1992 and as high as 94% in Ontario, Canada in 2005 (Garner & Maxwell, 2008).

Prosecutorial and judicial screening might occur because of the rapid changes in law enforcement. As discussed earlier, there has been a massive and steady increase since the mid-1980s. If not carefully managed, the interplay between a police department’s new pro-arrest policy—and, especially, mandatory arrest policy—might have unanticipated consequences. Domestic violence statutes with mandatory and presumptive arrest requirements have caused a rapid reform in police practices and have markedly increased the number of cases forwarded for prosecution. The prosecutor’s office, however, has always had far more legislative discretion than police and has always had fewer constraints on their decisions (Miller, 2005).

Furthermore, prosecutors’ offices do not receive increased funding when specific policies or mandates change. Hence, they typically do not receive the additional resources needed to prosecute a growing caseload. The net result is that the additional workload of domestic violence cases has competed for basically the same limited amount of judicial and prosecutorial time. Since prosecutors often have far fewer constraints on their decision-making ability, they retain discretion as to how to respond to their increasing workload.

The historic response of prosecutors to cases of domestic violence has been similar in behavior to that of the police—using allegedly impartial screening techniques to dismiss the majority of cases brought to them prior to adjudication. Prosecutors did this both by outright case dismissal and by dramatically limited charges after police filed initial charges. The effect of
this prosecutorial screening has been severely criticized as subverting potentially more aggressive police responses. It is easy to assume that at least in the past, prosecutors might not have taken domestic violence cases seriously when multiple charges of felony battery and specific domestic violence offenses were reduced to generic, simple assaults, which in turn became quite amenable to a judicial dismissal. When police were motivated to make domestic violence arrests a priority, their efforts—and ultimately their commitment—could easily be undermined by prosecutorial inaction. To understand contacts between the prosecutor’s office and the victim, it might be important to review the features of prosecutorial organization. We believe several key aspects are of significance.
Prosecutor offices are organizationally committed to maintaining decision-making autonomy. When a victim enters a prosecutor’s office, she often is confronted with an organization that has its own bureaucratic goals and operational norms. Victims might not realize that the self-declared primary purpose of the prosecutor is to enforce society’s rights to sanction activities harmful to the public order by punishing offenders and deterring future misconduct. Because its primary mission addresses societal goals, victims have no right to insist on prosecution. Furthermore, the decision of which charges to advance and which charges to dismiss or settle do not require victim consent.

This might seem intuitively obvious, as prosecutorial discretion—the ability of the state’s officer to choose to charge, prosecute, or settle criminal cases—is a key feature of American jurisprudence. It is doubtful, however, that most victims understand this fully, and they erroneously tend to expect that the prosecutor’s staff operate primarily to redress their particular crime(s). This creates potential barriers between the victim and her nominal allies. Their differing interests, unless carefully managed, provide an environment in which distrust and victim disparagement inevitably lead to high rates of voluntary dismissals.

One British study reported that the entire experience was extraordinarily frustrating to victims who could not understand what was happening or why some cases were dropped, others prosecuted, and still others continued without a concrete resolution. This has contributed to extremely high rates of voluntary case dismissal (Cretney & Davis, 1997).
The Reality of Budgetary Pressures

In previous editions of this book, we assumed that prosecutorial screening had become less of an issue over time. We no longer are certain this is the case. Based on anecdotal, but we believe real, evidence, budgetary pressures have caused many officers to increase the proportion of cases screened.

As with virtually all public service agencies, prosecutors typically operate with fiscal constraints and limited budget flexibility. They also are unlikely to be able to add resources in response to any crisis or new unfunded mandate. This was, of course, compounded by the virtual collapse in 2008 and 2009 of many states’ financing. Agencies whose funding was primarily based on individual and corporate income taxes declined along with net incomes, sometimes by 20% to 30%, in a remarkably short period of time. The cumulative effect of budgetary pressures was to force the lead prosecutor to allocate his or her scarce resources selectively. Special attention is always reserved for homicides of crimes of a heinous nature, drug cases, and other high-profile cases such as official corruption, cases involving public figures, and more recently terrorist offenses. Other crimes might then be prosecuted to the extent the prosecutor believes discretion is appropriate if the cases cannot be plea-bargained or otherwise rapidly disposed.

In this context, responding to a rapid influx of domestic violence prosecutions has proven especially problematic. Reformed police practices undoubtedly have increased the number of cases forwarded for prosecution. The prosecutor’s office often has been given no additional staffing and is already straining to respond to massive numbers of drug offenses, gang violence, and other violent crimes. The net results compete with the same limited amount of prosecutorial time. This has created a tremendous increase in a prosecutor’s workload.
Prioritizing Prosecutorial Efforts to Targeted Offenses

By this mechanism, the magnitude of drug cases has, in turn, been compounded by the longer sentences imposed by courts and by federal and state sentencing guidelines, removing discretion in judicial sentencing—incidentally leaving almost 1 in 100 adults in the United States in prisons or jails, which is the highest incarceration rate in the world (Pew Center on the States, 2008; Sabol & Couture, 2007). An unexpected, but predictable, consequence of such legislation has been that many drug defendants have little incentive to plea-bargain because their sentences cannot be substantively reduced. Whatever their other merits, such constraints have diminished the ability of an assembly line process that previously had rapidly disposed of more than 90% of criminal offenses. In 1989, a report of the Conference of Chief Judges of the nine most populous states commented that lawmakers and officials who had adopted such policies failed to consider the impact of the huge flood of cases on the courts. This report warned of either an imminent or existing caseload crisis or of a possible breakdown of the systems if solutions were not found (Labaton, 1989).

Unfortunately, in the 21 years since that report, the drug caseload has grown even larger, now impacting family courts as well as traditional criminal courtrooms. Since the September 11, 2001, terrorist attacks, we now have many new crimes, including breaches of security or other terrorism-related crimes, as well as computer and Internet-based crimes, which also are adding to the prosecutorial workload.
The Impact of These Constraints on the Prosecutorial Response

A critical problem for prosecution of domestic violence crimes is that, until recently, many prosecutors have not perceived that their practices might have screened out legitimate domestic violence cases (Belknap, Fleury, Melton, Sullivan, & Leisenring, 2001; Weisz, 1999). Under these circumstances, fiscal crises from an organizational perspective became a justifiable reason not to respond aggressively to domestic violence.

Under this kind of pressure, it is most surprising that prosecutors and their staffs have attempted informal strategies to reduce domestic caseloads by outright dismissal or other diversions from the criminal justice docket. Domestic violence cases are typically characterized as being in the category of less-favored misdemeanors, or when felonies are first offenses they are not usually covered by sentencing guidelines. It is, therefore, not surprising that they disproportionately become subject to pressure for settlement or dismissal. Perhaps this can be best summarized by the comments of a West Virginia assistant prosecuting attorney:

As a one woman, part-time domestic violence “unit” that maintains a “no drop” policy of sorts, I am without the resources to back it up. Many if not most prosecutors share this impediment to which little attention is given inside or outside the domestic violence community. It takes time to properly prosecute a domestic violence case, more time than those who fund and manage prosecutor offices and law enforcement agencies are willing to pay for. (Hartman, 1999, p. 174)
Unique Factors Limiting Prosecutorial Effectiveness

The unique characteristics of prosecuting domestic violence and sexual assaults also have increased the probability that such crimes would not be treated as seriously as they might otherwise warrant. Although a common problem in a civil setting, the complexity of intimate partner relationships often negates the simplistic dichotomy needed for criminal conviction. It also might be denigrated because it often involves offenses committed out of public view thereby being perceived as less threat to the public order and perhaps seeming to be a personal problem belonging in civil court.

With sufficient resources, the general bias against relationship cases, in particular, would be interesting but not particularly significant. Unfortunately, as explained earlier, the system operates without sufficient resources and forces many disfavored cases to be dropped. In addition, the prosecutor’s bias against handling relationship cases might be in direct conflict with victim expectations.

We believe it is fair to state that women are more likely than men to operate from a culture of relationships. The significance of maintaining personal relationships (i.e., performing obligations within the family structure) often leads many women to make decisions based on compromise or even a known subordination of her own needs to those of her partner, children, elderly relatives, and others. In sharp contrast, prosecutors expect victims to behave more like the stereotypical man, acting autonomously from the offender and the rest of her family, responding rationally by maximizing her own gains, and concentrating solely on legally germane facts. This conflict and organizational perspective creates enormous potential for misunderstandings that can fatally effect the interaction between the victim and those agencies (Weisz, 1999).
Screening as a Result of Organizational Incentives

The organizational imperative in most prosecutors’ offices is to achieve high rates of felony convictions. The number and percentage of cases successfully processed to a guilty plea or conviction are measures for evaluating prosecutors’ performance and the efficiency of their offices. In times of budgetary crisis, such measures might prove critical in sustaining or even increasing allocated resources in a zero-sum budgetary game between fiscally strapped agencies. Domestic violence cases still fail this “real life” test in most jurisdictions despite widespread statutory reforms.

Organizationally, criminal justice institutions maintain a marked distinction between misdemeanor and felony offenses. Most domestic violence cases continue to be classified as misdemeanors, although as described later, they are now denominated as domestic violence–specific misdemeanors. This distinction seems to be another product of the relatively low significance attributed to domestic cases, not a reflection of the degree of injury or potential threat to the victim posed by the incident.

The misdemeanor–felony distinction remains important. In most other contexts, an assault by an intimate might be termed a felony. For example, in one national crime survey, it was reported that more than one third of misdemeanor domestic violence cases, if committed by strangers, would have been termed “rape,” “robbery,” or “aggravated assault”—all felonies. In 42% of the remaining misdemeanor cases, an injury occurred. This rate of injury for domestic misdemeanor crime was higher than the combined injury rate of all of the foregoing felonies (Langan & Innes, 1986).

These surprising statistics occurred partially because in US jurisprudence, mere injury is not typically determinative of the severity of the crime charged. Unless a homicide occurs, evidence of premeditation and use of a weapon are far more important in the charging decision. Further, except as described later, in certain jurisdictions, domestic violence offenses are treated in isolation and out of context of a persistent pattern of battering or abuse. Even a violation of a temporary restraining order—a fairly obvious intentional crime—remains by statute a misdemeanor in most states, merely a
cause for civil contempt in many other states, and at the discretion of the court as being either civil or criminal in still others. As such, even the creation of new remedies has done little to effectively change organizational incentives to relegate such cases to a lower priority.

Some critics have also argued that crimes are downplayed simply because they are crimes against women, historically a disfavored group. We cannot find sufficient evidence to strongly support this conclusion in most jurisdictions; however, regardless of the reason, the effect of the dichotomy is to lessen the willingness of a prosecutor or court to waste its scarce resources to process domestic violence cases (Langan & Innes, 1986).
Case Attrition by Victims: Self-Doubts and the Complexity of Motivation

Earlier in this chapter we discussed why many victims never call the police. Now because of mandatory or presumptive arrest policies, many more cases reach the prosecutor’s office. What is the result? Perhaps inevitably, in domestic violence cases, victim or attrition dismissal rates are extraordinarily high. This might occur either because the victim drops charges or because she refuses to appear as a witness.

Certainly victim-led attrition has remained a concern. A series of studies in different jurisdictions conducted during the early years of reforms demonstrated that, absent unusually aggressive measures, attrition rates for victim-initiated cases hovered between 60% and 80% (Cannavale & Falcon, 1986; Field & Field, 1973; Ford, 1983; Lerman, 1981; Parnas, 1970; Rebovich, 1996; Ursel, 1995; Vera Institute of Justice, 1977; Williams, 1976).

Despite increased societal attention to domestic violence, the rate of prosecution is still limited by the unwillingness of victims to cooperate (Belknap et al., 2001; Hirschel & Hutchison, 2001). In fact, one study that controlled for type of evidence, witnesses, and relationship reported that when domestic victims cooperated, prosecutors were seven times more likely to press charges (Dawson & Dinovitzer, 2001). Commentators noted that prosecutors still believed that they were hindered by extraordinary rates of victim noncooperation (Guzik, 2007).

Why should such high rates of victim-initiated case attrition persist? Once an arrest has occurred, we strongly believe that victims should not be considered irrational decision makers, and instead their instrumental and rational reasons should be examined rather than their emotional attachments in their decision to cooperate with prosecutors. Victims might be far less concerned with deterrence as an esoteric concept than with using the criminal justice system to accomplish primarily personal goals. Hence, to understand this better, we need to examine what might motivate victims to support prosecution, as well
as how the process of prosecution might weaken these desires.

We start with a belief that there are six predominant motives for a victim to support prosecution: (a) curiosity about what alternatives are available to help her and her family; (b) confirmation of her status as an empowered person who has been victimized (a sort of “coming out”); (c) a matter of principle (i.e., a crime has been committed, and it should be reported); (d) to facilitate the assailant’s entry into an effective batterer treatment program; (e) increasing her legitimacy as a victim in subsequent police encounters both to enhance her future safety or to maintain economic independence should separation occur; and (f) revenge.

None of these factors is, of course, mutually exclusive, nor do they motivate all victims equally. The problem is that these motives, with the exception of the last two—seeking future leverage and revenge—might rapidly diminish or be satisfied once the victim observes the prosecution process.

For example, the first of these motivators, the desire for more information, might be resolved very early in the process of prosecution. Information about prosecution and alternatives are now widely disseminated. Given the known desire of the criminal justice bureaucracy to dispose of as many cases as possible, one might cynically observe that information given on alternatives to prosecution are provided because the alternative adds to a burgeoning caseload rather than attempts to determine the most appropriate disposition.

Similarly, the second motivation of empowerment might be satisfied quickly. Initiating prosecution might be the only initial alternative for a victim to gain control in an abusive relationship. Actual, continued prosecution would then be of only secondary importance to the control gained as a power resource through the threat of continued prosecution. Thus, the victim might use the criminal justice system as a strategic, but very limited, tool in a purely rational manner rather than seeking to prosecute a case through to conviction (Ford, 1991).

If we are not to become advocates of prosecution for its own sake, or for societal goals that might be of limited relevance to any particular victim, we need to understand that some domestic violence victims might not be as deeply committed to continued prosecution as are other victims. In addition,
their reasons are rational from their personal perspectives.

Also, although inappropriate, many victims tend to blame their own behavior for a violent incident. Self-doubt and guilt in relationship cases, in general, and intimate partner violence, in particular, is far more significant than for other victims of violent crime (Buchbinder & Eiskovits, 2003). Victim self-doubts might uneasily coexist with the desire to pursue the arrest and prosecution of an offender. Many victim advocates would observe that such a result is predictable given the process of socialization that is reinforced by constant societal pressure. Regardless of reasons, victim self-doubts might result in prosecutor attitudes that high-dropout cases are not worth the expenditure of scarce resources (Guzik, 2007).

Part of the reason for the high rate of victim attrition initiated might be a result of the lack of the victim’s belief that she is supported by society. The fact is that many victims do not broadcast to friends or work colleagues that they were abused for a variety of reasons, including shame and acute helplessness. Similarly, those victims who do not perceive institutional or formal support from victim advocates, dedicated prosecutors, or other officials within the criminal justice system often will be more likely to drop a case. This aspect of social isolation can become a critical pathway that weakens a victim’s commitment to prosecute a case (Belknap, Melton, Denney, Fleury-Steiner, & Sullivan, 2009; Bennett, Goodman, & Dutton, 1999).

This aspect of social isolation might be extremely important in cases of domestic violence prosecution. One of the primary control tactics of abusers is social isolation. Often, through the course of previous incidents, the victim might have lost her network of friends and relatives who could potentially support her actions. If the prosecutors, victim advocates, or other parties that might be expected to support prosecution do not fill this void, this social isolation is likely to persist, and a victim would be predictably far less likely to prosecute (Stark, 2007).

The attitudes of the prosecution and members of the office staff in many jurisdictions might contribute to a victim’s sense of isolation, thereby influencing her to drop charges (Belknap et al., 2001; Dawson & Dinovitzer, 2001; Erez & Belknap, 1998). As noted earlier, virtually all criminal justice
agencies from their earliest history have had a bias against intervention for
cases involving private relationships. Although statutes and rules
theoretically now have eliminated such discrimination, court personnel in
domestic violence and similar cases often have made victims feel personally
responsible for case outcome.

This occurs because, in many cases that are prosecuted through conviction,
public order was also affected, although the victim suffered the most direct
harm. For this reason, prosecutors often encourage, or even require by a
subpoena, victims in nonrelationship cases to support prosecution. In
domestic violence incidents, the violation to the public order is not as evident
to the prosecutorial staff, although they have been ambivalent about
intervention. Not unexpectedly, they might subtly, or even at times overtly,
encourage a victim to drop charges.

Another factor affecting victims and their desire to continue prosecution is
that a victim’s attitude toward the crime and her abuser might alter over time.
Memories of a crime often recede. Those victims who are in a continued
relationship with a cyclical batterer often experience a prolonged
“honeymoon,” in which the offender seeks to please the victim out of
atonement or fear of prosecution. He might even cease battering altogether.
In time, continued prosecution of the criminal case might become the only
event that reminds her (and the offender) of the battering incident and
threatens to end a current harmonious period. Other victims might have
successfully left the batterer and negotiated acceptable financial support or
terms of custody. These victims might now justifiably fear that prosecution
would simply anger the batterer, jeopardizing this hard-won status.
Victim Costs in Prosecution

The fact is that prosecution of domestic abuse cases might inflict major and unanticipated costs for a victim. One such cost is retaliation. Available empirical evidence suggests that many victims might be subject to subsequent retaliation or offender intimidation. Whatever the potential for retaliation that might be suggested by statistics, no one can provide certainty to a frightened victim, particularly if she is with a high-risk offender. Such victims’ fears, as we have discussed, actually often are valid.

One well-documented, if somewhat dated, study reported that nearly half of the victims reported that their assailants had physically threatened them if they proceeded further with the judicial process or if they sought a temporary restraining order. This was not an idle threat. The batterers as a group were demonstrably dangerous. Victims were aware of prior criminal records for 55% of batterers; still others, of course, had criminal records unknown to the victims, 2% of assailants had firearms of which the victim was aware, and two thirds of those with weapons had already threatened or assaulted the victim with these weapons (Klein, 1994b).

Similarly, victims correctly feared retaliation against their children. Klein (1994b) noted that 25% of offenders directly threatened kidnapping the couple’s children if legal action was pursued. Abusers also often threatened to lie or exaggerate the victim’s personal problems as a parental caregiver to child protective services. Thus, victims with their own substance abuse problems, or who had perhaps neglected or abused their children as a consequence rather than as a precedent to their own abuse, were threatened with child custody loss (Stark, 2002).

Although Stark’s study focused on incentives for a victim’s decision to drop a restraining order, there is every reason to believe that such acts of intimidation would occur more frequently when a criminal prosecution was pending. The stakes for the offender in an active criminal case far exceed those of a prospectively applied court order. In many judicial systems, there has been an utter failure to give victims information about methods to protect themselves via temporary or permanent restraining orders—and how to get
these orders enforced.

Although less dramatic, there also is the real possibility that indirect economic harm of continued prosecution might deter victims from prosecution. If the victim continues to cohabitate with the offender for financial reasons, she might fear direct economic loss if the offender loses his job. In other cases, reducing alimony or child support might be a real risk. Actual out-of-pocket monetary losses often occur in the event of a conviction or if extensive court time is required (Bent-Goodley, 2001; Coker, 2000; Mills, 1999). Direct economic harm to the victim might occur if she is required to take time off from her job or to arrange for child care to allow her to appear in court. In many cases, the seemingly arbitrary scheduling of criminal cases might force a victim to wait for hours in order to provide a few minutes of testimony or, as often happens, lead to a complete waste of her time if a defendant’s counsel is successful in continuing the case to a later date.

The batterer often fans such fears of economic retaliation. Klein (1994b) reported that monetary threats were made by 42% of abusers in his study, which is an especially difficult prospect since in his study 31% of the victims were unemployed and 67% earned less than a poverty wage. A couple’s minor children might present significant issues for those who want to be sure they are protected but still wish to maintain an intact family structure. Financial ties (intensified by welfare reforms) might make some victims critically dependent on an abuser’s financial support for minor children, which is a factor at odds with strict punishment models. A simple threat to have a person arrested or to initiate prosecution might terminate an abusive relationship. Pursuing prosecution past that point might not be in the interests of the victim because it might increase the risks of retaliation while forcing her commitment to a process with little direct benefit.

As a result of these factors, although the goal of assisting and empowering victims via prosecution might be understood in the abstract, it often is lost in practice. This is especially true if prosecution serves mainly to attain larger societal goals of punishing an offender or deterring other potential batterers. Several studies have shown that victim preferences were rarely solicited, and when known, they were rarely honored if they contravened policies designed
to punish and deter offenders (Buzawa & Buzawa, 1996). Because victim choices normally influence the criminal justice system to some degree (and the quest for restorative justice is pushing this to the forefront), policies that remove or limit victim input into decision making are unusual.

In short, the general assumption that prosecution is in the victim’s interests might not be accurate. In fact, at times there might be an irreconcilable dilemma: to assist and empower a victim might not involve the offender’s subsequent case prosecution.
The Impact of Victim-Initiated Attrition

Although victims might not desire arrest, let alone subsequent prosecution through conviction, we recognize that they might truly need a strong team of law enforcement personnel and prosecutors. In the more traditional society of past decades, the family, church, or friends might have provided victims with support. In the highly mobile 21st century, such assistance is much more problematic, making victim reliance on formal agencies more acute. Despite the growing presence of social service and nonprofit agencies, domestic violence victims often do not have real-time access to such assistance at critical moments without criminal justice support. For this reason, criminal justice agencies, especially law enforcement personnel and the prosecutor’s staff, do not just enforce their own mandates but also serve as critical gatekeepers to the provision of services of other essential actors.
A Judicial Annoyance: Handling Battling Families

Although virtually every state has passed domestic violence statutes, until recently, the judicial response to sexual and family violence has neither been as comprehensive nor as advanced as the police, or now even that of the prosecutor’s offices, in many jurisdictions. Why? The police, however grudgingly, are fully expected to follow the laws as written. Although prosecutors have the power to exercise discretion, their discretion has begun to be limited by active oversight or even by the initiation of the no-drop policies discussed earlier.

In contrast, judges have the express responsibility to adjudicate criminal responsibility and the conduct of offenders. Although many, if not most, are willing to experiment with innovative approaches, others are largely unsympathetic with the goals and methods espoused in domestic violence legislation and often are disturbed by potential impingement of a defendant’s rights. Because of their unique position, they can effectively refuse to enforce statutes, and the ability of most victims to contest judicial decisions in misdemeanor cases is, in practice, virtually nonexistent.

Research on the study of what works in the judiciary is less advanced (or at least less disseminated) than in the case of the police or even prosecutors. Although many policy analyses have been published by victim rights advocates, feminist attorneys, and law reviews that strongly advocate further change, issues of judicial operational performance have not been widely circulated. Nonetheless, the national consensus needed to force systemic change has begun to coalesce, imparting a current degree of uncertainty exceeding that of the police.

As a result, judicial management of domestic violence cases has only recently gained saliency as a public issue. Initial attention was the result of occasional newspaper series exploring the extent to which the system does not work or sporadic outcries to an especially outrageous unguarded public comment by a trial court judge who, at a minimum, was unaware of the political necessity to refrain from critiquing abuse victims. Such attitudes are not atypical. Although unspoken, they are endemic and systematized. The degree to which
these attitudes still prevail is unclear. Clearly, there are still many judges who hold victims largely responsible for their victimization and do not consider such cases appropriate for judicial intervention (Hemmens, Strom, & Schlegel, 1998).

Similarly, because most commentaries on the judicial response have been published in law journals or advocacy publications and are based on nonquantitative measures, there has not been a research catalyst for change equivalent to the Minneapolis Domestic Violence Experiment (MDVE). Therefore, changes in the orientation and training of individual administrators is more a product of the impact of professional groups such as the National Council of Juvenile and Family Court Judges, the American Bar Association, the State Justice Institute, and the National Judicial College coupled with the push for federal funding from VAWA (see Valente, Hart, Zeya, & Malefyt, 2001).

As a result of such factors, the current performance of judges is even more inconsistent than that of the police. Davis Adams, director of EMERGE, the country’s oldest treatment program for batterers (located in Massachusetts) with intimate experience with the system in that state, has argued that everyone in Massachusetts knows the rhetoric, but when dealing with individual cases, the consistency breaks down (Polochanin, 1994). A report published by the Boston Globe (Adams, 1994) used the Massachusetts database on the history and disposal of restraining orders, which is a good indicator of the commitment of judges to these crimes; this database showed startling variations in enforcement between different counties. In some counties, including Suffolk County (Boston), more than 60% of such claims of violation were dismissed. In other jurisdictions, as few as 18% of cases were dismissed. Similarly, sentencing of the offenders to jail time for restraining order violation ranged from 0% to 26%, with even the high estimates well below expectations considering that the applicable domestic violence statute clearly favored stiff punishment for violating restraining orders.

The reasons for the discrepancy seem to reflect the operations and attitudes of courts. Adams (1994) faults many judges in whom he now sees a backlash because they are tired of hearings regarding battered women. This was
partially confirmed by detailed analysis of individual court statistics demonstrating that some judges would rarely dismiss cases, whereas others might dismiss up to 75% under certain circumstances. Regardless of the reasons, it seems that there is a virtual patchwork approach toward handling domestic cases, sometimes even within the same jurisdiction.
Case Disposition by the Judiciary

Historically, cases that are not filtered out of the system by action or inaction of the police or by victims or prosecutors often received summary dispositions by the judiciary. Although it would be easy to overgeneralize, judges, at least in the past, shared the consensus of prosecutors that most domestic violence cases could not readily be helped by the full prosecution of an offender (Dobash & Dobash, 1979; Field & Field, 1973). Given the organizational context of extreme time pressures and limited resources, it is not surprising that in the past it was repeatedly noted that judges minimized domestic violence cases and disproportionately dismissed them.

Similarly, until the full effect of the ongoing recent reforms, the sentencing of convicted domestic violence offenders has been quite lenient, with few offenders sentenced to serve any time in jail (Sherman, 1993). One study was made in Ohio of all misdemeanor domestic violence assault charges in the state during 1980. This research was conducted after Ohio passed a new domestic violence statute designed to sensitize the criminal justice system to the problems of battered women. Although termed “misdemeanors,” many of these cases involved injuries and potentially serious conduct that in another context would have been termed felonies (Quarm & Schwartz, 1983).

The sentences imposed graphically illustrate how the crimes were trivialized. Of 1,408 cases, 1,142 (81%) were dismissed. Of the 1,142 dismissed cases, 1,062 (93%) were dismissed because the victim requested this action (for the vast variety of reasons described in this chapter) or failed to appear. Of the remaining 256 cases, 166 guilty verdicts or pleas were received. Despite being in a jurisdiction otherwise noted for harsh sentencing, only 60 miscreants (36%) spent any time in jail, with one third (20) spending between 1 and 15 days (including time spent in jail awaiting trial), one third (20) between 16 and 30 days, and only one third (20 out of the original 48 cases) more than 20 days. Similarly, only 12% of the miscreants were fined more than $100. Simple probation, instead of imprisonment or fines, was the sentence in almost two thirds of the cases (Quarm & Schwartz, 1983).

The same results were reported in several other studies even when, in the rare
occasion, domestic violence cases were treated as felonies. Another study, also conducted in Ohio, reported that even in the rare circumstance that a domestic violence defendant was convicted and received a prison sentence, sentence terms were shorter than they were for other types of offenders (Erez & Tontodonato, 1990). Similarly, in one study conducted in Alaska, the overall result of court actions (after taking into account voluntary dismissals) was that domestic violence offenders were less likely to be convicted, and if convicted, they were less likely to be sentenced to jail (Miethe, 1987). Why did such results occur, even in the face of blunt statutory directives to enhance the response to domestic violence? Few empirical studies have surveyed judicial attitudes to explain behavior. We can, however, surmise that several key factors are involved. First, trial criminal court judges are attorneys, primarily recruited directly from the ranks of prosecutors or indirectly after a prosecutor has become a successful defense attorney. For the reasons we described earlier, prosecutors have long had a troubled history in responding to these offenses. Becoming a defense attorney would be unlikely to change their attitudes toward aggressive enforcement.

Second, judges are in a unique position to impose their own will on a case. Since this crime has never received the mandatory minimum sentences meted out in certain drug and other offenses, they can, if they choose, ignore statutory directions. Because of separation of powers, such decisions cannot be overturned by the legislature. Moreover, as judges, they do not have to justify sentencing and other case dispositions to victims, prosecutors, or defense attorneys. As most domestic violence cases are treated by the system as misdemeanors, the operating reality is that there is no appeal from their decisions.

For the last decade, the study of so-called gender bias in the courts received significant research attention, especially from feminist writers and their political allies. As a result of claims of gender bias, the National Organization for Women (NOW) Legal Defense and Education Fund worked with the National Association of Women Judges to study systemic gender bias in the courts (Schafran, 1990). By 1989, 30 states had such gender bias task forces. Interestingly, it has long been assumed that gender bias is not simply, or even at this time, primarily a case of intentional ill will against women. Instead, it is more likely to be differential treatment in situations in which gender should
not be considered as a result of stereotypical beliefs about the gender’s temperament, expectations, and proper roles (California Gender Bias Task Force, 1996).

Such attitudes were found to exist by the judges and by their staff. For example, the California 1996 task force reported that 53% of male court personnel thought that women exaggerated domestic violence complaints. Not surprisingly only about one quarter of female court personnel shared these beliefs. Similarly, whereas 40% of the male court personnel believed that domestic violence cases should be diverted or that counseling should be used rather than prosecution, only 21% of female court staff agreed with this (Hemmens et al., 1998).

Hemmens and colleagues (1998) summarized the findings of the state reports and found that gender bias was most prevalent in domestic violence cases. Although a significant part of their findings related to the actions of prosecutors and defense attorneys, many reports commented on inappropriate attitudes and actions by the judiciary. For example, Utah in 1990 reported that cases of domestic violence were minimized compared with nondomestic assaults (Utah Gender Bias Task Force, 1990). The Maryland report stated that “51% of male attorneys and 68% of the female attorneys believed that judges sometimes failed to view domestic violence as a crime” (Hemmens et al., 1998). Hemmens and colleagues quoted several particularly egregious examples cited in the state-sponsored gender bias studies.

For example, one state trial court judge commented, “I have difficulty finding where this defendant’s (the husband) done anything wrong. other than slapping her [his wife]. Maybe that was ‘justified’” (Utah Gender Bias Task Force, 1990, p. 44). A study in Massachusetts revealed that some victims report improper or irrelevant questions during court proceedings. More than three fourths of the responding attorneys said judges sometimes allow questions as to what the victim did to provoke the battering. Comments made by judges included, “Why don’t you get a divorce?” and “Why are you bothering the court with this problem?” (Hemmens et al., 1998, p. 24).

Third, even the more enlightened judges who have sought to provide an adequate answer to such crimes have faced real issues. They are aware that the evidence of which party was at fault can be quite tangled in many cases,
creating relatively weak cases when presented at trial. Even when guilt is clear, many have long acted on the assumption that their goal was primarily to rehabilitate the domestic violence offender, not primarily to punish him. This has been perceived by many as being responsive to victims who want rehabilitation, not punitive results. Not surprisingly, it was noted that in most courts the likelihood and duration of jail sentences has simply not been increased as a result of reforms, although this did not prove true in an in-depth study of case dispositions in New York City (Peterson, 2001).

We recognize that judicial decisions toward leniency, when prompted by evidentiary challenges or respect for genuine victim preferences, are, on balance, positive. We have certainly met many judges whose commitment to the resolution of domestic violence cases cannot be questioned, and their actions in these difficult cases can be open to interpretation. We are, however, less sanguine that the result of judicial action in many, if not most, courtrooms truly reflects victim preferences and not preexisting judicial attitudes to dispose rapidly of this part of a judge’s overwhelming caseload. Unfortunately, the effect of judicial attitudes and practices that negate the importance of this crime, like those of prosecutors before them, cascades throughout the criminal justice system.

Frankly, the judiciary has always retained the potential to lead the criminal justice system by example or direction. They are the ultimate authority, with the power to ratify or negate the actions of the police and prosecutors, as well as to define the parameters and seriousness of a particular crime. They might use such power to compel effective action or, as in the past, strongly imply that domestic violence is not a real crime.

The cost of judicial action that is not conducted properly is high. In many cases, victims have essentially been deprived of legal protection, and offenders might have perceived that the whole matter was “no big deal.” Additionally, police with policies that emphasized the role of arrest or that even made arrest mandatory undermined such cases, resulting in their being routinely dismissed or in the sentencing trivializing the inherent serious nature of an assault.

Only recently have there been widespread systemic efforts to coordinate the actions of the judiciary. To date, although individual judiciary actions are
being examined, no one has really attempted to force consistency in actions among the thousands of judges nationwide. In this manner, the response of the judiciary, compared with those of the police or prosecutors, is even more problematic. Many judges lead their communities in the fight against domestic violence. Others, sometimes even in the same jurisdiction, treat such cases lightly or either resent or lack the resources to respond to the flooding of their court dockets with misdemeanor cases that often are dismissed.

The federal Violence Against Women Act (1994), reauthorized in 2000 and 2005, has greatly facilitated judicial efforts by establishing standards, providing technical assistance, and funding improvements to those courts not yet increasing efforts toward a proactive response. Although not being at all coercive toward the courts, it has provided guidance by highlighting achievements of innovative efforts by designating model courts such as the Quincy District Court. Databases and evaluations also have begun to develop in an effort to confirm the relative performance of particular courts. Also, by establishing new federal crimes and enforcement responsibilities, there is increased pressure for courts to take these crimes more seriously. In the absence of any judicial uniformity, the following is a discussion of several major changes now being evaluated and adopted, specifically the move to divert appropriate cases systematically at an early stage out of the criminal system through mediation and court-mandated counseling as well as the development of specialized courts. Furthermore, an integrated approach to handling domestic violence cases is explored later in this treatise. As will be discussed more fully in Chapter 11, considerable progress has been made.
The Decision to Access Victim Services

As discussed earlier, not all victims choose to report abuse to the police. Some victims prefer informal supports including family and friends over more formal sources of support. Many victims may believe such matters should not only be disclosed publicly, in part shaped by the attitudes of family and friends, norms of their own religion and culture, and the influence of the media. Other victims may lack awareness of services, find them too costly, or have difficulty gaining access. People especially from Latin America, Asians, and African American cultures may fear reporting to any agency that provides victim support due to their fear of social stigma (Postmus, 2015), and simply the reporting of abuse can increase a victim’s distress. Some research suggests that victims seek services to protect their children, while still others avoid disclosure for the same reason.

Findings have been inconsistent on the role of race and ethnicity, age, education, and socioeconomic status as well as on the severity and frequency of abuse. Some research suggests that Caucasian women are more likely to disclose to formal sources including not only the police, but other agencies as well (Coker et al., 2000; Postmus, 2015).

Some victims choose to access services after a marked increase in abuse, while others prefer assistance when they are ready to leave the relationship (Hart & Klein, 2013; Postmus, 2015). Victims often make several attempts to leave a relationship before finally achieving success and it is the support of such agencies that proves critical to their ultimate success. One recent study in the Midwest reported on the results of help seeking behavior by interviewing a sample of Caucasian, African American, and Latina women. The researcher reported that Caucasian women were more likely to rely on therapeutic resources including counseling and health services while African American and Latina women relied more on tangible resources including welfare, housing, food banks, and job training.
While these demographic variations are striking, the researcher also noted that much of the race and ethnicity variance was not significant after controlling for welfare use and frequency of prior acts of abuse (Postmus, 2015). Nonetheless, these groups are disproportionately less likely to access needed therapeutic services.
What we do know is that we still lack a sufficient understanding on the efficacy of domestic violence victim services. There is considerable variation in victim preferences and needs for services, and in addition, these preferences and needs may vary over time. In addition, what we define as “effective” also varies among victims. An outcome of remaining free from subsequent reabuse or even survival may be the primary goal for some victims, while emotional and physical recovery may be the desired outcome for still others (Hart & Klein, 2013).
Summary

Victim advocates have long been concerned about victims not known to the criminal justice system. This chapter discussed two different sets of reasons for this. First, there is a wide range of reasons why victims fail to report. Often, these reasons are valid from the victim’s perspective as there is a fear of retaliation or other consequences that might result. However, these preferences might be diametrically opposed to society’s interests in identifying and intervening with offenders. Nonetheless, evidence does suggest that there has been an increase in reporting in recent years.

Second, there have been long-standing concerns with agency screening of calls for reasons that might be less than ideal. Often they are not based on official policies, but instead are idiosyncratic because of individual or organizational factors not relevant to the situation.

This chapter also addressed the need to think beyond the criminal justice system in order to determine how best to service victims. We know that victims of intimate partner violence seek help from a wide variety of sources, but may prefer informal networks before engaging criminal justice, health care and social service agencies for support.

Future research can hopefully help us better understand the reasons for how and why victims choose to access services as well as the barriers to their use. Only then can we understand how to best improve our efforts to protect and serve them. This should result in a greater congruence between what is in the victim’s interests as well as that of society as a whole.
Discussion Questions

1. You read about the concerns with call screening by both victims and the police. The chapter also addressed the need to consider the totality of the police job rather than take any given crime problem and give disproportionate attention to it (often driven by political or perhaps liability considerations). What policy recommendations would you suggest and why?

2. As you hopefully noticed when reading the MDVE and the Replication Studies, the policy implications remain unclear. First, for those of you interested in the validity (and usefulness) of research, what variables should the researchers have examined rather than unemployment and racial status and why?

3. Should victims be given alternatives to criminal justice interventions for services or should they instead be a supplement?

4. Based on your readings of the research to date, what policy recommendations do you recommend to improve victim reporting? Who should we be encouraging them to report to?

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6 The Impetus for Change
Chapter Overview

This chapter will discuss the modern movement for change in the police response to domestic violence. Change originated from an unusual confluence of political and legal pressure from women’s rights and battered women’s advocates, research, and organizational concerns over the possibility of liability if the police continued past practices of neglecting domestic violence victims. The interaction of all these sources of influence is worthy of examination as it helps us understand our current concepts of belief systems and best practices.
Political Pressure

Political pressure began to mount in the late 1960s and early 1970s over observed inadequacies of criminal justice responses to issues of interest to women. The growing women’s rights and feminist movements that emerged raised consciousness about societal neglect toward the unique problems confronting women. Initially, the inability of the criminal justice system to respond to violence against women focused on stranger rape and assaults. However, it soon broadened as activists recognized the severity of the problem of intimate violence.

One source of the pressure was the professionals who assisted battered women through shelters and legal services networks. These networks were, at first, largely decentralized, assisting battered women through hundreds, if not thousands, of local, community-based volunteer efforts. Later, such groups were assisted by statewide coalitions to prevent violence against women. Whether on their own or through the assistance of umbrella groups, shelters acquired the services of volunteer and paid attorneys, victim advocates, and social workers. These trained professionals soon realized that the needs of domestic violence victims were not being met by criminal justice agencies.

A pattern variously described as “patriarchal” or “cavalier” began to be used to describe the attitudes and, even more important, the practices of male-dominated police agencies and prosecutors. Concerns grew rapidly when advocates came to believe that police arrested everyone but domestic violence assailants (Berk & Loseke, 1980–1981). As a result, advocating more aggressive use of arrest became the natural consensus position among domestic violence activists (Coker, 2000; Ferraro, 1989b; Mills, 1999). This group provided the driving leadership needed to promote enactment of domestic violence legislation. This occurred first at the local and state levels and much later at the national level.

As discussed, the reasons for the differences in perspective were explainable, if not adequate. Advocates for battered women were faced with policing that traditionally had emphasized public order and authority without official intervention in “private matters”—that is, an organizational commitment to
intervene in the family using only informal strategies for resolution. This also was amply reinforced, as Sanders (1988) noted, by police ideology in which protection of the public order was paramount, individual rights of secondary importance, and the safety of a particular victim typically relegated to minimal importance.

The contribution of victim advocates was to argue that, regardless of the reason, police would not or could not adequately respond to the concerns of women. It was simply factual that women were more likely to be raped, murdered, and assaulted by someone they knew in private rather than in public places. Conversely, men were more likely to be the victims of public disorder. Criminal justice agencies were, regardless of any inherent sexism, far more likely to respond to crimes in public places.

Societal pressures emphasizing a legalistic intervention to long-standing social issues also became significant. To understand better the impetus for the changing role of law enforcement in domestic violence, it is essential to acknowledge that political climate. Since the widespread riots in the mid-1960s and the proliferation of drug use at the same time, the “war on crime” became (and still is) a reliable vote winner. This strategy was first used successfully by presidential candidate Richard Nixon in 1968 and was reinforced during the 1980 presidential campaign, when candidate Ronald Reagan argued that a “new morning in America” was at least partially dependent on being much tougher on criminals. A “tough-on-crime” or “war-on-crime” approach was a consistent and successful political theme both among Republican candidates and, partially as a reaction, among centrist Democratic aspirants to higher office.

As a result, recent decades have experienced a marked increase in society’s propensity to use its coercive police powers to solve social problems and a relative unwillingness to invest in efforts to attempt to reform miscreants. Not surprisingly, criminal justice agencies have been increasing in budget, size of staff, and numbers of cases processed (Garland, 2001). It can be argued that the increasing role of law to maintain social control indicates the perceived weakness of informal controls. Pressure to criminalize domestic conflict, similar to policing disorder, emphasized the use of misdemeanor arrests.

As might be expected, threats of random street violence and drug abuse were
generally viewed as a law enforcement issue justifying a greater punitive response. Placed in this context, it is not surprising that the previously lax treatment of domestic violence became a political issue.

There are certainly parallels with this period to the earlier reform era of the late 1880s. Key distinctions between the current and earlier reform periods have made the challenges to the system far more powerful. Today’s mass media, and the growing ability of special interests to influence legislation, have made the movement to increase law enforcement in this area into a national phenomenon. Similarly the existence of support services to assist women with shelter and legal advocacy, even when not well funded, has given increased national visibility to the tremendous numbers of women injured by intimates. Finally, tantalizing stories of celebrity spouse abuse or death have been regularly reported, giving national feminist and battered women’s groups enormous media attention and focusing public opinion even more on domestic violence.
Coverage of Domestic Violence in the Media

Even after the start of domestic violence reforms, national attention to domestic violence was periodically stoked by instances of nationally televised domestic violence. For example, in 1990, the media were captivated by Carol Stuart’s murder in Boston. Her husband, Charles Stuart, had frantically reported the crime using a cell phone to call 911 from their vehicle.

He described in graphic detail how a Black man had shot both of them in an attempted robbery of their vehicle. This account was nationally broadcast both because of its inherent drama and because it played to White suburban fears about random minority street crime in urban areas. Many in the Boston Police Department placed responsibility on an innocent Black man and tried to obtain his confession. These efforts were derailed by Charles Stuart’s suicide, as others within the police department, as well as members of the press, developed leads that indicated Stuart was the killer. This incident was ultimately recognized as reflecting both societies’ tendency to blame street crime committed by minorities for most violence and police departments’ inability to recognize domestic violence.

In 1994, the public allegations about domestic violence among celebrities—for example, Roseanne and Tom Arnold as well as Axl Rose—was rapidly followed by the national media circus attendant to the domestic violence and stalking involved in the O. J. Simpson–Nicole Simpson case. Not surprisingly, such media attention, including gavel-to-gavel coverage of the O. J. Simpson trial and repeated cover stories in newspapers and national news magazines, led to dramatic increases in calls for service to domestic violence hotlines, shelters, the police, and the courts.
“Stone Cold” Steve Austin

WWE Professional wrestler “Stone Cold” Steve Austin, whose real name is Steve Williams, turned himself in to police on charges of assaulting his wife, fellow WWE performer Debra Williams. In June 2002, Debra Williams called police to the couple’s house in San Antonio, and police saw a “large noticeable welt” beneath her right eye, as reported by the TV show Entertainment Weekly. Austin was not at the house when police arrived, and he was not arrested. In August 2002, Austin turned himself in, posted $5,000 bond, and was released pending future legal action.
Riddick Bowe

In February 2001, former heavyweight boxing champion Riddick Bowe was arrested and charged with third-degree assault for a fight with his wife, Terri Bowe. Police arrived at the Bowe house on Long Island and found Terri Bowe suffering from cuts and bruises, according to an Associated Press (AP) report (“Bowe Let Go—Sort of,” 2001). Riddick Bowe pleaded innocent to charges of assaulting his wife and was released from jail on $2,500 bail. The AP reported that the couple was “splitting up after a ‘very brief marriage.’” Bowe was arrested again in March 2003 on a domestic violence charge of second-degree assault, less than 1 week before he was scheduled to begin serving a prison sentence for abducting his first wife, Judy, and their five children. Bowe was arrested after Prince George’s County police responded to a domestic disturbance call. Bowe’s current wife, Terri, was taken to the hospital, but her injuries were not believed to be serious, according to a Washington Post article (“Bowe Files for Chapter 11 Bankruptcy,” 2005). Bowe served an 18-month prison sentence for the 1998 abduction of his first wife.
Jim Brown

Former NFL star Jim Brown was released from prison in July 2002 after serving time for vandalizing his wife’s car. Brown received a 6-month sentence after he refused to undergo court-ordered domestic violence counselling and community service. Brown was convicted in 1999 of vandalism for defacing Monique Brown’s car. He was acquitted of the charge of making a terrorist threat against Monique Brown after threatening to kill her during an argument. Brown served 4 months of his 6-month sentence.
James Brown

In February 2004, singer James Brown was arrested and charged with criminal domestic violence for allegedly shoving his wife, Tomi Rae Brown, to the ground and threatening her with a chair. Tomi Rae Brown suffered scratches and bruises and was taken to a hospital in Augusta, Georgia, for treatment. Brown denied the charges and was released from jail. If convicted, he faced a maximum penalty of 30 days in jail and a $500 fine, reported the AP (Grace, 2004). In November 2003, some advocates for victims of violence spoke out against the decision by leaders at the John F. Kennedy Center for the Performing Arts to give James Brown a lifetime achievement award. Brown was honoured anyway for his contribution to the arts at the Kennedy Center Honors in December 2003. In 1988, Brown was charged with assaulting his then wife Adrienne, but the charges were dropped when she refused to testify against him. He also settled several lawsuits filed against him that alleged sexual harassment. Kay Mixon, President of the Comby Center for Battered Women, a shelter that served Adrienne Brown, told the New York Post, “It’s a disgrace that the Kennedy Center is giving him this award.... He is a batterer. He didn’t batter her just once, but over and over again.” (Celebrities Violence, 2008)
The Role of Research in Promoting Change
Early Research

Research linking the criminal justice system to domestic violence also had a dramatic effect alerting the policy elite to the existence of the problems of domestic violence and legitimizing support for pro-arrest policies. In this regard, the research itself became a factor independent of the adequacy of its design, accuracy of conclusions, or the utility of the particular policy nostrums being promulgated.

Academic interest in family violence first emerged with concerns about child abuse. The seminal article “The battered child syndrome” by Kemp, Silverman, Steele, Droegenmuller, and Silver (1962) focused on the necessity that physicians and other primary caregivers such as social workers recognize and intervene in such cases. This article and subsequent publications, however, focused less on criminal law implications and more on the etiology of the problem and treatment of the victim and offender.

Several years after the Kemp et al. (1962) article, Parnas (1967) published “The police response to the domestic disturbance.” This was followed in 1971 by Morton Bard’s “Police discretion and diversion of incidents of intra-family violence” (Bard, 1967, 1973). Bard’s study analyzed the effect of a demonstration project on family crisis intervention, funded by the Law Enforcement Assistance Administration (LEAA). This project, in turn, became the theoretical foundation for many other family crisis intervention projects (Liebman & Schwartz, 1973).

Although the specific tenets and a critique of family crisis intervention as a technique will be addressed later, the impact of the Bard study (1973) was that it reinforced the concept that changing the police response could dramatically reduce the impact of domestic violence.

Although the domestic assault policy at that time was for police to do as little as possible and then leave the situation, Bard convinced LEAA that crisis intervention techniques had significant potential. As a result, they funded a feasibility study for a special unit of crisis intervention officers. Bard’s research was highly influential despite its weak design and findings that
indicated that the program had negative results on officers and victims. The NIJ spent millions of dollars to pay overtime for officers to attend training that encouraged the use of Bard’s intervention program in more than a dozen police departments across the United States. Elements of the program were promoted by the International Association of Chiefs of Police and discussed positively in the widely distributed *Law Enforcement Bulletin* (Mohr & Steblein, 1976). As a result, Police Family Crisis Intervention became a major, if not the dominant, law enforcement approach to addressing domestic violence. Despite the evaluation’s negative program findings, the evaluators advocated their own untested version of police family violence intervention training (Wylie, Basinger, Heinecke, & Rueckert, 1976). “The clear lesson is that the strength of federal financial support for a social intervention does not necessarily mean there is an extensive body of knowledge supporting the efficacy of that approach” (Garner & Maxwell, 2000, p. 87).

The next important study, *Domestic violence and the police*, was provided by Marie Wilt and James Bannon (1977). They demonstrated that domestic violence was directly related to homicide; that in 85% of incidents, the police had been called at least once before; and that in 50% of incidents, police had been called five or more times. Although it was concluded that an ineffective police response contributed to the excessive rates of death and injury to victims as well as to the high cost of intervention for police departments, no suggestions were given for exactly how the police could intervene effectively.

This body of domestic violence research was supported by other research criticizing the efficacy of rehabilitation efforts for violent offenders. The famous research of Lipton, Martinson, and Wilks (1975) on the impact of rehabilitation and their conclusion that “nothing worked” contributed to the temporary eclipse of the influence of researchers.

The cumulative impact of research contributed to developing a consensus among researchers and policymakers regarding the then current police policy of noninterference. There was widespread agreement that passive police responses further contributed to societal tolerance and to high rates of domestic violence. This led to the growing belief that alternative police strategies were needed to reverse this trend.
The Evolution of Research Supporting the Primacy of Arrest

By the 1970s, there was widespread disillusionment among practitioners, researchers, and some police administrators regarding then current domestic violence policies and practices. In part, this was a reflection of the general societal movement away from what Garland (2001) referred to as “penal welfares.” Among criminologists, major philosophical differences began to emerge, whereas previously the discipline had demonstrated a far more consistent posture.

Debates regarding the control of domestic violence as a possible exception to policies of tough enforcement continued to persist, however. One side argued that the dichotomy between aggressive enforcement against street crime and lax enforcement of crimes against intimates was justified in that domestic incidents involved families and intimate partners. Still others believed such incidents were more trivial and less likely to incur injury, that victims were less likely to desire police intervention and prosecution, and that, therefore, an arrest would not result in conviction, negating the value of such efforts (Myers & Hagan, 1979). Many writers successfully challenged these assumptions and instead maintained that criminal justice institutions were demonstrating sexist behavior by presenting such rationales (Dobash & Dobash, 1979; Matoesian, 1993; Smart, 1986). Over time, there was a growing concern that the use of formal social controls needed to be increased with an emphasis on legal remedies. These sentiments were highlighted by a National Academy of Sciences report addressing the role of criminal justice sanctions as an effective crime control strategy (Blumstein, Cohen, & Nagin, 1978).

Such concerns gradually permeated the general attitudes of practitioners, policymakers, and the public (Garland, 2001). This represented substantial change. Although reliance on the law often is believed to be a result of the failure of informal social controls (Black, 1976), many sociologists initially doubted the ability of laws to effect levels of domestic violence and for police organizations to change practices (Manning, 2010). Nonetheless, primary
emphasis began shifting to increased police use of arrests as a deterrent to domestic violence. It has long been known that arresting certain domestic violence offenders was both proper and essential, at least in some situations. After all, making an arrest was the only method by which police could ensure separation of the couple and prevent further violence, at least until the offender was released. Similarly, despite a strong past bias against arrest, arrests for non-domestic-violence-specific charges, such as drunk and disorderly conduct or public intoxication, often were used. Also, arrests were an acknowledged method for the police to regain control from a disrespectful or otherwise threatening assailant and to maintain the officer’s situational dominance (Bittner, 1967, 1974).

By the early 1980s, consensus was reached on the historically limited role of arrest and the first reform of crisis intervention lost credibility. It was replaced by an expanding debate among policymakers, researchers, practitioners, and advocates about arrest as a mechanism to deter violence and as a means to strengthen other traditional criminal justice measures that were clearly inadequate. The concept of deterrence as a general preference for crime control became the dominant perspective in mainstream academic literature and policy circles. Not surprisingly, the two trends were linked; deterrence as a justification for the use of arrest came to be regarded widely as the only true reform. The line between researchers and activists began to blur, with both vehemently advocating arrest even though research on the deterrent impact of arrest remained inconclusive. In part, this was a reflection of the general US attitudes favoring the increased use of formal social controls to deter crime. Policies favoring punitive rather than rehabilitative responses gradually permeated practitioner, policymaker, and general public attitudes (Garland, 2001).
Deterrence as a Rationale for Police Action

Beginning in the 1970s, a series of experiments involving some of the country’s most prominent researchers were conducted to try to determine whether police actions specifically deterred offenders and to develop the most effective police response to domestic violence. Before discussing these experiments, it is helpful to understand the concept of deterrence.

Specific Deterrence

Specific deterrence presumes that arrest will deter or prevent an offender from committing further crimes. It presumes that individuals, even violent offenders, rationally consider the benefits of a particular behavior against its potential consequences. Therefore, when an offender is punished by means of an arrest or other criminal justice sanction, threats of punishment become more credible and deter future misconduct.

Over the years, many researchers argued that domestic violence was an ideal setting for the application of deterrence theory. Williams and Hawkins (1989) noted that although classic deterrence theory focused on formal punishments as actual consequences of committing a crime (see also Gibbs, 1985), this analysis was inadequate. Instead, in domestic violence cases, it was the act of being publicly labeled as a “wife beater” and attendant fear of social scorn and ostracism that deters possible recidivism. The shock of an arrest, especially to an individual who does not typically interact with the police, would deter future violence.

Deterrence theory, although rooted in economics, is also consistent with the more psychologically based learning theory, which posits that the best time to attempt to correct deviant behavior is immediately after the conduct occurs. Learning theory predicts that immediate punishment need not be very severe to prevent reinforcement of deviant behavior. In contrast, aberrant behavior might otherwise recur if the deviant act, in this case spousal abuse, went unnoticed and unpunished. The premise to the application of deterrence theory to domestic violence is that arrest can itself serve as sufficient
punishment to prompt changed behavior (Williams & Hawkins, 1989).

In contrast, most lay people assume that punishment only can commence after a person has been convicted of a crime. This ignores the reality faced by the criminal justice system. Conviction in a contested case requires a considerable commitment to use sorely stressed public assets, whether the police, public defenders, prosecutors, judiciary, and, after conviction, probation and penal departments of the state. Furthermore, formal criminal justice system case processing does not typically gain momentum for several months after an initial arrest is made. Delays of several months to more than 1 year are common, if not the norm in many jurisdictions. Although such delays are rarely advantageous for any of the involved parties, delays in these cases can be critical to the safety and well-being of victims and their children. Evidence suggests that most reoffending occurs prior to their court appearance (Buzawa, Hotaling, Klein, & Byrne, 1999; Wilson & Klein, 2006).

**General Deterrence**

General deterrence occurs when an arrest serves as an effective deterrent for potential offenders. This is based on the logical, if unproven, assumption that potential offenders weigh the benefits and costs of their possible actions before committing an offense. Hence, general deterrence might occur in addition to specific deterrence of past offenders (Nagin, 1998).

This theory assumes that when offenders are arrested, there are serious consequences (Williams & Hawkins, 1989). The concept of general deterrence has been applied to arrests in the context of domestic violence. In one early study of anticipated indirect effects of an arrest for domestic violence, 63% of men stated they would lose self-respect if arrested. Most men also feared family stigma and social disapproval after arrest. In contrast, although the possible ultimate costs of a conviction, time in jail, or loss of a job were far more severe, they perceived correctly these outcomes as highly unlikely, and hence not very effective, as a general deterrent against domestic violence (Williams & Hawkins, 1989).

Deterrence theorists believe this is predictable because although conviction
and sentencing for a domestic violence–related offense would be far more serious than simple arrest, the chances of conviction have historically been so low that the threat lacked any real credibility. In contrast, public perception of the likelihood of an arrest might serve as an effective deterrent. A variety of factors impacts perceptions of the threat posed by a specific sanction (Carmichael & Piquero, 2006).

In the 1980s, the NIJ funded a series of studies testing the application of deterrence theory and originated from a National Academy of Sciences Report titled *Deterrence and incapacitation: Estimating the effects of criminal sanctions on crime rates*, which was edited by Blumstein and colleagues (1978).

These studies have been of key importance in stimulating change in police organizations, and had a virtually unprecedented impact in changing police practices and policies, as well as domestic violence legislation.
The Minneapolis Domestic Violence Experiment

Sherman and Berk (1984a, 1984b) conducted the MDVE, which was reported as “The specific deterrent effects of arrest for domestic assault,” in the early 1980s.

The MDVE asked 51 volunteer patrol officers in two precincts to adopt one of three possible responses to situations in which there was probable cause to believe that domestic violence had occurred. Officers were randomly assigned one of three choices: (a) to separate the parties by ordering one of them to leave, (b) to advise them of alternatives (possibly including mediating disputes), or (c) simply to arrest the abuser. During a period of approximately 17 months, 330 cases were generated. The authors then evaluated the possible success of these various treatments in deterring recidivism. Recidivism was measured both by official arrest statistics, such as arrest reports and, when available, by victim interviews. The researchers later reported that 10% of those arrested, 19% of those advised of alternatives, and 24% of those merely removed repeated violence (Sherman & Berk, 1984a). From this, they concluded that arrest provided the strongest deterrent to future violence and consequently was the preferred police response. It is important to realize that the MDVE was a limited experimental design that did not purport to address the question of the “proper” police response to domestic violence.
Methodological Concerns of the MDVE

The Minneapolis study was strongly critiqued both for its methodology and for its conclusions. Severe criticism was raised in several areas. Responding officers apparently had advance knowledge of the response they were to make. As such, they had opportunity to reclassify offenses to fall outside the parameters of the experiment (Mederer & Gelles, 1989). They might do so if an arrest was assigned despite the officers not desiring to do so—either because of police traditions or possibly to avoid extra paperwork. Even in official statistics of the experiment, several cases (17) were dropped from the experiment, and in fully 56 of 330 cases (17%), the officers gave a treatment different than that required.

Unionized, rank-and-file police officers have never been committed to honoring an experiment by academic outsiders (not exactly their favorite group). There is, in fact, considerable evidence that the MDVE experiment did not control the officers.

Three of the 51 officers assigned to participate in the study made most of the arrests, which suggests that the other officers assigned to participate might have actively or passively subverted randomization techniques.

Furthermore, the study only used volunteer officers. This, plus anecdotal evidence, strongly suggests that most officers simply acted the way they thought the situation demanded, indirectly sabotaging the project’s validity. Similarly, 5% (16) of the 314 cases were excluded (Sherman & Berk, 1984a).

The victim measurements also were questionable. Only 49% responded in the 6 months after interviews, leaving conclusions based on the database innately suspect. Binder and Meeker (1988) as well as Lempert (1987, 1989) provided a thorough critique of the MDVE, including these as well as additional concerns. Gartin (1991) attempted to address many of the methodological concerns through a reanalysis of the archived data from the MDVE and found that statistical significance depended on which data sources were used and how the data were analyzed. Gartin concluded that arrest did not have as great a specific deterrent effect as the original research had suggested.
The external validity (or generalizability) of the conclusions in this study also was suspect. The actions of the officers were, by the nature of the experiment, treated in a vacuum largely independent of the downstream effect of other criminal justice actors. In our view, it is difficult to determine the effect of any police action without explaining how domestic violence prosecutors, courts, probation officers, or social service agencies subsequently handle the cases.

Despite initial disclaimers to the contrary, the Sherman and Berk study immediately became the most cited study in the field. Findings were reported in the *New York Times* (Boffey, 1983), in a Police Foundation report (Sherman & Berk, 1984a), and in numerous academic journals (Berk & Sherman, 1988; Sherman & Berk, 1984b), and they were widely publicized across the country as a whole. Hundreds of newspapers and nationally syndicated columnists discussed these findings, and several major television networks provided prime-time news coverage, often with special documentaries (Fagan, 1988; Sherman & Cohn, 1989). The 1984 Attorney General’s Task Force on Family Violence even cited the MDVE findings as a basis for recommending that all law enforcement agencies should develop policies requiring arrest as the preferred response for domestic violence incidents (US Attorney General’s Task Force on Family Violence, 1984).

In their summary of the significance of the 1989 MDVE, Maxwell, Garner, and Fagan (2001) stated that “a 1989 survey of local police departments concluded that the published results of MDVE may have substantially influenced over one-third of the police departments responding to their survey to adopt a pro-arrest policy” (p. 4).
The Impact of the MDVE

Although the Minneapolis experiment might best be referred to as being merely a pilot study, few now deny its great policy impact. This occurred directly via policymakers and indirectly via researchers. Part of the reason for the profound impact of the MDVE was the promotional campaign that followed. At least one of the authors, Professor Sherman, stated that he believed it was the obligation of social scientists to solicit publicity (Sherman & Cohn, 1989). He recounted how he and his colleagues made decisions about how to manage the story, including persuading local television stations to feature documentaries or action tapes for national news shows (even before the results of the experiment were known). Efforts to manage the press continued even to the extent of releasing the final results on the Sunday before Memorial Day, assuming that there would be less competition on a slow news day (Sherman & Cohn, 1989) and notifying the MacNeil/Lehrer NewsHour of the study’s release well in advance.

Such publicity efforts, which were extraordinary for social science research, were justified as an attempt to “get the attention of key audiences effecting police department policies” (Sherman & Cohn, 1989, p. 121). As Sherman remarked, he also “wanted the audiences to be influenced by the recommendations and be more willing to control replications and random experiments in general” (p. 122).

The NIJ did not release any publications on the study, hold any meetings or conferences, or fund any demonstration programs testing the use of arrest, however. The massive publicity generated by this research was almost entirely due to the efforts of individuals (Garner & Maxwell, 2000).

The impact of the Minneapolis study was certainly a result, in part, of the extreme publicity it received and the impression that its conclusions, however tentative, were federally funded and supported. Under such conditions, administrative debates on the relative merits of arrest compared with other potential avenues of reform became nearly irrelevant. In fact, despite its acknowledged limitations, by the mid-1980s the study reinforced to the point of orthodoxy the view among feminists that police should arrest and a
mandatory arrest policy should be instituted when possible.

For this reason, the research and policy implications of the MDVE and the attendant publicity campaign clearly deserve extensive study. Debates among researchers continued over the years as reanalyses and discussions of the findings were conducted (Maxwell, Garner, & Fagan, 2001).

All parties have acknowledged that widely reported research, although preliminary in nature, might dramatically affect social policy. As might be expected, the differences among the participants are in the perception of the duty of researchers. Some believe it more responsible to wait until final research is available before publicizing preliminary findings (Binder & Meeker, 1988). Others believe that researchers have a duty to try to effect change in response to a critical problem despite knowledge of research limitations (Sherman & Cohn, 1989). This is also despite the concern that extensively publicizing a preliminary study might cause adoption of a policy that would do more harm than good (Lempert, 1987).

There is a risk to relying reliance on preliminary research as it may lead to the adoption of faulty policies, which could scarcely be imagined in the context of experiments on new drugs or proposed medical interventions. Further, it is unrealistic to assume that agencies will simply change their methods of operation when future research provides different conclusions or finds unanticipated consequences. It also implies willingness to subject social policies to the uncertainties of preliminary social science.

Ultimately, there is a risk that police might become less likely to respond to accurate scientific evidence about the impact of proposed policies, which is a major defeat for researchers in general. This perhaps has contributed to the decline in the influence of social science research recently noted by Garland (2001). Similarly, as we review later in this chapter, federally funded research on the proper role of the criminal justice response to domestic violence was dominated by the six replications of the Minneapolis experiment. As a result of funding limitations, virtually no alternatives to arrests were explored in federally funded research projects.

In any event, within 1 year of the study’s first publication, almost two thirds of major police departments had heard of the Minneapolis experiment, and
three quarters of the departments correctly remembered its general conclusion that arrest was the preferable police response. Similarly, the number of police departments encouraging arrests for domestic violence tripled in 1 year from only 10% to 31%—a figure that increased again to 46% by 1986 (with more than 30% of all such departments stating they had changed their position at least partially because of the Minneapolis study). This impact was immense. The fact that it generated wide-scale abandonment of police doctrine that had remained static for decades is still probably an understatement of its importance in changing policy.

The study served as a catalyst for ongoing politically based efforts at change, being favorably cited by other influential researchers and policymakers who were then considering implementing state domestic violence laws (Cohn & Sherman, 1987).
Deterrence Theory and the MDVE

Apart from concerted efforts to publicize the findings, why did the MDVE so resonate with policymakers? In part, it resulted from the emergence of the predominance of the theory of deterrence. As indicated, advocates and battered women’s support groups seized Sherman and Berk’s (1984a, 1984b) conclusions. For years, their advocacy and litigation had little visible effect on convincing police departments of the seriousness of domestic violence and the need for greater victim respect. Therefore, the attention placed on the study was fortuitous, supporting an agenda favored by a significant policy elite. Under such conditions, research disclaimers were predictably ignored.

In addition, the belief that arrest would actually stop domestic violence offenders from reoffending had a great deal of intuitive appeal. Arrest or the potential for arrest would provide a deterrent to potential offenders. At that point in time, consideration was not given to the criminal justice response once an arrest had been made. As we discuss in Chapter 11, the likelihood of a case continuing in the criminal justice system was highly unlikely; however, at the time, arrest itself was thought to provide an end point in the cycle of victimization for women.

Indeed, this could be perceived as part of a trend among “crime control” proponents to advocate deterrence as a mechanism to prevent future criminal behavior. Von Hirsch (1985) noted the radical shift from a treatment model favoring offender rehabilitation predominant during the 1960s and early 1970s to one that implicitly conceded that rehabilitation had little effect. The increased challenge to the treatment model left a void that deterrence theorists happily filled. Economists began to apply their disciplines to criminal justice policy development, an area that had been the province of sociologists, psychologists, and political scientists. They theorized that “crime could effectively be reduced... through sentencing policies aimed at intimidating potential offenders” (p. 7).
The Replication Studies

Part of the reason for the extensive publicity campaign discussed earlier was to pressure the NIJ to replicate the study in additional cities rather than focusing research on victims or other aspects of the response to domestic violence. In addition, questions, criticisms, and concerns were escalating in the research community, and support for replications became widespread.

As a result, the NIJ decided to expend most of its limited domestic violence research funds on six experimental replications of the MDVE study. It is interesting that a concern among other researchers was the huge expenditure of funds to employ essentially the same type of research methodology. Their concerns, which were not addressed by the NIJ, focused more on victims’ needs and on employing designs that encompassed more qualitative components, seeking input from victims directly. This became a source of controversy among other researchers, although according to Joel Garner (who was at that point an NIJ program manager), arguments against funding experimental research designs were not persuasive (Garner, 1990).

In any event, the NIJ subsequently funded six additional experiments. These experiments were collectively known as the “Replication Studies,” and their results were revealing.
Omaha, Nebraska

Dunford, Huizinga, and Elliott (1989) conducted the first replication study in Omaha, Nebraska. When both victim and offender were present, the officers were explicitly instructed at the time of their initial response as to one of three options: to arrest, to separate the parties by removing the offender from the household, or to use mediation. The methodology was improved compared to the MDVE because it matched ethnic backgrounds of the victims to female interviewers, which resulted in the cooperation of far more victims (73% at 6 months).

Dunford and his colleagues (1989) reported that arrested offenders were more likely to reoffend based on official police data but less likely to reoffend based on victim interviews. These findings were not statistically significant, however, leading the researchers to conclude that the relative impact of arrest versus other treatments was not profound because arrest by itself did not seem to deter future assaults any more than separation or mediation. Although this did not seem to provide any rationale for making arrests—the preferred outcome—the study also did not find that using arrests increased subsequent assaults. From this, Dunford et al. concluded the following: “It is clear, however, that arrest, by itself, was not effective in reducing or preventing continuing domestic conflict in Omaha, and that a dependence on arrest to reduce such conflict is unwarranted, perhaps erroneous and even counterproductive” (p. 67).

A second component involved offenders who had already vacated the premises. Offenders in this group were randomly assigned to issuance of a warrant or to no further police action. This data set provided the surprising result that more than 40% of the offenders were not present when the police arrived. This was significant because little attention had been paid to the fact that a large percentage of offenders left before police arrived, which led future researchers to question whether there were differences between offenders who remained and those who stayed (Buzawa et al., 1999; Hirschel & Buzawa, 2013).

There also were clear differences based on the intervention chosen when the
offender was absent. Absent offenders who were the subject of an arrest warrant were less than half as likely to recidivate than others—5.4% versus 11.9% (Dunford et al., 1989). Therefore, this experiment provided tentative evidence that the issuance of a pending arrest warrant seemed to deter prospective offenses. In addition to the more structured experimental approach, the researchers also reviewed police records for 45 months after the survey began. They found that although victims were at most risk for repeat violence immediately after the first incident, almost 25% were reabused after 1 year of their prior contact with the criminal justice system. This finding presented interesting policy implications about whether contact with the criminal justice system does, in fact, deter offenders and whether probationary supervision of assailants should be routinely extended.
Milwaukee, Wisconsin

A second replication study by Sherman, Schmidt, et al. (1992) was conducted in Milwaukee, Wisconsin. Many of the earlier methodological problems of the MDVE were expressly addressed by this research design. These researchers chose to study four police districts containing high concentrations of minorities and to compare the results of offenders who were merely warned by the police with those who were arrested and held for a short period of time (3 hours) and those arrested and held for a longer period of time (12 hours). The duration of holding was tested to see whether a “short arrest and hold” might serve to provoke an offender.

It was true that when repeat violence was measured after 6 months, arrest deterred more reabuse than the mere issuance of a warning, whereas a greater duration of the hold period did not significantly affect outcome. This result, however, did not continue. After 11 months, the arrested group showed even higher levels of recidivism. The report concluded that arrests seemed to deter the employed but not the unemployed offender (Sherman, Smith, Schmidt, & Rogan, 1992). Perhaps this result should not have been surprising. Less-publicized research had long reported that being arrested seemed only to have an effect for 6 months, which is a relatively short period (see, e.g., Dutton, 1987). Within 30 months, there was a 40% recidivism rate despite arrest. In short, Dutton had already concluded that any contact with the criminal justice system, unless reinforced by long-term counseling or other activities, may only result in relatively short-term behavioral change. It is possible that many of these offenders have a long history or arrests or are aware of the fact that arrest seldom leads to prosecution.

In addition, the research strongly suggested that deterrence occurred among many of those arrested. Specifically, arrest seemed to deter White offenders with a reduction rate of approximately 39% over those offenders who were merely warned—versus a modest increase among Black offenders. Unemployed offenders, both Black and White, seemed to be least deterred by arrest, being the group most likely to recidivate in general and most likely, statistically, to show a long-term negative effect after arrest.
The results of the unemployed offenders are even more intriguing. Logically, if an offender has had significant past experience with the police, he might not be as deterred as someone who has not, and thus, the experience with police intervention is a shock. This might not necessarily mean, however, that arrest was the wrong strategy to pursue with this group. Instead, it might signify that police and courts should implement complementary actions after an arrest. Unfortunately, because of the somewhat artificial strictures of this experimental design, this thesis could not be tested. The results of the significance of unemployment are not surprising in the context of what we know about criminal behavior. Unemployment has consistently been identified as a risk factor not only for domestic violence, but also for criminal behavior generally.
**Charlotte, North Carolina**

Hirschel, Hutchison, Dean, Kelley, and Pesackis (1991) conducted the third replication study in Charlotte, North Carolina. Charlotte has a relatively high crime rate and high unemployment. In addition, at the time of the study, the city had an approximately 70% minority population, allowing the researchers to address the police response to this subpopulation. The Charlotte experiment focused on misdemeanor-level violence committed in that city during a 23-month period (August 1987 to June 1989).

According to official statistics, arrest was associated with increased reoffending. This contrasted with the findings from victim interviews in which arrest was associated with reduced reoffending. Neither finding was statistically significant, however, and the researchers concluded that the data did not support arrest as being more effective in deterring subsequent assaults. Subsequently, Garner and Maxwell (2000) suggested that the research designs used might not have been capable of detecting differences that could have existed because of the number of interviews (338) in this case.

The group and jurisdiction selected in Charlotte might have contributed to an especially tough test of the effects of arrest. Almost 70% of the offenders had previous criminal histories. It had been hypothesized that this group is among the least likely to be deterred by yet another arrest (Sherman, Schmidt, et al., 1992). Of even greater importance, only 35.5% of those arrested or who had received a citation was ever prosecuted, and less than 1% ever spent time in jail beyond the initial arrest. Simply put, arrest used in an administrative vacuum seemed unlikely to be a significant deterrent to a group of offenders already inured by past experiences with the criminal justice system.
Colorado Springs, Colorado

Berk, Campbell, Klap, and Western (1992) conducted the fourth replication study for a 2-year period in Colorado Springs, Colorado. They drew a large sample—1,658 incidents of misdemeanor violence. The study was unusual in several ways. It involved a highly unrepresentative proportion of military personnel (more than 24% of the offenders and 7% of the victims). Also, only 38% of the cases involved an assault, whereas others were claims of “harassment,” “menacing,” and other related offenses.

This study assigned respondents to one of four options: (a) an emergency order of protection alone, (b) the protective order coupled with arrest, (c) the protective order coupled with crisis counseling, and (d) the officer’s response limited to merely restoring order (Berk et al., 1992). Although victim interviews found a deterrent effect, this was not reflected by the official data.

Of equal or greater importance, the study seemed to show only a limited effect of a case being assigned to the Safe Streets Unit; 18.8% of those who received their services reported continued violence compared with 22.4% of those who had not. This 3.6% difference was not statistically significant nor was the frequency of reported abuse markedly different.
Miami, Florida

Pate and Hamilton (1992) conducted a fifth replication from August 1987 to July 1989 in the Metro-Dade Police Department, Miami, Florida. The study involved 907 cases in which the officers had arrest discretion. The sample was somewhat unusual in that it only involved male offenders as a result of then current Florida law.

Two interventions were tested—arrest versus no arrest as an initial action and whether there was a follow-up assignment to the Safe Streets Unit. This specialized unit consisted of a number of detectives, supervisors, and support staff, all of whom had received an intensive 150-hour training course in handling domestic violence. The unit established case histories and interviewed the couple.

Police assisted parties in reaching acceptable solutions and made referrals to appropriate agencies and outside resources. Although updated in its approach, this unit shared the same orientation as the Family Crisis Intervention Teams first used in New York City and discussed earlier. Based on victim interviews and police records, this study reported significant differences between those offenders who were arrested and those who were not. Using the common 6-month follow-up, 14.6% of arrested abusers had reabused their victims compared with 26.9% of those who were not arrested. In addition, the frequency of violence was greater among those who had not been arrested. Victim’s reports, however, indicated that there was no significant effect of treatment chosen on the 29% of offenders who were unemployed (Pate & Hamilton, 1992).

A second experiment with these data involved the provision of follow-up police services. The authors reported that there were no significant differences in revictimization rates for those victims receiving follow-up services based both on official police data and on victim interviews (Pate, Hamilton, & Annan, 1991).
Atlanta, Georgia

The Atlanta, Georgia, Police Department was intended to be the seventh site of a replication study, but the researchers never submitted a report to the NIJ nor did they ever publish the findings.
A New Analysis of the Data

Maxwell et al. (2001) reanalyzed data from the replication studies with the exception of Omaha and, of course, Atlanta. Their analysis attempted to address the concern that none of the replication studies employed the same outcome measures, measurement strategies, or methodologies as the MDVE. They determined that the only analyses possible were based on prevalence, frequency, and time to failure in official records as well as on prevalence and frequency of reoffending in victim interviews. Although they did report that overall arrest decreased the likelihood of reoffending, the findings were not statistically significant when using official data but were significant when analyzing victim report data.

It can be argued that victims only report a small percentage of reoffending, however, and that those who are willing to be interviewed or could be located might be those who were most likely not to be revictimized. In research involving several data sets, Buzawa and Hotaling (2000) found that victims only reported about half of new offenses. Those dissatisfied with the police response and who believed that the police either overreacted or increased the danger of the situation were unwilling—and, in fact, feared—disclosing new assaults (Buzawa et al., 1999; Buzawa & Hotaling, 2000; Hotaling & Buzawa, 2001). Also, the research protocol in how follow-up interviews were conducted in the replication studies might easily have affected the willingness of victims to disclose an unreported assault to a researcher out of fear that the offender would be arrested.

In addition, we now have research suggesting that many offenders find new victims once a victim is unwilling to tolerate violence or reports it to the police (Buzawa et al., 1999). Therefore, although it is possible for revictimization to be reduced, reoffending rates might remain stable.
The Reaction to the Replication Studies

Reaction to the replication studies and their failure to confirm the earlier MDVE findings were predictable. Feminists and battered women’s advocates severely criticized their methodology, their sensitivity to policy implications, and their conclusions (Bowman, 1992; Zorza, 1994; Zorza & Woods, 1994).

Bowman (1992) wrote the following:

Quantitative research has often elicited a good deal of criticism from feminists. Quantitative methods are considered suspect because they place a greater value on “objective” and quantifiable information than on other sources of knowledge. Relying solely on such data assumes a separation—indeed, a distance—between the researcher and the object of study since they isolate the factors under study from their socioeconomic and historical context. Further, there is a failure to hear directly from the victim herself and include data as to how she interprets the situation. In the domestic violence field, moreover, survey research is greeted with particular mistrust because of early studies, which were perceived as both insensitive in their design and biased in their results. (p. 201)

An especially telling critique has been leveled at the heart of the experimental approach—isolating one individual variable (in this case, arrest) from all other factors and then assuming that this factor might truly be studied independent of its organizational and societal milieu. Zorza and Wood’s (1994) overall analysis of the replication studies best summarizes this position:

The problem inherent in police replication studies is that they isolate the initial police response from any other possible responses to domestic abuse and fail to realize that the effect of arrest on
domestic abuse is only one of potentially dozens of issues, which should be studied. Although the experimenters occasionally reported the rarity of conviction and especially imprisonment, they failed to evaluate what steps prosecutors and the courts took and why, what sentences the offenders received, what type of batterer treatment programs were utilized and for how long, how batterers were monitored for attendance... were orders of protection issued, or what assistance was provided to the victims.... In the absence of answers to all these questions, one cannot properly assess whether some other part of the system supported or completely undermined police efforts. (p. 972)

Deterrence theorists might simply treat these studies as a failure to confirm the deterrence hypothesis without providing any exceptionally insightful views of the necessary role of the police and the rest of the criminal justice system on the control of domestic violence. Sherman, Smith, et al. (1992) stated it in the following manner: “A policy of non-arrest may erode the general deterrent effect of arrest on potential spouse abusers. Yet a policy of arresting all offenders may simply produce more violence among suspects who have a low stake in conformity” (p. 688).

Regardless of their individual and collective methodological shortcomings, the replication studies collectively suggest that the role of arrest as a monolithic response for responding to all cases of domestic violence is problematic. Deterrence might exist for some but not all offenders. Furthermore, although not addressed by the replication studies, what is of at least equal significance is the differential impact of arrest on victims. Nonetheless, arrest clearly is an essential tool even if it does not deter certain types of offenders. As we have seen with the MDVE, extensively published research does not guarantee that the results will remain constant in other settings and at other times. Although some offenders might not be deterred, others (both those arrested and those who might otherwise batter in the future) might be so dissuaded.

In addition, such a conclusion would place an inappropriate emphasis on the concept of deterrence. Arrest historically has not been used because of its capacity to deter offenders but to serve as the primary vehicle by which
offenders are brought into the criminal justice system. In addition, it is an important reminder to the victim, the offender, and society at large that a particular conduct will not be permitted. The replication studies should be considered along with other evidence suggesting the necessity of providing a coordinated criminal justice response. Arrest could then be a useful tool that is part of a coordinated response rather than an end by itself. These issues are discussed in more detail in Chapter 8.

Dunford et al. (1989) perhaps best stated this conclusion when discussing the implications of the Omaha replication study:

Since arresting suspects is expensive and conflicts/assaults do not appear to increase when arrests are not made, one response to these data might be a recommendation to effect informal dispositions (separate or mediate) in cases of misdemeanor domestic assaults in Omaha. A significant problem with this approach, however, is that it seems ethically inappropriate, it violates the recommendations of the Attorney General’s Task Force... and it may be illegal... to patently ignore the rights of victims. (p. 204)

A policy that encourages, but does not mandate arrest may be useful from several points of view. First, it would allow officers... to respond to the wishes of victims who do not want, for a variety of reasons, suspects arrested.... Second, when an arrest is seen as an entry point into a coordinated criminal justice system rather than an end point, it may shift the burden of deterrence from a single official police intervention (arrest) to a sequence of other interventions, each of which may have some salutary effect. This view recognizes that suspects chronically involved in domestic violence most frequently do not admit to having a problem in this regard... are not easily treated... and do not seek help voluntarily... to deal with such problems and thus might require sustained long-term interventions to change their ways. It supports arrest in domestic assault instances in which probable cause for an arrest is present and when victims support the arrest of suspects, not because arrest is a panacea for deterring domestic violence, but because of penalties and the leverage that an arrest implicitly
facilitates. (pp. 61–77)
Legal Liability as an Agent for Change

The final major force impacting the police response to domestic violence was that individual officers, as well as entire police departments and municipalities, were exposed to substantial risks of liability awards, fines, and injunctions if they failed to make an arrest for domestic assault. This concern dramatically restricted their freedom to continue with previous practices and contributed to the development of written domestic violence policies and training.

Several lawsuits in the late 1970s claimed that the Oakland, California, and New York City police departments failed to protect battered women (Bruno v. Codd, 1977; Scott v. Hart, 1976). In both of these cases, trial courts ordered the police to provide better protection to the victims of domestic violence. These cases were important because the courts clearly recognized that the police had not served the class of victims of battered women, resulting in damages. In these early cases, the remedies requested were largely prospective, for example, to force police to treat victims of domestic assault the same as other victims of crimes. Remedies typically were to force the police to adopt more aggressive and proactive policies.

Although these cases laid the legal groundwork to establish that poor police policy and practices could result in a court order, it has generally been recognized that the seminal case forcing police change was Thurman v. City of Torrington (1984). Because this case is a graphic portrayal of police indifference and had a profound impact on police procedures, it is worthwhile to discuss it in detail.

In this case, Ms. Thurman and other relatives had repeatedly called the police, pleading for help to protect her from her estranged husband, but they had received virtually no assistance, even after he was convicted and placed on probation for damage to her property. When she asked the police to arrest him for continuing to make threats to shoot her and her son even while still on probation, they told her, without any legal basis, to return 3 weeks later and to get a restraining order in the interim.
In any event, she did obtain the court order, but the police then refused to arrest her husband, citing a holiday weekend. After the weekend, police continued to refuse to assist based on the fact that the only officer who could arrest him was “on vacation.”

In one final rampage by her husband after a delayed response to her call for emergency police assistance, Ms. Thurman was attacked and suffered multiple stab wounds to the chest and neck, resulting in paralysis below her neck and permanent disfigurement. The responding officer stated that he was at the other side of the house “relieving himself” and thought the screams he heard were from a wounded animal.

Her attorneys argued two major theories for police liability: negligence and breach of constitutional rights. Simply stated, the negligence theory claimed that police, being sworn to protect citizenry, had a duty to take reasonable action when requested to prevent victim injury from a known offender. The second theory was that the police, as agents of the state, violated her fourteenth amendment rights by failing to provide equal protection under the law. This claim was based on differential treatment accorded by police to largely male victims of non-domestic assault compared with primarily female victims of domestic assault. This was considered sex discrimination because most victims of serious injuries in cases of intimate partner abuse were women.

The court found a clear hidden agenda of the Torrington Police Department. Police actions were found to constitute deliberate indifference to complaints of married women in general and of Ms. Thurman in particular. This was negligent and violated the equal protection of the law guaranteed Ms. Thurman. A $2.3 million verdict was awarded to Ms. Thurman and her son. An excellent description of the legal rationale of the judgment is contained in Eppler (1986). The *Thurman* case was widely reported in the popular press, police publications, and research journals, and it was addressed in a variety of legal seminars nationwide. It graphically confirmed to all parties, including prospective legal counsel, that financial penalties could be imposed on municipalities that abjectly fail to perform their duties.

The impact of *Thurman* and similar cases was twofold. Fear of liability
became a prime factor motivating departmental administration, at the least out of self-protection, to require more justification if arrests were not made. In some cases, this actually nudged departments to adopt pro-arrest policies.

Fear of liability awards was even more important for those departments located in jurisdictions that had adopted, by statute or department policy, mandatory or presumptive arrest. Such statutes could easily be used by plaintiffs’ attorneys to establish the standard of care that police owed to victims of domestic violence. In this context, it is noteworthy that one state’s mandatory arrest law was cited in a legal advocacy journal as providing a sound basis for asserting a legally enforceable right of action to victims hurt by police failure to make arrests (Gundle, 1986; restated by the Victim Services Agency, 1988).

As a result of a number of cases both before and after Thurman, there was a proliferation of consent decrees resulting from negotiated settlements of class action lawsuits to stop tacit “no arrest” policies. As a result, several police departments operated under consent decrees for many years requiring them to treat domestic violence as a crime, to make arrests when appropriate without consideration of marital status, and to advise victims of their legal rights.

The importance of having these orders in place is twofold: If the order is violated, a clear standard of care has been set—and not met—making liability relatively easy to determine. In addition, if the violation was intentional, the police administrators and the officers in question risk contempt of court, possibly risking personal fines or incarceration. (For a summary of the early cases, see Ferraro, 1989a; Victim Services Agency, 1988; and Woods, 1978. For a discussion of the full breadth of civil litigation and its impact, we recommend Kappeler, 1997.)

Unfortunately, although such consent decrees have been imposed in a number of jurisdictions, including Oakland in Scott v. Hart (1992), New York City as a result of Bruno v. Codd (1977), and many other locations, there is a lack of empirical research examining the extent to which actual operational practices were changed after such orders were in effect. We can, however, hypothesize that the prospects of paying substantial attorneys’ fees (even if ultimately successful), of the drain on management attention, and of the potential for a public relations and financial debacle each applied pressure on police
departments to adopt policies that were easy to explain and defend. Such policies, if written clearly and, presumably, applied and enforced, would have the effect of insulating police departments from organizational liability and shifting that risk to the individual officer.

This book does not, of course, purport to describe the latest legal findings on police liability, or lack thereof, but only to describe the influence of litigation as a factor in changing the police response to domestic violence. In that vein, there have been few, if any, rollback of policies simply because the US Supreme Court in *DeShaney v. Winnebago County Dept of Social Services* (1989) made it far more difficult to sue police departments. In this case against a social service agency, the Supreme Court disallowed the action even though the county had seemingly negligently sent a minor child back to his father, who then brutally murdered him. The county was held not liable for damages caused by the private violence of one party against another. This can be contrasted with *Canton v. Harris* (1989), which the Supreme Court decided 6 days after *DeShaney*. In that case, the Supreme Court found liability against a police department after it determined that the department had not adequately trained an officer on its own policies, resulting in injury to people who should have been protected. Similarly, liability under state law for negligence or even intentional liability might continue to pose potential problems for police departments that fail to deal with domestic assaults in a systematic fashion.

The collective impact of these suits was that, by the early 1980s, there was a highly unusual blend of research, pressure from advocates, and legally based administrative need for change. These factors all operated in one direction—to force the police to increase arrest rates in domestic violence cases.
Summary

The irony is that, as of the writing of this edition, two of the three reasons for the change in practices have been severely eroded, with research no longer consistently reporting that arrests are the best method for handling domestic assaults. Similarly, legal liability against the police has been minimal—at least at the federal level and for many states. Nonetheless, there is no apparent relaxation in the push for mandatory arrest, as we discuss in the next several chapters. Arguments are still made about the need to protect departments from liability and lawsuits, and early research is still cited to support its effectiveness despite contradictory evidence.
Discussion Questions

1. What factors do you think most accounted for change in the community where you live? If you think more change is needed, what would best facilitate it?
2. Why do you think there is such variation in how communities have changed their response?
3. What role do you believe liability should play in effecting change? Do you believe cities should pay for negligence on the part of those who respond to domestic violence victims?
4. Who should be held responsible for failure to respond properly to a victim—the individual or the agency/organization for whom they work? Why?
5. Do mandatory arrest policies rely on faulty assumptions regarding deterrence?
6. Do mandatory arrest policies adequately differentiate among the vast range of incidents and relationships that fall under domestic violence statutes?

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7 Policing Domestic Violence
Chapter Overview

By the early 1980s there was widespread disillusionment with classic patterns of police noninvolvement in cases of domestic violence. As explained earlier, these changes were the result of an unusual congruence of the acknowledged failure of the past approach to combat this problem, growing political pressures, risks of potential legal liability for poorly responding agencies, and highly publicized research uncritically promoting arrest. Such pressures were reflected in, and then reinforced by, a wave of state and federal legislation. The result has been a clear bias in policy toward the use of arrests as the primary focus for criminal justice intervention.

Even when arrests are not mandated or required in actual practice, the police can take a variety of actions in cases of domestic violence. Arrest, however, was not historically the typical outcome for any assaults. Instead, arrests have traditionally been infrequent and considered a last resort. Statutory change and pro-arrest policies have clearly changed this underlying dynamic making arrest far more likely than it was in the past. As stated earlier, research has shown that mandatory arrest jurisdictions have higher arrest rates followed by presumptive arrest jurisdictions and then, not surprisingly, discretionary ones. However, considerable variability in arrest practices still exists in all such jurisdictions making an examination of when police arrest or do not arrest a key question for public policy in the response to domestic violence.
How Do Police Decide Whether to Arrest?

Clearly, arrests should not be performed without good reason. They impose a loss of freedom upon the person arrested, may be highly disruptive to a family, can threaten police–community relationships if done capriciously, and therefore, unless with good cause, impose unnecessary burdens on the individual, the agency, and society at large. This supports the constitutional standard that no arrest shall be made unless the officer believes that there is reasonable cause to believe that the arrested suspect committed a crime, and that crime is of sufficient gravity to justify arrest. Hence if variation in arrest practices clearly was made solely or even primarily on the basis of probable cause, there would be little need to study the matter farther.

In addition, unless discretion is further circumscribed by statute as in mandatory arrest jurisdictions, an officer might develop an internal matrix—or, preferably, one set forth in published policies—governing whether to make an arrest in any particular circumstance. Perhaps the most important question to ask is, what are the proper discriminators for the decision to arrest and to what extent do police follow them? While not an exhaustive list, some logical factors that might be included in a straightforward prediction of when police make an arrest include:

- What is the extent of injury to the victim?
- Did the offender intend any such injury? Since few offenders are likely to make such an admission, factors to consider are:
  - Did the offender act in a premeditated manner evidencing intent?
  - Did the offender use any object as a weapon such as a gun or knife, or use another technique (e.g., choking) that is very likely to cause injury?
  - Was there a gross difference in size, strength, or other physical attributes that would demonstrate a callous disregard of serious risk of victim injury or perhaps a grossly disproportionate response to a minor verbal or physical provocation?
- Were the victim and offender engaged in mutual combat or was this a physically unprovoked attack? It should be noted that many agencies now have training and policies to distinguish between a primary
aggressor and a victim acting in self-defense.

- Has the offender ever engaged in this unlawful behavior in the past?
  - Against this victim?
  - Against other intimates or family members?
  - Does the perpetrator show a pattern of abusive or violent behaviors demonstrated by a lengthy arrest or conviction sheet
- Are there special circumstances justifying arrest including threats to the officer, an apparent need for immediate protection of the victim, or risk to minor dependents?
  - Was an act of violence witnessed by minor children or otherwise endangering their future mental or physical health?
  - Is the accused offender still threatening the victim, children, witnesses, relatives, or the police officer indicating high likelihood of immediate future violence?
- Is there probable cause for an arrest or will it results in a dropped charge due to insufficient evidence?
  - Does the victim appear willing to testify? Can the officer tape a statement from the victim or witnesses, or find corroborating evidence?
- What is the likelihood of reoccurrence of violence or property damage?
  - Has the underlying conflict already been resolved?
  - Does the behavior of the offender indicate a predisposition to continue as soon as the officer leaves?
- Does the victim prefer arrest?
  - If not, does this appear to be the result of fear?
  - Has the victim obtained restraining orders that for some reason she does not want enforced (possibly indirectly indicating coercion)?

It is recognized that most police officers have changed past practices and now believe they should, and typically do, arrest when the incident indicates a high degree of potential danger for the victim or a serious criminal assault has already occurred. Police legitimately need to focus limited resources on cases in which there is potential for violence or a history of assaults (or both). Studies have consistently shown that legal requirements or articulated policies are in fact the best predictor of the domestic violence arrest decision. In one particularly thorough examination of national NIBRS data involving 577,862 incidents of assault and intimidation for the year 2000, the
seriousness of the offense in the context of the offender’s use of a weapon or injury was the single most important predictor of arrest among mandatory, presumptive, and discretionary arrest jurisdictions (Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007).

Furthermore, and critically important, arrests were far more prevalent in mandatory arrest jurisdictions, than in presumptive arrest jurisdictions, which in turn generated a higher rate of arrest than in states where the officer was totally free to use his or her discretion. Whether we agree or disagree with mandatory arrest statutes, the higher increase in the rates of arrests in states that have such statutes reaffirms the legitimate policy consensus as shown by such legislation.
Discretion to Arrest in Domestic Violence Cases

A strong body of police behavioral literature has, however, reported that when given any degree of discretion, police start using extralegal variables—factors not specified in statutes—in deciding whether to arrest or not (Black, 1976). This is especially true in interpersonal conflict and in cases involving misdemeanors or other crimes considered to be less serious, where such factors may dramatically influence arrest decisions, (Phillips & Sobol, 2008). The area of domestic violence, because of the heavy contextual component (who attacked first, in response to what provocation, presenting what degree of future risk; and the possibility of strong victim preferences for or against arrest) presents one of the areas most likely to be driven by such contextual factors (Buzawa & Austin 1993; Finn & Bettis, 2006). Thus, despite the existence of strong statutory frameworks that—at least in the United States—universally favor arrest, there remains a strong possibility that officers can exercise their discretion as to whether to make an arrest (Lee et al 2013).

In addition, facts that legitimately impact the decision to arrest are often extremely difficult for an officer to accurately assess. These decisions are made in the context of the need for rapid intervention, and often in a complex, highly emotional, and potentially volatile environment. To more fully understand how police actually act, it is helpful to examine what they confront situationally when they reach the scene of a possible crime. Also, it has long been known that police, like most professionals, follow established routines or trained behavior patterns whether in the context of arrests or in deciding which crimes to target for enforcement. This tends to result in a similar organizational response to cases that share similar characteristics (Elliott, 1989; Faragher, 1985; Sanders, 1988; Sherman, 1992). In this regard, police may to some extent be viewed as street-level bureaucrats who follow established patterns of behavior. Such behavior is partially based on legislative mandates, policies, and training, but is internally fairly consistent (Cross & Newbold, 2010). Similarly, decision making, in deciding what crimes to focus on and when to make arrests, can be at least partially based on officer-established profiles on when and how to act (Piquero, 2008; Ruiz & Lee, 2009).
To no one’s surprise, conflict theorists long have believed that police enforcement of many laws is differentially applied, often in ways that reinforce the economic and social stratification of society with some theorizing that poor or minority neighborhoods would get more aggressive policing, and hence more arrests, rather than problem solving approaches that might take more time to implement (Black, 1976; 1980). Others theorized, for almost identical reasons, that the reverse would happen: due to cynicism and callousness of veteran officers, law enforcement (and hence arrests) in poor and minority neighborhoods would actually become less likely and the problems ignored (Lawton, 2007).

For whatever reason, despite legislative and policies that might encourage or even mandate officers to make arrests, the actual decision to arrest at the street level still remains highly variable. Researchers, therefore, still must examine the factors or variables proven predictive in the arrest decision in domestic violence cases.

Situational, offender, victim, and organizational or officer variables—and, more recently, community characteristics—have all been the major focus of efforts for researchers to understand the extent to which arrests can be predicted, provide insight regarding the role of extralegal variables that affect the arrest decision, and identify the circumstances under which pro-arrest policies might encounter resistance.

It is not a new concept that police base arrest decisions largely on the situational characteristics of an incident and on their interactions with the parties involved. In doing so, the course of action followed might be driven by the officer’s perceptions of the crime itself, the factors we cited earlier, or be only tangentially related to these characteristics.

This leads to several critical questions: What are the situational characteristics of the police–citizen encounter that are most likely to lead to arrest? Perhaps equally important, how do the legal factors we describe above (e.g., incident characteristics) interact with extralegal factors (e.g., victim and offender characteristics) and officer and departmental characteristics, and how might these and other policy preferences affect the decision to arrest assailants?
First, in the context of professionally accepted roles and missions, most police officers believe that arrest priority should be given to cases in which public order and authority have been challenged, attaching only secondary importance to the protection of an individual victim. Because most domestic violence cases are not public in nature, they would normally be expected to be of less importance.

It is only in recent years that pro-arrest policies might, in many departments, have skewed an officer’s preference toward making more arrests in domestic assaults. However, despite these laws and official policies, arrest in many, if not most jurisdictions, remains nonroutine and somewhat problematic. This is not surprising and might not indicate any effort to subvert arrest statutes or policies. For example, in cases of verbal altercations, police are often called proactively before any violence occurs. This leaves open any decision to arrest since, in keeping with the problem-oriented approach to policing, a variety of less coercive alternatives need to be considered.

In other cases, the true status of the victim and offender cannot be reasonably determined, or probable cause to arrest is insufficient. Also, where arrest is not mandated, officers might follow victim preferences not to arrest. Finally, even within a particular police department, a variety of organizational, attitudinal, situational, and socio-demographic variables affect the decision to arrest.

In addition to these sources of variability are the true situational variables that occur in each encounter (i.e., the characteristics of the incident, victim, and offender). Complicating the matter further is the unique character of responding to intimate partner violence in which common strategies are often pursued by one or both parties to negotiate the meaning of the situation and shape police reactions (e.g., “he/she initiated it,” “we both got physical,” “it’s a one-time thing,” “we’re both under a lot of stress,” etc.).

The decision to arrest becomes most critical in cases where the police have discretion because the incident is not clearly defined by the critical factors discussed earlier in this chapter. Although this discussion is generalized in nature and, hence, might not properly reflect many less common variables, three major factors seem to determine when the police decide to make an arrest: (a) situational or incident characteristics, (b) victim traits and attitudes
toward the police, and (c) assailant behavior and demeanor.
Key Situational and Incident Characteristics

Primary situational variables in the decision to arrest include (a) offender presence; (b) initial characterization of a crime as a misdemeanor or a felony; (c) who called the police; (d) the presence of weapons; (e) serious victim injury; (f) the presence of children; (g) victim–offender relationship; (h) perceived mitigating circumstances; (i) hostility, intimidation, or violence toward the police; as well as (j) criminal history and (k) officer perception of the likelihood of future violence or offender dangerousness.
Offender Absence When Police Arrive

A key situational or incident-related factor in the decision to arrest is whether the suspect leaves the scene of the offense (Buzawa & Hotaling, 2000; Eigenberg, Scarborough, & Kappeler, 1996; Feder, 1996; Robinson, 2000). In fact, one researcher found it to be the single most significant predictor of arrest (Robinson, 2000). Clearly, in stranger assaults, this is understandable. A misdemeanor arrest is more difficult when the offender has left the scene and might be unknown to the victim or witnesses. Police might simply lack the needed resources or inclination to identify and locate the offender for a lower-priority crime. However, typically, police have no difficulty identifying domestic violence offenders. They also are usually able to locate most domestic assault offenders easily by questioning victims and witnesses, thereby making this less of an appropriate discriminator for these offenders.

Why is this important? A number of studies consistently report that more than 50% of intimate abusers leave before police arrive (Berk & Loseke, 1980–1981; Buzawa, Hotaling, Klein, & Byrne, 1999; Dunford, 1990; Feder, 1996; Hirschel & Hutchison, 1992; Robinson, 2000). That number is likely to escalate the more an abuser has (good) reason to believe that policies have changed in favor of arrest and therefore an abuser is more likely to face arrest if he stays. Any distinction in treatment of these offenders is, therefore, not only unwarranted in terms of police inability to locate perpetrators, but also perversely impacts most those first-time offenders who are less likely to be aware of the increased likelihood of arrest if they remain at the scene. In the limited studies of offenders who left the scene before police arrived, Dunford (1990) reported that, on average, their victims were far more fearful than those whose offenders remained. This heightened concern may be warranted as one study reported that offenders who left the scene were twice as likely to reoffend within the next year as those who stayed (Buzawa et al., 1999).

Even though those who flee the scene are more violent than those who stay, a number of studies have shown that most police agencies do not aggressively pursue, or often even issue warrants for, fleeing domestic violence offenders. Robinson (2000) reported that 55% of offenders at the scene were subsequently arrested compared with only 2% when the suspect was absent.
In the multijurisdictional study using NIBRS official data from 25 police departments in 4 states, and controlling for a variety of incident, offender, victim, and jurisdictional characteristics, Hirschel and Buzawa (2013) reported that an offender who fled the scene of the incident was more than 5 times less likely to be arrested than one who remains at the scene (Hirschel & Buzawa, 2013).

These differences might be a result of the lingering police perception that domestic violence does not warrant the additional time required to locate and apprehend such offenders. They might erroneously assume that once an offender is no longer in the presence of a victim, the victim is safe. Unfortunately, given the high percentage of cases in which offenders are absent when police arrive, and the reported data that such fleeing abusers are more likely to pose further danger, police should change priorities to eliminate this discrepancy and develop formal, enforceable policies to serve outstanding warrants for arrest.
Characterization of a Crime as a Misdemeanor or a Felony

In many departments, organizational priorities and limited resources force departments to prioritize attempts to arrest a felony suspect and conversely, to limit follow-up on misdemeanor offenses. Although this policy might seem reasonable on the surface, the classification of a single domestic incident as a misdemeanor versus a felony offense has long been known to be inaccurate because police routinely discount serious domestic assaults as misdemeanors. Thus while the extent of injury, level of threat, presence of a weapon and other similar criteria predict a felony arrest in a stranger assault, many similar domestic violence crimes are instead inappropriately labeled as misdemeanors, often even when severe injury is readily apparent.

Also, often a single domestic violence incident is part of an ongoing battering relationship involving both violence and coercive control that should in its totality be considered extremely serious, warranting consideration as a felony (Stark, 2007). If these are properly linked, then the distinction between the less-severe domestic violence misdemeanor and the serious felony incident might prove illusory. When such down-charging occurs, police often do not arrest, victims are likely not given the services they would otherwise receive, and the subsequent case, even if brought, is less likely to receive the attention by the criminal justice system it warrants.
Who Called the Police?

Many police appear to—at least partially—base operational arrest decisions on who initiated the call for service. In the abstract, it would be seem to be logical that police would be more responsive and willing to arrest if the victim initiated the call. After all, this indicates victim commitment to the intervention, and with apossibly willing witness, the likelihood of successful case prosecution increases dramatically—especially compared to those victims who never wanted police involvement. However, research reports the opposite with consistently lower percentages of arrests in intimate partner incidents that were reported by victims as opposed to other witnesses (Berk & Loseke, 1980–1981; Berk & Newton, 1985; Buzawa & Hotaling, 2000; Stanko, 1985). Nor has this changed after the advent of new pro-arrest statutes. More recently, Hirschel, Buzawa, Pattavina, Faggiani, and Reuland, (2007) and Hirschel and Buzawa (2012), in a national review of NIBRS data, found that incidents reported by victims were 20% less likely to result in arrest than incidents reported by witnesses.

This surprising distinction might relate to the self-perceived mission of the police to protect public order rather than intervene in private disputes. From this perspective, when a bystander becomes involved to the extent of calling the police, the conflict is no longer confined to its principals but becomes a matter affecting public order. Therefore, when a bystander calls, the initial police characterization of the call would be as “disorderly conduct” or a “public disturbance,” a classic mission for police concerned with public order maintenance. The involvement of an external complainant might, therefore, be viewed to increase officers’ perceived need to do something to resolve the threat to public order. In addition, in cases where the third party is a witness, officers might also perceive that they have a stronger case against the offender.

This finding is important because bystander reporting might be increasing more rapidly than victim reporting. Growing public awareness of domestic violence, campaigns to stop violence in the home, and concern for domestic assault as expressed in the popular press, news accounts, and in television docudramas have increased reporting by neighbors and bystanders (Cassidy,
Nicholl, Ross, & Lonsway, 2004; Robinson & Chandek, 2000a, 2000b). For example, Klein (2005) reported that most calls to the police for domestic assault in Rhode Island did not come from the victim but from witnesses or people overhearing the incident.
LAPD Misclassified Nearly 1,200 Violent Crimes

The Los Angeles Times reported that between September 2012 and September 2013, nearly 1,200 violent crimes were misclassified as misdemeanors. The Times asked five crime-coding experts to examine a random sample of 400 incidents classified as minor offenses. The experts confirmed that 90% of these incidents were instead serious crimes. This appears to be a continuing practice as a 2009 audit reported examining 383 simple assaults during a 6-month period and found 1 in 10 should have been reported as aggravated assaults (Poston & Rubin, 2014)
Presence of Weapons

As expected, when incidents seem to have greater potential for serious consequences, the likelihood of arrest increases. Several researchers have reported that if an assailant uses or threatens to use a weapon or kill a victim, then the odds of arrest increase dramatically (Kane, 1999; Loving, 1980; Holland-Davis & Davis, 2014). Clearly, this impacts the officer’s assessment of a victim’s risk and is an important consideration in the arrest decision. In fact, Kane (1999) reported that officer perceptions of the situation’s overall risk to the victim were the most important factor in the police decision to arrest.

There is general agreement that the presence or use of a weapon increases an officer’s perception of the potential danger of an incident. However, the officer’s determination of risk is itself the product of an interaction of a variety of factors, including not only the incident, victim, and offender, but also the officer’s attitudes, training, and socialization as well as departmental policies and practices. Hence, an officer’s predictive construct of an offender—that is, officer perception of whether a given offender is dangerous—might not be consistent with reality.

For example, a police officer, based on past experience or simple prejudice, might believe a young man of color is far more likely to present a risk of future violence than an older White man who committed the exact same offense. Similarly, seemingly obvious decisions, such as determining a victim’s safety, might be affected by underlying beliefs of which neither the police nor either party can agree or even articulate at times. Even relatively straightforward analyses such as the presence or use of a weapon to determine the degree of potential injury involve a surprising amount of subjectivity. For example, would a young man of color with a knife in his car intrinsically constitute a greater potential threat than an elderly White man who “happened” to have invested in a gun safe that included guns and ammunition? Kane (1999) reported that just such subgroup differences—and, frankly, some degree of prejudicial assumptions—interacted with officers’ predictive constructs to determine how police assess risk.
Incident Injuries

Research reports that between 2003 and 2012, about 45% of domestic violence incidents resulted in injury (Truman & Morgan, 2014). However, the impact of victim injury on the arrest decision is unclear. Most early research prior to the passage of pro-arrest legislation consistently concluded that the degree of violence or threat of violence was of only minimal significance in the arrest decision (Berk & Loseke, 1980–1981; Eigenberg, Scarborough, & Kappeler, 1996; Feder, 1998; Jones & Belknap, 1999; Klinger, 1995; Worden & Pollitz, 1984). Even when victims were in danger and requested an arrest, numerous studies from the period of the early 1980s, prior to many of the legislative reforms covered in the last chapter, reported that most officers consistently refused to make arrests regardless of the extent of the victim’s injuries, at least unless a fatality occurred (Berk & Loseke, 1980–1981; Black, 1980; Brown, 1984; Davis, 1983).

More recent research from the last two decades clearly shows a dramatic change in police behavior in this area, reporting that victim injuries are now definitely related positively to making arrests (Buzawa & Austin, 1993; Buzawa & Hotaling, 2000, 2006; Eigenberg, 2001; Feder, 1996; Center for Court Innovation, 2007; Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007; Hotaling & Buzawa, 2001, McLaughry et al., 2013).

Police clearly have become more responsive to incidents in which victims are injured. Surely, the degree of victim injury should be considered by police, as well as by prosecutors and judges in deciding whether to prosecute and in the sentencing phase of a criminal proceeding. Taken to the extreme, the punishment for attempted murder is far less than that of murder, even if the motive, intent, and method of attack are the same. Similarly, the distinction between felonious larceny and a misdemeanor level of the same crime is based primarily on the property stolen, not on the similar larcenous intent.
**Presence of Children**

Most researchers now report a greater likelihood of arrest if an offense is committed in the presence of children or if children seem to be at risk of abuse or neglect, either from the commission of the crime itself or from situational factors at the home (Buka, Stichick, Birdthistle, & Earls, 2001; Buzawa & Austin, 1993; Edleson, 1999; Eigenberg et al., 1996; Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007; Hirschel & Buzawa, 2009; Levendosky & Graham-Bermann, 2001). This is certainly a legitimate factor, evidencing that many police take seriously the well-documented deleterious effects that children experience as a result of exposure to domestic violence.

It is noted, however, that one study of misdemeanor domestic assaults by Kane (1999) reported the contrary, finding an inverse correlation between the presence of children and the probability of arrest. However, this anomaly may be because Kane’s study was expressly limited to incidents with no explicit risk to the victim and with no violation of a restraining order. In those circumstances, police might have reasonably decided that there was less potential for a long-term negative impact to the child if a parent was not arrested in front of them compared to the jarring disruption to their lives and potential economic burdens to the family as a whole if an arrest was made.

However, the likelihood of arrest when children witness domestic violence is still problematic. A recent nationwide study which included interviews with both parents or caregivers of children under the age of 10 years old, and direct interviews with children between 10 and 17 years old, reported that almost one third of adults said police should have arrested the perpetrator, according to the study (Hamby, Finkelhor, & Turner, 2013).
Existence of a Formal Marital Relationship

The relationship between marital status of victim and offender and subsequent arrest is murky at best. Research, quite honestly, has resulted in inconsistent and contradictory reports. Initially, many early researchers reported that offenders who were married to the victim were less likely to be arrested (Bachman & Coker, 1995; Dobash & Dobash, 1979; Ferraro, 1989b; Martin, 1976; Worden & Pollitz, 1984). The theoretical consensus at that time was that in the traditional models of police behavior, the relational distance between the offender and the victim inversely affected the probability of arrest. One rationale was that if the police perceived a continuing relationship between the victim and the offender, then the likelihood of victim cooperation leading to a conviction was far less likely. Police would then, however inappropriately, conclude that their efforts were of little value if the victim would not end her relationship with the abuser.

It was also possible that some police, again reflective of society in general at that time, considered that some degree of violence was a legitimate “self-help” response to marital strife or infidelity (Saunders & Size, 1986). However, even if police adopted this regressive perspective, this assumption would never have extended to include violence to punish infidelity with boyfriends or casual acquaintances accounting for why this group was more likely to face arrest.

Finally, some researchers have reported that marital status is unrelated to arrest (Buzawa & Austin, 1993; Feder, 1997; Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007). These researchers suggested that domestic violence legislation and proactive arrest policies have minimized, if not eliminated, this factor. What is interesting is that findings by Hirschel and colleagues (2007[Hirschel, Buzawa, Pattavina, Faggiani, and Reuland]) and Holland-Davis and Davis (2014) differed while both used the same NIBRS datasets. However, they used data from different years (2000 and 2004, respectively), and Holland-Davis limited her study to jurisdictions with more than 100,000 in population. This highlights the importance of understanding that all studies vary in terms of data used and time analyzed, which holds considerable implications for the findings.
Perceived Mitigating Circumstances

Some evidence suggests that arrest practices are influenced by normative ambiguities in family and relationship issues (Buzawa & Hotaling, 2000, 2006). Research in several Massachusetts communities has suggested that the likelihood of arrest for domestic assaults involving the use of force is low for those parties who can provide the police with a plausible rationale for the incident. The police seemed particularly able to accept an explanation involving the offender experiencing a major life event.

Violence “explained” by a crisis such as an impending divorce or separation, the birth or impending birth of a child, a child about to be removed from the household, or a serious mental health problem of the offender resulted in arrest in only 1 of 5 instances, which is far below other groups of offenders. For example, the presence of a single factor—the prospect of imminent divorce—had a profound effect. The authors reported that the single claim of a recent or impending divorce reduced the likelihood of arrest to less than half that of other offenders (Buzawa & Hotaling, 2006).

In contrast, offenders who offered the police more pedestrian excuses for violence citing everyday conflicts (e.g., problems with drinking, fights over money and sexual jealousy, time spent at work, and child custody issues) as the reason for their violent behavior were three to five times more likely (depending on the police department) to be arrested than those with a major life crisis (Buzawa & Hotaling, 2000, 2006).

This suggests that in some departments, police may be unduly influenced by such an explanation and therefore are less willing to protect victims whose offenders provide a plausible rationale for their conduct. A significant question is why such distinctions are important. For reasons that we will address in the following discussion, if such distinctions relate to victim preferences, then they might be appropriate; however, if they reflect officers’ personal beliefs or their identification with the offender’s personal circumstances, then there is the potential for a serious impact to fair, impartial enforcement of the law.
Victim-Specific Variables in the Arrest Decision
Victim Preferences

Many commentators long have advocated that victim preference be an important determinant of arrest (Black, 1980; Eigenberg et al., 1996; Feder, 1996; Sheptycki, 1993). Without victim concurrence, and prior to starting mandatory arrest policies, most jurisdictions had either express policies or (at the least) standard operating procedures that actively discouraged making arrests (Bell, 1984). In that context, studies during the 1980s confirmed that the probability of an arrest increased by 25% to 30% if the woman agreed to sign a complaint and decreased by a similar amount if she refused. Berk and Loseke (1980–1981) as well as Worden and Pollitz (1984) reported that victim preferences accounted for the largest variance in arrest rates in every study examined. In non-mandatory jurisdictions, an informal operational requirement for a domestic assault arrest might still be the victim’s desire for the arrest.

It may now be more of historical interest, but it should be noted that in the past, the police bias against making arrests often overrode victim preferences. This carried over even after reforms started in the early 1980s, accounting for much of the push to adopt mandatory arrest laws. In the early period of reform, even strong victim preferences for an arrest were only of limited impact, as arrests were made so infrequently. For example, Bayley (1986) reported that in one department assailant arrest was not even correlated with victim wishes. In another study sampling certain Massachusetts police departments, the police literally could not have been affected by victim preferences as evidenced by police inability to even know, let alone report, the victim’s arrest preferences in more than 75% of the cases (Buzawa & Austin, 1993).

More recent studies suggest, logically, that mandatory arrest practices might also tend to limit deference to victim desires. Hotaling and Buzawa (2001) compared domestic versus nondomestic assaults in two communities with mandatory arrest policies. The result was striking—an overall arrest rate of 77% for domestic assaults, covered by the mandatory arrest statute, compared with only 36% for nondomestic assaults despite little evidence that there were major differences in victim preferences in the two groups.
Victim Behavior and Demeanor

The interaction between the police officer and the victim is more complicated. Police, as part of their occupational culture, often apply strongly moralistic beliefs of proper versus improper behavior. This may be a large part of the reason that they chose careers in law enforcement. Despite laws and policies to the contrary, such judgments still might affect their response to a victim they somehow deem partially responsible.

We find that, when interviewed, many police do not find either party to be guilt-free, especially if the offender justified their assault in the context of victim provocation or misbehavior. In this context, the victim’s demeanor toward the officer might be as significant as her degree of injury. If she is rational, undemanding, and deferential toward the police, then her story evokes more sympathy and attention—probably because it is assumed that within the context of the relationship, the victim expressed those same characteristics (Ford, 1983). Buzawa and Hotaling (2000, 2006) found strong correlations between the victim appearing upset and trembling and the likelihood of arrest. In fact, they reported that “victim trembling” was positively related more strongly to arrest even than extent of injury.

In contrast, women victims who were angry, aggressive, or under the influence of alcohol or drugs were often treated as less credible than other victims, perhaps because of a suspicion that they were unreliable, generally quarrelsome, or prone to deception.

Other victim actions at the scene clearly influence the police. For example, victim cooperation with the officer strongly influenced the likelihood of arrest (Belknap, 1995; Buzawa & Austin, 1993). This might be a result of the lingering police stereotypes of domestic violence victims as providing little support or dropping complaints, ostensibly because they reconciled with their abusers. In certain circles of police domestic violence, victims are termed “fickle.” Officers also know that there is an increased likelihood for case dismissal without victim cooperation or acquittal at trial because of a lack of evidence, and a lack of victim cooperation may signal future difficulties in presenting such evidence.
On a more concrete basis they may believe that if the victim is unwilling to initiate a complaint or cooperate with an investigation, then the seriousness of the injury might not warrant their own time commitment. Research on victim cooperation has, until recently, largely measured victim cooperation solely by the victim’s preference for arrest or their willingness to support prosecution. This, of course, displays a lack of understanding of how a traumatized victim is likely to behave. Even if such informal screens are to be used in making the decision to arrest (not favored by us), far more appropriate measures for determining cooperation might include victim willingness to speak with a domestic violence advocate, availing herself of shelters, or willingness to explore obtaining a restraining order.
Victim Lifestyle

Officers, like much of the general population, react to the traits and conduct of a victim. If, for example, the officer judges the victim to have a “deviant” lifestyle, arrests in all jurisdictions are less likely. Research finds that those victims who conform to societal expectations are more likely to have their assailant arrested (Buzawa & Hotaling, 2000, 2006; Chesney-Lind, 2006). To some extent, this can be viewed as a reflection of society’s norms, biases, and expectations regarding the behavior of victims and offenders.

Of particular significance is the failure to identify women as victims who do not behave according to expected societal norms (Chesney-Lind & Irwin, 2008; Chesney-Lind & Pasko, 2004) or who in their lifestyle differ substantially from acceptable behavior. We remain concerned that, unless training is given or discretion limited, many police judgments of victim conduct might be more of a reflection of an officer’s—or organization’s—implicit beliefs than the reality of the seriousness of the case itself. This may result in a bias or differential treatment of specific subpopulations. This result is complicated even further by whether the police behavior can be defined as a bias unsubstatiated by any empirical facts or as the result of an objectively increased likelihood of future violence that, nonetheless, often disproportionately impacts these same groups.

In fact, police officers inevitably view the conduct of any party through the prism of their own beliefs. We assume that if an officer is biased against helping certain domestic violence victims, then arrest is less likely. Some research has indeed found that biased officer attitudes toward certain types of victims disproportionately influence their response to domestic violence compared with other types of assaults in which arrest is more predictable (Feder, 1998).

This behavior is expected. A necessary aspect of police decision making is to make rapid value judgments in situations where the reality is unclear. It has long been observed that in the face of ambiguous facts and contradictory accounts, research has indicated that officers often make judgments based on their inherent assumptions regarding the propriety of a victim’s conduct.
In such cases, the nature of the relationship between the parties, as well as their behavior and demeanor, might be considered by police as valid factors in evaluating the criminal behavior of either party. Officers scrutinize the victim’s behavior as well as that of the assailant, which might affect who is identified as the victim, and who the offender.

Data on the effects of police judging victims are inconsistent. A detailed study was made of the interaction between officer expectations, victim actions at the scene of the incident, and officer reactions to what might be perceived as a deviant lifestyle. Robinson (2000) asked officers to report a “global rating” of victim cooperativeness. She reported that victim cooperation when defined in this manner did not significantly impact arrest decisions; however, she also reported two variables that significantly predicted an officer’s rating of victim cooperativeness: (a) whether the officer believed the victim had a substance use problem and (b) whether drugs or alcohol were present at the scene. If the woman was abusive, disorderly, or drunk, officers rarely made arrests—or, at least, failed to follow victim preferences.

Another study reporting on extensive field observations in Detroit confirmed that when officers did not follow preferences of a female victim, it often was because she was not liked by the responding officers, who labeled her as being too “aggressive,” “obnoxious,” or otherwise “causing problems” for the officer (Buzawa & Austin, 1993).
Police Perception of Violence as Part of Victim’s Lifestyle

Another arrest criterion is the officer’s subjective perception that violence might be a normal way of life for a particular victim and offender (Black, 1980; i.e., “battling spouses”). As discussed by Ferraro (1989b), when officers observe a regularly recurring pattern of violence, they might believe that it is normative for the relationship. Consequently, they are less likely to believe that any police response, including arrest, will be successful in deterring future violence. Many officers dichotomize between normal citizens (those who are similar to themselves) and deviants (those who perhaps are viewed to use excessive alcohol, drugs, or, far more problematically, not being able to speak fluent English or belonging to minority groups). For these groups, some officers, however inappropriately, might perceive battering as merely a part of an overall pathology common in the targeted community and, therefore, may not be amenable to intervention. We cannot defend this practice, as this obviously presents an insidious attack on equality in the provision of services. However, to some extent, it does seem likely that it still impacts police behavior, at least at the margins.

Current research broadens the focus from examining the norms of the individual to those of the community. As a result, key issues are emerging that are creating considerable controversy. There is a question of whether certain communities or neighborhoods might be allowed to have differential norms regarding police suppression of violence.

For example, in schools situated in certain neighborhoods, an act of aggression by a student might be expected by the victim’s parents (and possibly by community norms) to result in a physically aggressive response in kind by the victim. Regardless of efforts by school officials, a victim’s failure to respond might well result in increased long-term risk to the victim because of his or her inability to “take care of himself.” However, in an affluent, suburban setting, the social reality, parental expectations, and the police response are likely to differ considerably.
Of course, it is possible that assuming officers react directly to community, race, and ethnicity is an insufficient and stereotypical analysis of a complex phenomenon. In this regard, Ferraro (1989b) reported that the key variable really reverted back to the previously described typology of the victim as a member of a deviant population, which might in turn be based partially on race or other problematic criteria. Although this differential might exist in certain departments, it is clearly not found in others. For example, in the Buzawa and Austin (1993) study of Massachusetts departments, no arrest disparity based on race of the victim or offender was found. Similarly, a study using a large, national data set reported that, although 31.2% of incidents involved Black offenders, only 29.9% were actually arrested, suggesting little real difference (Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007).

It also appears that patterns of differential enforcement for different racial groups might have diminished as the cultural diversity in departments has increased. For example, Buzawa and Buzawa (1990) examined attitudes within the Detroit Police Department and reported that Black and female officers had markedly different operational arrest patterns than their White male counterparts, the traditional subjects of researchers analyzing police behavior. As officer diversity has increased, the previous patterns of predominantly White male departments might no longer hold true.
Sex of the Victim and Offender: A Changing Story?

Male victims provide a different dimension of the officer’s reaction. A man being battered by a woman may not conform to societal expectation. Police handling of male victims of female violence, although not a primary topic of this book, is instructive in that it shows dramatic change.

It long has been documented that male victims, often due to embarrassment, are less likely to report domestic assaults. A longtime contributing factor to their reluctance to report assaults has been the realistic expectation of limited police empathy or subsequent police inaction.

The traditional image of intimate partner violence is of a male offender and a female victim. As discussed in Chapter 2, the extent to which there is gender symmetry in intimate partner violence continues to be hotly debated. After all, acknowledging that the weaker partner might resort to violence in intimate relationships does not mean that he or she is an abuser. It is important to understand the context in which violence is used and whether such behavior was offensive or defensive in nature. Police reports indicating role reversals between victim and offender in a series of incidents might therefore be the result of a failure to understand defensive behavior or to identify a primary aggressor, rather than a reflection of reality (Chesney-Lind, 2006; Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007).

Having said this, we note that male victims often assert that, even when severely injured, the police did not respect their desires to arrest a female abuser. For example, one man required hospitalization for treatment of a stab wound that just missed puncturing his lung. Despite his request to have the offending woman removed (not even arrested), the officers simply called an ambulance and refused formal sanctions against the woman, including her removal. Indeed, all the male victims who were interviewed in one research study consistently reported having the incident trivialized and having felt personally belittled by officers. Officers apparently assumed incorrectly that a male victim should have been capable of preventing violence by his partner or that he must have initiated the violence. If not, he no longer conformed to accepted standards, perhaps rendering his account of events suspect (Buzawa
Readers will note that most of the research showing the disparate inferior treatment of male victims of domestic abuse is dated from the 1980s and early 1990s. Also it discounts several factors that could legitimately account for discrepancies in arrest rates: specifically that officers might justifiably perceive male offenders as potentially more dangerous to female victims or have a greater past history of violent crime—both more likely overall among males.

Frankly, we have reason to doubt this dichotomy still exists. Although significant research attention has been focused on the impact of traditional male views on the police treatment of female victims, similar research has not yet been extended to encompass how traditional views of proper conduct affect the police response to male victims. This is especially true given the widespread passage of mandatory or even presumptive arrest statutes, where sex distinctions are clearly not set forth in statutes.

We know that in one analysis of data from the NVAWS, Felson and Paré (2007) did not find significant differences in the likelihood of arrest for crimes committed against men or women with deviant lifestyles including substance use or victim precipitation (conduct promoting the offender physically retaliating). They did note, however, that women as a group were less likely to be arrested for an assault against a male partner, suggesting this is an area where gender stereotypes of victims and offenders might remain. In another report, a detailed analysis of approximately 600,000 intimate partner, domestic, and nondomestic assaults, Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007), using NIBRS data from the year 2000, reported that no statistical differences were found in the likelihood of arrest for either men or women controlling for incident characteristics. Finally, at least one tentative study reported that, in the case of female offenders with male intimate partner victims, the arrest of the women occurred at higher rates than equivalent male offenders (Hotaling & Buzawa, 2001).

The net effect has been dramatic in terms of the proportion of male versus female arrests. Meda Chesney-Lind (2006) observed that, although the FBI (in 2004) reported that the male arrest rate for assault decreased by approximately 5.8% between 1994 and 2003, the female arrest rate increased...
by 30.8%. Likewise, Greenfield and Snell (1999) have noted an increase in female convictions for aggravated assault, which they believe can be attributed at least partially to the increase in arrests for domestic assault. The overall rate of women arrested specifically for domestic violence differs by jurisdiction and time. Several studies have examined the specific rate of female arrests as a percentage of total domestic violence arrests. These results vary widely from 30.8% (Connecticut State Police, 2000), to 17.4% (Domestic Violence Training and Monitoring Unit, 2001), to 28% (Governor’s Division for Prevention of Family Violence, 2001). These figures are far higher than in previous decades when, unless they caused very serious injury or death, few women were arrested.

We hope that in time we will have a better understanding of what the newer data signify. It is possible that attitudes among officers have changed to become more gender neutral. We know that, with the passage of more aggressive domestic violence intervention statutes, police behavior has significantly changed in other areas. We would not be surprised if newer data continue to show few differences in arrest rates.
Increased Female Arrests

Are increased female arrests a sign of less gender bias or a byproduct of incomplete law enforcement analysis? As discussed in Chapter 2, many noted “family violence” theorists have written that female violence against male intimates is fairly common, and in some populations the rate is almost as high as violence committed against them. While the reasons are often hotly contested by women’s rights groups, the preponderance of the evidence suggests that women do commit considerable numbers of violent acts. Much of this is not really self-defense, even if women’s rates of violence are lower, and their violence less severe, than those of men. It is certainly possible that increasing numbers of arrests in cases of female assaults against male victims are due primarily to the police no longer improperly refusing to protect a class of victims—men.

Another plausible explanation for the growing rate of female arrests for domestic assaults is that it merely evidences the increasing propensity for American women in recent years to engage in violence, and who now face a police force willing to confront such behavior.

This explanation, however, does not seem consistent with available evidence. Steffensmeier, Zhong, Ackerman, Schwartz, and Agha (2006) addressed the possibility of increasing rates of female violence by contrasting trends reported in the NCVS and UCR program for female-against-male intimate partner violence during the period from 1980 to 2003. Despite the significant increase in female arrests, the UCR reported no change in the relative rate of offenses committed by women for homicide and sexual assault, and the NCVS reported little or no change in female rates of assault. Furthermore, the gender gap has remained fairly stable during this period as well. These findings further have been substantiated by other researchers who report that female violence seems to remain fairly stable, and overall is less severe, than that of male offenders (Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007; Moffitt, Caspi, Rutter, & Silva, 2001).

Therefore it may be the case that the observed increase in female arrest rates is due as much or more to the unintended consequences of recent statutory
amendments emphasizing arrests, and how these have been applied into practice. The police are, by statute and code of conduct, legally required to rely solely on criminal codes to form the basis for arrest decisions. Criminal codes have an inherent problem in the area of domestic violence because they focus on the immediate sanctioned act, typically one of violence or threat of physical harm, rather than the overall pattern of coercive control that we describe earlier as a recurrent theme in cases of serious abuse.

As a result, applying legalistic definitions that emphasize only the immediate violence rather than the continuing pattern of psychological and physical abuse might force a diverse range of incidents into one of a fixed set of formal categories, preventing police from dealing with the complexities and unique aspects of each case. This is then reinforced by police training that teaches them to focus on the evidence presented in the current incident rather than to consider the incident in the context of prior events (Manning, 1996; Rice, 2007). Several writers have maintained that a clearly observed consequence of the nationwide effort to adopt mandatory arrest policies has been a distinct and disproportionate increase in the number of women arrested for intimate partner violence, both as sole offenders and as part of a dual arrest (DeLeon-Grandos, Wells, & Binsbacher, 2006; Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007; Miller, 2005).

For example, a woman who may have been the victim in an ongoing pattern of coercive control and sporadic violence might find that the police arrive only to misinterpret her act of self-defense, in the context of overall abuse, wholly out of context, resulting in her arrest. The inability or refusal of police to distinguish victims from offenders is one possible explanation for high dual-arrest rates. In a recent study, Holland-Davis & Davis (2014) reported that women who possessed a weapon at the time of a domestic violence incident, sustained injuries, or showed evidence of substance were significantly more likely to be arrested.

They attribute this to a potential bias by police who still may expect victims of intimate partner violence to be totally passive in the face of an assault. This type of passivity is often consistent “with traditional female gender role expectations and middle class standards of behavior” (Holland-Davis & Davis, 2014:16). This finding may explain why dual arrest rates are
higher when police encounter victims and offenders that do not fit traditional expectations (Holland-Davis & Davis, 2014).

However, it can also be argued that the presence of a weapon, victim injury, and substance use are appropriate legal factors in determining the seriousness of an incident and which also make identification of a primary aggressor more difficult (Holland-Davis & Davis, 2014).

There are several alternate explanations for this observation on police arrest practices: Certain officers may still expect to see passivity in domestic violence victims, especially women victims. “Fighting back” even if in the context of self defence requires the officer to make difficult judgment calls. Alternatively, as suggested by Hollands-Davis et al., (2014), some officers may still resent (or less negatively) are simply resigned to their loss of discretion and now do not bother to use their remaining power to determine the primary aggressor, regardless of their responsibility to do so.
Offender-Specific Variables in the Decision to Arrest

Criminal History

A history of offenses reported to the police has long been shown to be a key determinant of the decision to arrest an offender (Buzawa & Hotaling, 2000; Gondolf, Fisher, & McFerron, 1988; Hotaling & Buzawa, 2001; Klinger, 1995; Smith & Klein, 1984; Waaland & Keeley, 1985; Worden & Shepard, 1996). The validity of determining the offender’s criminal history, for domestic violence as well as for overall criminal history, is emphasized when determining whether an arrest should be made. Police in general view past criminality as a legitimate criterion in the arrest decision (Buzawa & Hotaling, 2006; Kingsnorth, 2006; Klein, 2009; Klinger, 1995; Worden & Shepard, 1996).

Unfortunately, although we agree with this factor, some police departments still have difficulty in having their officers get real-time access to databases that provide up-to-date information on open restraining orders and warrants. Another source of data, criminal history, is even less likely to be immediately available to the responding officer until long after the arrest decision is made. Furthermore, many police agencies that do provide such information only consider prior domestic violence history rather than overall criminal history. As discussed previously, failure to adequately incorporate prior violent criminal history into real-time police decision making may increase the risk posed by chronic, generally violent offenders (Wilson & Klein, 2006).
Offender Behavior and Demeanor

Studies on police behavior report consistently that arrest decisions are highly influenced by officer reaction to offender behavior and demeanor. Assailant demeanor, especially lack of offender civility toward the police, dramatically increases the rates of arrest. Hence, if the offender seems argumentative, behaves aggressively toward the victim, or challenges police authority, then an arrest is likely to be made, as much to establish control of the situation as to respond to the incident. Most police administrators admit this is true, and would view this as a fair discriminator since such insubordination increases the likelihood of an assault on the responding officer or an offender who, by his conduct, demonstrates that he is truly out of control. From this perspective, domestic violence–specific research merely conforms to their standard operating procedures.

For example, even before arrests were preferred in most jurisdictions, an arrest nearly always occurred if an assailant remains violent in the officer’s presence (Ferraro, 1989a). Perhaps because of the implied threat to the officer’s authority or a lack of respect, an arrest is likely if the offender is perceived to constitute a direct threat to the officer even independent of the strength of the case (Black, 1980). Similarly, when police respond to gang locations or other places where they feel threatened, they tend to act more aggressively and use their powers far more frequently (Ferraro, 1989a).

As a logical corollary, it also has been observed that arrests are likely when the suspected abuser was belligerent or drunk. In one study, Bayley (1986) found that in a discretionary arrest jurisdiction, two thirds of offenders who were hostile were arrested, whereas none who were civil toward the police were arrested. Buzawa and Austin (1993) measured the relative importance of offender demeanor in the arrest decision. They noted that in a situation where officers had discretion but were by policy presumed to make arrests, not even victim injury was as predictive of arrest as was offender demeanor. In one case, an uninjured victim who had called the police cut the alleged assailant with a butcher knife near his eye, requiring several stitches. No arrest was made because the alleged assailant was drunk; in fact, the officers stated he was so intoxicated they were not sure if he could have been
potentially dangerous to the victim.

It is important to distinguish between a person perceived to be under the influence and its important, but not necessary, corollary—demeanor. Earlier studies suggested that being under the influence of alcohol or drugs positively affected the likelihood of arrest (Berk, Fenstermaker, & Newton, 1990; summary in Jones & Belknap, 1999). Now, however, more recent studies using multivariate analysis to tease out closely related variables reach markedly different conclusions. For example, when simply examining the likelihood of arrest if drugs or alcohol are involved in the incident, Hirschel, Buzawa, Pattavina, Faggiani, & Reuland (2007) reported a decreased likelihood of arrest in the presence of offender inebriation. However, when impaired offenders displayed anger, their likelihood of an arrest was far greater than non-impaired offenders, making the behavioral factor of assailant “anger” or a “drunken rage” more significant than the offender’s use of alcohol per se.
Race

Earlier studies by Black (1980) and others assume that police in general, and in domestic violence in particular, treat Black offenders more harshly than Whites. Recent research strongly suggests that even if this were the case in earlier periods it is no longer a material factor in arrest decisions. Studies examining the impact of race on single and dual arrest rates have found little differential treatment (Kochel-Rinehart, Wilson, & Mastrofski, 2011; cf. Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007 and Shernock & Russell, 2012).

Sometimes teasing out the effect of a particularly significant variable in the decision to arrest is difficult, requiring the analysis of multiple data sources and sophisticated methodology. These can show surprising variances in police conduct. For example, Rinehart-Kochel, Wilson, & Mastrofski (2011) conducted a robust meta-analysis of multiple quantitative research projects that estimated the effect of race on the police decision to arrest in four separate categories, including domestic violence. While police do seem to arrest non-Whites at a higher rate in general, this did not appear to be the case for domestic violence assaults.

Screening nearly 4,500 potential sources, we analyze the results based on 27 independent data sets that generated 40 research reports (both published and unpublished) that permitted an estimate of the effect size of the suspect’s race on the probability of arrest. The meta-analysis shows with strong consistency that minority suspects are more likely to be arrested than White suspects. Depending on the method of estimation, the effect size of race varied between 1.32 and 1.52. Converting the race effect size to probabilities shows that compared with the average probability in these studies of a White being arrested (.20), the average probability for a non-White was calculated at .26. The significant race effect persists when taking into account the studies’ variations in research methods and the nature of explanatory models used in the studies. We anticipated that the race/arrest relationship would be smaller for domestic violence crimes because of the proliferation of mandatory arrest policies for domestic violence during the last three decades. That is, since the proliferation of misdemeanor mandatory arrest laws for domestic violence that began in the 1980s, officer discretion has been substantially reduced for domestic violence cases. This should manifest itself as a smaller relationship between race and arrest when examining domestic violence cases, given the restrictions these laws place on police discretion. The mean odds ratio for the three studies that only examined domestic cases... For studies limited to domestic violence incidents, we did not find strong evidence showing that race influences arrest decisions and was not statistically significant (Q = .22, df = 1, p =.64). (Kochel, Wilson, & Mastrofski, 2011, p. 473, emphasis added)

On the one hand, the study is depressing in that race appeared to be a significant factor in so many arrest decisions in multiple areas, on the other hand, this practice fortunately was not
seen in the field of domestic violence.

Rinehart-Kochel et al. believed the lack of such differences was due to policies that limited officer discretion. As is typical when trying to explain the results of complex research, we however can’t be certain this is the case without even more analysis to see if there were differences in domestic violence arrest practices based on race. Many state statutes simply do not significantly abridge officer discretion to arrest, whilst others impose mandatory requirements. If the Rinehart-Kochel analysis is correct, there should be very different arrest profiles in states with different statutes.

Similarly, in a study based on national NIBRS data for the year 2001, Hirschel, Buzawa, Pattavina, Faggiani, and Reuland (2007) concluded that, given the same level of offence, officers were more likely to arrest White offenders than Black offenders. This result was confirmed by a recently published study authored by Lee, Zhang, and Hoover (2014), in which it was reported that Blacks were less likely to be arrested for domestic assaults than Whites or Latinos. The highest rates of arrests were for Latinos, who had approximately a 50% greater chance of being arrested than Black offenders.
Variations Within Police Departments

Officer characteristics constitute another critical set of variables affecting the arrests. Not surprisingly, officers’ arrest decisions are scrutinized far less often in cases of misdemeanors than felonies. Despite policies to the contrary, different officers may have far different propensities to make arrests. The response depends heavily on the officer’s orientation toward domestic violence, skill level, and time constraints. Although difficult to quantify or predict, these factors are evident. For this reason, many studies have concluded that the police–citizen encounter is profoundly unpredictable from the viewpoint of the victim and offender.

Some studies note legally irrelevant but organizationally significant factors to partially explain variant arrest practices. For example, earlier authors in the 1980s noted that police officers might be less likely to make a domestic violence arrest late in their shift, as it is not considered of sufficient significance to justify potentially staying late (Berk & Loseke, 1980–1981; Ferraro, 1989b; Stanko, 1989; Worden & Pollitz, 1984). Alternatively, because many departments now require supplemental paperwork for cases of domestic assault, charges might be downgraded to simplify the booking.

Research suggests that both attitudinal factors and demographic variables add to variance in arrests among different officers. Certainly, in the absence of specific, enforced mandatory-arrest domestic violence policies, individual attitudes of officers toward domestic violence cases seem to affect arrest preferences dramatically. When confronted with a report of serious injury to a victim, one study found that approximately 50% of the officers would regularly arrest, whereas the remaining 50% would not do so on any consistent basis (Waaland & Keeley, 1985).

The reasons for this difference are not clear. Officers often have different role expectations. Some view their primary mission as being a crime fighter or maintaining public order; others are more service oriented, concerned with assisting victims. From this, one might expect that those oriented toward a service approach would make arrests at a higher rate than those viewing their mission as crime fighting.
Gender Differences

Differences in the use of arrest powers also have been attributed to officer demographic characteristics. Male–female distinctions have been examined most frequently. The preponderance of research suggests that female officers are not necessarily more likely to arrest but are reported by victims as being more understanding, showing more concern, and providing more information about legal rights and shelters for victims. In one dated survey by Homant and Kennedy (1984), 40% of a male and female officer sample stated that the two groups handled domestic violence situations differently. Male officers perceived female officers as “softer,” “more uncertain,” “weaker,” “more passive,” “slower,” and “lazier,” whereas female officers saw themselves as more concerned with domestic violence than male officers, “feminine,” and “nonviolent,” but they agreed that they were more “passive.” The extent of a male–female dichotomy in practice was in turn questioned by several authors (Ferraro, 1989a; Radford, 1989; Stanko, 1989) who believed that, to work in a male-dominated organization, some female officers behave similarly to men because of occupational socialization or the desire to fit in. This theory is generally unproven by empirical research.

Research from the last two decades still confirms that female officers do make fewer domestic violence arrests than their male counterparts (Martin, 1993; Robinson, 2000). Although perhaps unexpected, the decreased rate of arrests by female officers is not indicative of indifference. Instead, female officers are reportedly more likely to follow victim preferences not to arrest despite an official policy to the contrary (Robinson, 2000). Therefore, female officers simply might not be as likely to exercise their authority, or even to follow department’s proactive or mandatory arrest policies, if they believe it does not serve the interests of the victim and her family.
**Officer Age and Arrest**

Other officer demographic features have been considered to affect arrest rate and the overall officer response. Buzawa and Buzawa (1990) found variations on the basis of officer age. This result held even when controlling for exposure to domestic violence training. Older officers clearly were more likely to be exposed to departmental socialization, training, policies, and practices that in the past were less supportive of an aggressive police response to domestic assaults. Not surprisingly, older and more experienced officers made fewer arrests than their younger peers (Bittner, 1990; Stalans & Finn, 1995).

It also might be important to put these findings in the context of the overall likelihood of older officers to make arrests because research examining police socialization argues that older officers are simply less aggressive and less likely to make arrests in general compared with younger, more motivated (or perhaps, using a different frame of reference, more confrontational) officers (Van Maanen, 1978).

Of course, it might be that the generational differences will gradually reduce over time. Large numbers of officers have been hired since the 1990s and were therefore provided initially with a pro-arrest orientation. As a result, several studies have failed to find great variation among officers by age cohort despite noting that older officers still have attitudes less supportive of victims than younger compatriots (Robinson, 2000; Worden, 1993).
Officer Race

Officers’ race also has been examined. On the one hand, White officers have been viewed in some contexts, such as street crime, to be more coercive and more likely to arrest Black suspects. Alternatively, they might be more biased about endemic violence in Black communities and, therefore, less likely to want to intervene. Black officers might not share these stereotypes regarding normal behavior in Black families.

The results are not definitive. In one classic study, Black (1980) noted that the arrest practices of Black officers in some contexts were more coercive toward Black citizenry, compared with their White cohorts who sought to enforce the law impartially. In any event, to date, research provides no consistent empirical support for major racial differences in arrest decisions (Walker, Spohn, & DeLeone, 1996). For example, one recent study reported that a high proportion of Black officers to the population increased the rate of victim arrest, a wholly unexpected result (Holland-Davis & Davis, 2014).

In some ways, the entire dynamic of officer race, arrest practices, and community preferences all interact. Typically, an aggressive arrest policy by White officers in policing a minority neighborhood is perceived by many as being harsh and discriminatory. Indeed, from this perspective, police arrests can be viewed as targeted since there is a disproportionate impact on low-income neighborhoods and specific racial and ethnic minorities. Alternatively, these same practices in the context of domestic violence also can be perceived as being “for the community,” as they often are initiated by a victim or people trying to help her. This emphasizes the need for examining organizational variations within a jurisdiction to understand how officer characteristics like race and, for that matter, sex and ethnicity truly interact with discrete neighborhood needs and preferences.
Organizational Priorities

To appreciate fully the reality of modern policing we need to understand that virtually all departments are facing incessant and debilitating battles for funding and trying to prove their effectiveness and efficiency. In turn, individual officers often have become responsible for their own metrics as the perceived efficacy of individual officers is measured by such discrete methods. The classic police metric is an arrest, or “collar,” leading to a conviction. Realistically, this mandate drives officers to spend time on cases that are likely to lead to such convictions. The effectiveness of police officers, which is a key aspect of promotion, is determined partially by their number of major felony arrests. Similarly, police departments seek to justify to the community their share of scarce resources by focusing on major crimes and emphasizing the number of felony arrests and the percentage of convictions.

Because most domestic violence cases are misdemeanors, the time spent might not be considered as justified and, therefore, they may be considered a waste of time by officers trying to advance their careers and departments trying to justify budget requests and maintain high performance ratings.

Of course, we must emphasize that many police departments have contributed to this dilemma because their officers regularly downgrade domestics to misdemeanor assaults even though these cases would otherwise fit the textbook definition of a felonious assault (Buzawa & Buzawa, 1990). Other studies have focused on attributes of the criminal justice system that are not related directly to the police, to determine whether they affect arrest rates. For example, at least one study reported that extraneous conditions such as overcrowded jails or lockups seem to reduce domestic violence arrest rates (Dolon et al., 1986), as do inconvenient court hours or court locations (Ford, 1990).
Dedicated Domestic Violence Units and Arrests

Police units dedicated to domestic violence have been growing in number since the 1990s. While there is considerable variation in the scope of their duties and structure, their establishment demonstrates an organizational commitment to more aggressively respond to incidents of domestic violence. Not surprisingly, research supports the increased likelihood of an arrest in agencies with an established unit (Holland-Davis & Davis, 2014).

There are several possible explanations for such findings. Not only are additional resources given to address domestic violence incidents, but officers in these units typically receive specialized training and are more committed to aggressive intervention, including arrest. It also is likely that the presence of such units impacts the behavior of other officers in the department because it allows them to refer cases that they may normally not want to handle to such a unit.
Community Characteristics
Urban–Rural Variations

The physical attributes of a police jurisdiction obviously vary by such factors as land area, population, and resulting population density. The characteristics of a department’s service community have been shown to dramatically affect police practices. In one study of suburban departments in the 1980s, suburban police departments recorded higher rates of domestic violence, which were less likely a result of a real crime wave in these communities than because suburban residents reported their complaints to police as a matter of course. Nonetheless, the suburban police departments initiated criminal complaints at lower rates than rural and urban departments (Bell, 1984). Bell concluded that the three types of departments—urban, rural, and suburban—had markedly different policy orientations toward domestic violence. In addition to such generalized variation, specific features of a department and its organizational milieu have been shown to have a dramatic impact on arrests and other behavior in cases involving domestic assault.

Consider the impact of domestic violence policies in a rural community compared with an urban community. With large and sparsely populated areas to cover, rural law enforcement agencies deploy a service model that differs considerably from that used in urban areas. In an urban area, several police officers might be responsible for patrolling a small area of a city or might be devoted to one area of specialization, including a domestic violence unit. In contrast, in a rural area, one deputy sheriff might be responsible for covering a large geographic area.

This model presents obvious challenges for rural departments in policing domestic violence, such as increased response time. This factor might impact arrest outcome significantly, as a delay in response time is likely to increase the probability that an offender will leave the scene, a factor known to decrease the likelihood of arrest dramatically. Delayed response time also might decrease the likelihood that an officer will have probable cause to make an arrest in a misdemeanor assault.

Officers in urban jurisdictions also have been described as adopting a more legalistic and less service-oriented style of policing compared with other
departments (e.g., favoring arrests if provided for by statute; Crank, 1990; Liederbach, 2005; Hirschel & Buzawa, 2009). Conversely, rural and small-town police agencies have been reported widely to present a more service-oriented approach to policing and to engage in far more informal citizen interactions (Liederbach & Frank, 2003; Weisheit, Falcone, & Wells, 1996). As a result, there would seem to be a greater likelihood for a more diverse response to arrest mandates. Police officers in these rural and small-town agencies also are more likely to respond to community norms and expectations, whereas in more urbanized jurisdictions, organizational characteristics are more likely to dominate arrest practices (Crank, 1990; Liederbach, 2005; Wilson, 1968).

Although these considerations collectively suggest that the overall percent of arrests should be lower in rural jurisdictions, the higher crime rates in the more densely populated urban areas seem to offset this factor. However, it has been proposed that because of the current fiscal crises, large departments that might be under funding pressure may now lack the resources to respond to misdemeanor incidents or make arrests if they retain any discretion (Liederbach, 2005). To date, not many studies have measured whether such budgetary issues affect arrest rates. One study did examine the impact of urban versus rural jurisdictions on domestic violence arrest rates. Researchers reported higher arrest rates in rural jurisdictions independent of the domestic violence legislative framework. However, they could not measure the impact of actual workload of officers or arrest for incidents other than intimidation, simple assault, and aggravated assault (Pattavina, Hirschel, Buzawa, & Faggiani, 2007).
The Controversy Over Mandatory Arrest
Advantages for Victims

Mandatory arrests have been justified primarily by the theoretical model showing how arresting offenders benefits domestic assault victims by deterring future violence and by confirming their status as victims. Consider how this contrasts with past practices. Often, when called to the scene of a domestic disturbance, officers simply admonished everyone to keep the peace. At most, an assailant was arrested for being drunk, for disorderly conduct, or for disturbing the peace. This arrest charge gave no recognition that he had actually committed an assault against a victim. The label of being a victim rather than a brawling combatant might increase the victim’s confidence in her ability to access legal rights. In addition, in many jurisdictions, police intervention might be the primary, if not the sole, mechanism for a victim to gain access to non-criminal-justice-agency support services (Stark, 1993).

In addition, by placing the burden of an arrest fully on police, the theory was that less hardship would be placed on already traumatized victims. After all, these victims might have suffered from situational stress reactions and often exhibit classic symptoms of PTSD, sometimes known as battered woman syndrome. PTSD can occur as a cluster of symptoms including panic attacks, depression, and high levels of anxiety. When the police respond aggressively by arresting an offender, the victim can be greatly relieved, because both the immediate source of her terror has been removed and the responsibility for subsequent coercive actions taken could not be viewed as her responsibility.

Finally, such a policy might fulfill perceived victim needs for retribution. The underlying rationale of retribution is that, given similar factors, victims of interpersonal violence deserve the same societal reaction as victims of stranger violence. Although many researchers might discredit the legitimacy of retribution as an element for the establishment of criminal justice policies, retribution is a well-recognized goal of criminal justice intervention as it institutionalizes retribution and obviates the need for vigilantism. We are not as ready to dismiss the importance of retribution as a legitimate goal. Recent social science research in the field of applied psychology demonstrates that most humans have a deeply ingrained goal to feel that there are negative
consequences for misbehavior. The failure to do so weakens their own commitment to maintaining public order and following societal rules (Sachdeva, Iliev, & Medin, 2009).
Societal Reasons Favoring Mandatory Arrest Practices

A policy favoring arrest might have an additional indirect societal impact. As indicated previously, some victim advocates and feminist authors believe that society retained an implicit threat of violence against women reinforcing societal domination by more powerful men. Current examples of official tolerance of violence in most societies are difficult to find. However, one does not have to peruse international news long before seeing stories of honor killings to preserve the family’s “honor” against a young lady’s “sins,” and of beatings or even of killings by vigilantes or state-supported “morals police” in many countries to realize that this might not be a great exaggeration at least in some countries. In that context, violence against women became the exemplar of the more powerful putting the weaker “in their place” by using or threatening to use violence to maintain behavioral control. From this perspective, the failure to arrest batterers means that police tacitly condone such conduct, thereby impinging on women’s social equality. In contrast, a policy mandating domestic violence arrest can undermine one of the pillars of sexism in society—the right of men to dominate women and children physically within a patriarchal family unit without fear of government intervention.

We need not fully subscribe to this view to realize that the increased rates of arrest, even mandating arrest in certain circumstances, might be of potential benefit. In a more value-neutral version of the previously stated theory of societal sexism, arrests might simply serve as an aggressive boundary-maintenance function, indicating clearly that such abuse will no longer be considered a private family matter. If police always enforce existing laws against domestic violence, then societal tolerance for abusive behavior might rapidly diminish as the behavior is actually treated as a crime.

The direct analogy is to the increased enforcement of drunk driving laws in the past several decades. By most accounts, this movement first resulted in less toleration of drunk drivers by the public and, over time, in an actual reduction in the number of drunk drivers and resultant accidents.
Unfortunately, because of the limitations of research and inability to secure sufficient grants to test such hypotheses, the role of arrest as an indirect trigger for societal change has not been fully explored in mainstream criminal justice literature and, at least at this time, is more of a hope than a reality.
Controversies Regarding Mandatory Arrest

We know now that the passage of domestic violence reform legislation has resulted in increased arrests for both intimate partner violence as well as violence other relationships included under such statutes. If we assume that resources in a jurisdiction are made available and a policy of mandatory arrest is implemented at the street level, the merits of such a policy and its costs and drawbacks, therefore, need to be considered carefully. To start, we need to consider critically the supposed major benefits and costs to all concerned.

The next section of this chapter will examine whether the increase in the role of arrests has achieved its primary goal of a reduction in violent assaults, and then explore the validity of concerns that continue to be voiced regarding the impact of removing police arrest discretion inherent in the adoption of mandatory arrest statutes and policies.
Have Increased Arrests Suppressed Domestic Violence?

Studies have, for more than 25 years, tried to examine the impact of mandatory arrest on subsequent offender behavior (see Dunford, Huizinga, & Elliott, 1989; Berk, Campbell, Klap, & Western, 1992; Garner, Fagan, & Maxwell, 1995; Garner & Maxwell, 2000; Hirschel & Hutchison, 1992; Maxwell, Garner, & Fagan, 2001; Pate & Hamilton, 1992; Sherman, Schmidt, et al., 1992). As an aggregate, it seems that mandatory arrest has not had nearly the desired effect on either offenders or victims. In terms of offenders, it was anticipated that the use of mandatory arrest strategies would deter subsequent violence by offenders. This has not proven to be the case.

Decreases in domestic violence (up until the recent recession) coincided largely with the increased emphasis on arrest. On the surface, this might suggest a strong causal relationship. However, despite the success of domestic violence legislation in increasing rates of arrest, the actual impact on the rate of intimate partner violence is not as certain. It is probable that the increased likelihood of arrest has deterred many former or potential casual offenders who generally could control violent tendencies if they were presented with an effective deterrent. However, as we have already discussed, although these might be most offenders by number, this group does not commit the bulk of serious violence.

We also need to acknowledge the overall societal context in which crime trends are analyzed. Data indicate that the overall rates for serious domestic violence offenses have decreased but not at a faster rate than for other violent crime. According to recent NCVS data, violence overall, including nondomestic assault, has decreased at greater rates than domestic violence. Data for domestic homicides and the impact of criminal justice intervention are inconsistent at best, suggesting that the impact of the increased use of sanctions has been limited (Catalano, 2007; Dugan, Nagin, & Rosenfeld, 2001). The most recently reported data have shown that the overall rates for serious domestic violence offenses have declined 63% between 1994 and 2012, but the overall pattern and size of the decline were similar to the
decrease for other violent crime but not at a faster rate than for other violent crime (Truman & Morgan, 2014). Violence by intimate partners may have decreased at a somewhat higher rate than violence by other family members (67% vs. 52%). However, between 2012 and 2013, there were no significant changes in the rates of intimate partner violence, whereas violence committed by a stranger continued to decrease (Truman & Langton, 2014).

How can rates for domestic violence be decreasing without attributing a major part of the decline to the change in police behavior? It can be argued that observed declines in assaults are at least partially a function of current societal demographics. We have long known that most violence, including domestic violence, is committed by younger offenders typically prior to the age of 30 years. With slower population growth and the aging of the Baby Boomer and Echo Baby Boomer generations, the high-violence age cohorts younger than this age are decreasing as a percentage of the overall population.

In addition, until the recent financial crisis, increased numbers of police and increased rates and lengths of incarceration, particularly for young minorities, undoubtedly had, to some extent, an effect on violent crime rates. Although this might not seem at first to be relevant, this point is of great importance. Recent research suggests that those offenders reaching the criminal justice system who continue to reoffend despite increased sanctions tend to be generally violent (Wilson & Klein, 2006). If increasingly severe jail and prison terms for all violent crimes incarcerate many of such offenders for lengthy terms, the overall problem of domestic violence diminishes and reported rates of domestic abuse decline, regardless of whether arrests for domestic violence per se are effective.

We suggest that it is best to typologize offenders and acknowledge that variations impact the utility of any type of intervention. Research has shown that arrest by itself does not stop chronic violent offenders but is far more useful in giving a reality check to stop the occasional situational batterer. Unfortunately, it would be legally indefensible to try to arrest only the occasionally violent on the theory that deterrence will only work with this group. In fact, merely articulating a policy favoring arrest for a first-time offender but to ignore the hard-core abuser graphically demonstrates its folly.
Instead, such a policy can be implemented only as part of an overall framework that heavily favors arrests while providing alternative intervention strategies for an occasional batterer committing a minor assault.

It might be that the greatest impact of mandatory arrest policies will be achieved by coordinating police, prosecutorial, and court resources on a targeted population of chronically violent individuals. Mandatory arrests of those offenders who have multiple prior convictions for any type of violent behavior, coupled with prosecution and, when possible, incarceration, may present the optimal use of this technique.
The Costs and Unintended Consequences of Arrest

In addition to questioning the overall positive impact of mandatory arrest practices, there also are some major concerns with their application in practice; the five primary concerns are (a) the widening of the scope of mandatory domestic violence laws to capture assaults not originally anticipated to be covered, (b) the unexpected costs to victims of mandating arrests despite victim preferences to the contrary, (c) the growth in the phenomenon of arrests of female offenders and dual arrests in general, (d) the individual and societal costs of disempowering victims who might not want an arrest, and (d) the possibility of misallocation of extremely limited agency resources.
The “Widening Net” of Domestic Violence Arrest Practices

Recent domestic violence legislation has expanded considerably the scope of relationships covered. Although initial domestic violence statutes typically addressed only violence between married couples, political pressure was applied by advocates for groups not covered by the original statutes. As a result, definitions have been subsequently expanded in virtually all states to encompass a broader range of domestic relationships. We now know that the passage of domestic violence reform legislation has resulted in an increase in arrests not only for intimate partner violence but also for other relationships included under such statutes (see, e.g., Chaney & Saltzstein, 1998; Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007; Municipality of Anchorage, 2000, pp. 8–9; Office of the Attorney General, State of California, 1999; Wanless, 1996, pp. 558–559; Zorza & Woods, 1994, p. 12).

This may result in unintended consequences. For example, some empirical evidence reports that girls, being both of minor status and female, are at an increased risk for arrest compared to either boys or adults (Chesney-Lind, 2002). In a recently released report, the Girls Study Group was reported that, although the arrest rate for juvenile girls between 1980 and 2003 increased much more than for male juveniles, juvenile boys were still five times more likely to be arrested for aggravated assault, indicating that the arrests of girls tended to be of a more trivial nature yet were mandated by statute or policy. The fact is that the greatest increase in police arrests has been in the area of simple assaults; and as in the case of adult women, a greater proportion of these simple assaults is committed by juvenile girls than by boys (Zahn et al., 2008). In addition, an analysis of the large-scale national NIBRS data set found that adult women were least likely to be arrested, followed by adult men, and then juvenile boys. Juvenile girls were the most likely to be arrested of all groups, respectively, for non-intimate-partner domestic assaults (e.g., assaults on other family members and relatives; Buzawa & Hirschel, 2008).

A more recent study by Buzawa and Hirschel (2010) also examined differences by both age and gender. They found that the many differences in
arrest rates were attributable to age, not just gender, and that juveniles were far more likely to be arrested for assaulting adults, whereas adults were far less likely to be arrested for assaulting a juvenile, with adult women having the lowest arrest rate regardless of whether the adult assaulted was male or female. Again, should mandatory arrests be a preferred policy for dealing with violence between siblings or in parent–teenager altercations? What is likely to be achieved? What costs and unintended consequences are incurred by the juvenile that is arrested?

Collectively, these studies suggest that an unintended effect of aggressively applied domestic violence statutes, particularly mandatory arrest, is that the acts of many juveniles have been increasingly criminalized, and an arrest in many cases has become mandatory.

Second, any mandatory policy, by definition, does not take into consideration victim preferences or their perspectives, concerns, and possibly their prior experiences. We also cannot address the impact an arrest will have on the offender, along with real concerns regarding safety, financial resources, and children discussed earlier.

Although a number of studies have examined whether the intended outcomes of policy mandates on arrests have been achieved, there has been a lack of research on the costs and unintended consequences of such policies. Over the years, we have suggested a variety of known costs and unanticipated consequences of arrest. For example, an arrest not desired by the victim may impact their willingness to report future acts of violence. Studies suggest that most, but certainly not all, calls for domestic violence are initiated by victims; NCVS data reported that 72% of the assaults were reported by the victim (Felson, Ackerman, & Gallagher, 2005), and NIBRS data found that 66.1% of domestic calls to the police were made by victims (Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007).

However, a large number of incident calls are initiated by other parties—or fail to be reported to the police by anyone. Why? Many victims simply might have preferred some other form of assistance and, absent the possibility of a police arrest, actually would have engaged in alternative help-seeking behavior.
In some cases, victims might not view the particular offense as serious enough to warrant criminal justice system intervention. For example, victims might be more likely to report subsequent assaults but be less likely to report restraining order violations—especially if they involve nonconfrontational visits, perhaps with children, that may technically be forbidden by a restraining order.

Alternatively, victims might believe an assault must involve injury to herself or others or serious property damage to justify arrest. This rough form of victim decision making is borne out by research finding that women with severe physical or psychological violence or injury were more likely to call police than other abused women (Bonomi, Holt, Martin, & Thompson, 2006). Specifically, there were 96% more calls when a weapon was involved, 58% more calls if they were severely sexually abused, and 50% more calls if they were severely physically abused. Of interest is that women with children at home made 32% more calls to the police (Bonomi et al., 2006).

Finally, as noted earlier, victims might be skeptical about the effectiveness of criminal justice involvement in their issues. Like other crime victims who may not report law violations, victims who had previously reported a past domestic violence assault believe that an arrest will not deter their offender. In fact, we know that some victims strongly believe that earlier arrests may have made an already bad situation worse.

What if a victim of a domestic assault does not desire an arrest? Are there rational reasons or should society assume that it knows what is best and act accordingly by always arresting an offender? What can happen if the victim feels that her arrest preferences have been ignored? To answer these questions fully we need to explore why a victim of abuse might not desire the involvement of authorities. To understand this seemingly paradoxical behavior more fully, we need to have an insight into a victim’s goals and motivations.

Victim goals are diverse. Some might wish to salvage a flawed relationship in which aggressive behavior is now customary, whereas other victims might have already terminated contact with the offender. Victims might believe that an arrest will make a bad situation worse or, as described previously, they might have had negative experiences with police in the past. Victims also
vary in their perceptions of the level of danger, threat, and harm posed by an offender. Obviously, not all offenders present the same degree of danger; some victims are threatened or assaulted by a first-time offender, while others are the target of a serial batterer.

Jurisdictions with mandatory arrest policies cannot incorporate the complexity of these victim needs and preferences into policies and practices. Victim situations are not all alike; yet such policies treat all victims as if they were. Mandatory arrest policies implicitly consider victim preferences largely irrelevant because the overarching goal of the system is to punish offender misbehavior and deter the accused and other offenders rather than to accommodate victim preferences and needs. Still others might acknowledge that victims do have legitimate preferences but believe that, having been victimized, they cannot judge what is in their best interests. Following this line of thought, professionals should make these decisions.
Unanticipated Costs of Arrest to the Victim

To understand the impact of mandatory arrest on victims, it is important to realize that victims as well as offenders are not a monolithic group but are a highly diverse population. Many victims are trapped by dependency on the offender, believing that they must remain in an abusive situation for economic, physical, or even emotional survival.

A victim might be affected adversely by the arrest of an offender in a variety of ways. The most problematic reason for this is fear. She might justifiably fear physical or economic retaliation or other acts committed by the assailant or by his family, relatives, or friends. Sometimes the motivation for reabuse, subsequent to arrest, is indeed strictly revenge. At other times retaliation, or threats thereof, are designed to intimidate and prevent a victim from pressing charges. If a victim is already severely physically or emotionally traumatized by abuse, she may find the additional demands attendant to supporting arrest realistically beyond her capabilities.

We understand that, on the surface, such fear should not prevent the police from using an otherwise effective tool such as arrest. Indeed, the police, prosecutors, and courts should exercise their strongest possible efforts to prevent witness intimidation—a threat to the integrity of the criminal justice system as well as to the victim herself.

However, victims might have additional concerns. For many, primary among those are the financial costs resulting from an arrest. Although the arrest alone might not have a serious financial impact on the family, an arrest might affect an offender’s current or future employment, thereby limiting the offender’s ability to maintain child support or other payments. Furthermore, the offender might threaten or actually stop child support, leaving the victim scrambling for assistance from an overburdened family court system.

Many victims might be deterred from reporting abuse if arrest is likely. Findings from the Chicago Women’s Health Study report that fear of consequences for the offender was the primary reason provided by more than 50% of victims not contacting the police for a domestic assault (Fugate,
Landis, Riordan, Naureckas, & Engel, 2005).

In addition to the obvious direct costs of time and effort to the victim that result from the arrest of a family member, the arrest also is likely to traumatize other family members. Children, who are already affected by the abuse, might suffer from the arrest itself or from the stigma associated with the incident.

We understand that in the long term it is developmentally beneficial for children to never witness parental arrest. In many, if not most, cases, a child identifies closely with their parents and typically would not benefit, at least in the short term, from watching one being led out of the house in handcuffs. Unfortunately, all too often, children align their loyalties with the offender and blame the victim for disrupting the family. This does not mean arrest should not be used when indicated, merely that all collateral ramifications should be considered.

Ambivalence, as discussed in detail in the chapters regarding prosecution, often translates into a victim’s failure to support criminal cases after an arrest is made. Domestic violence victims are far more likely than other victims to be motivated by self-protection and less on vengeance in calling police and pursuing prosecution. Many domestic violence victims might simply want restoration or redress, not vengeance or absolute punishment. They might be far less concerned with the abusers’ punishment than with using the criminal justice system to achieve these purposes. Although many people who are victimized by someone with whom their relationship has ended might want aggressive prosecution, others simply seek an immediate end to abuse.
Susan Still

Susan Still appeared on 20/20 with Diane Sawyer and later on The Oprah Winfrey Show to share her story of 24 years of emotional and physical abuse by her former husband. The abuser, Ulner Still, received a 36-year prison sentence in December 2004, which was the longest sentence given to the crime of domestic violence that did not result in the death of the victim. Ulner Still would instruct his two sons and one daughter to call their mother a “White slut” and would order his 12-year-old son to videotape him beating her. He would then play these tapes again later in front of his children as well as friends. He would mock her, and her children would as well. He continually manipulated the children to join him in his abusive behavior toward her.

With the encouragement of her supervisor, Susan and her two sons sought protection from the police in May 2003 and reported her husband for domestic abuse. Although Susan took custody of her two sons, then 13 and 8, they blamed her for the abuse and for breaking up their family. Their daughter (21 years old at the time) not only sided with the father, but also she testified on his behalf.

Since that time, Susan began speaking publicly to groups about her experience, and her sons gradually began to realize that they had been brainwashed. This was a very difficult and slow process. However, in 2007, when her sons appeared with her on The Oprah Winfrey Show, one son described his mother’s abuse as analogous to waking up and brushing your teeth—a typical part of the day. Life at that time was “survival of the fittest.” He now believes what happened to his mother was wrong and that he has changed. Susan Still said that she was proud of her boys because they now better understand their experiences growing up in that environment.

Sources: New York City Domestic Violence Court Open House, Center for Court Innovation, March 24–25, 2009; Winfrey, 2009.
Arrests and Minority Populations: A Special Case?

Mandatory arrest policies seem to affect minority populations disproportionately. Ciraco (2001) found that after the passage of mandatory arrest laws in New Jersey, there was a 51% statewide increase in reported offenses over the previous decade. Not surprisingly, this increase occurred mostly in counties with the greatest proportions of poor households. In poor, urban areas where minorities are overrepresented, neighbors or bystanders are more likely to report domestic violence simply because they hear a disturbance. The unanswered question is who initiated the call to the police and whether the victim’s interests were served by an arrest. Currently, empirical data are lacking that provide an understanding of how the calls that reach police attention by victim reporting compared with others among specific subpopulations.

There is, after all, little doubt that domestic violence is a major problem in African American society since such violence is highest among racial and ethnic minorities and the poor in general. Nevertheless, for many racial and ethnic minority victims, the risks of involvement with the criminal justice system might outweigh potential benefits. Many African Americans have, with good cause, long protested that they were disproportionately subject to arrest and police brutality.

Research has consistently found minorities to be less likely to trust the criminal justice system. An integral part of their community, many African American women have witnessed or experienced what they consider to be police mistreatment. Many African American women state that official racism is more serious than sexism, even when the latter involves personal risk (Bent-Goodley, 2001). This attitude is likely to have increased with the recent widespread protests over police shootings of unarmed Blacks, and is captured by the saying “Black Lives Matter.”

We need to recognize that, at least in the past, in the African American community, the label of being either the victim or the offender of intimate abuse creates an unwanted stigma for both parties. Some African American women have gone so far as to reject the entire concept of domestic violence
as a concept of “White feminism and male bashing” primarily of Black and poor men (Bent-Goodley, 2001).

Specific characteristics of regressive policing domestic cases might play on such fears. Many African American women might have greater fear than other victims that their children might be taken away from them, especially in states mandating full investigation of cases in which children were present (Bent-Goodley, 2001).

In addition, there might be a realistic fear of being arrested themselves, especially if the police uncover other criminal activities in the family such as drug addiction or even alleged child neglect or abuse when responding to a domestic assault. The fact is that, for a host of reasons, the likelihood of victim arrest among minorities increases with proactive or mandatory arrest policies against domestic violence (Coker, 2000). See the example cited later in Chapter 10 of what happens when the police react to the injuries to Roberta’s children.

Not surprisingly, victim behavior is affected by these factors. One study reported that African American women were 1.5 times less likely to call the police compared with White women (Joseph, 1997). This finding is extremely significant because domestic violence is more likely to be known by police among urban, lower socioeconomic classes in general and minority communities in particular.

It is likely that the increased use of arrest among minority communities, especially with the adoption of mandatory arrest policies, will strengthen the number (and validity) of claims of disproportionate use of arrest and physical force on minority men (Forrell, 1990–1991; Zorza & Woods, 1994). Therefore, it is necessary to determine whether other, less-intrusive measures would be of similar effectiveness with far fewer negative consequences.

As noted, virtually any police intervention in domestic violence, even if flawed, has some deterrent effect for many batterers (Carmody & Williams, 1987; Feld & Straus, 1989; Ford, 1988; Pierce & Deutsch, 1990). If this is true, should this affect the default position of arrests within a minority community that has been, as a group, subjected to abusive police practices? Is not arrest the police action most likely to increase tensions and dissatisfaction
within the minority community?
The Role of Victim Satisfaction in Reporting Revictimization

So far, we have stated that a uniform policy might not meet the needs of a diverse set of victims. The question might be posed as follows: What impact does the failure to meet these needs have on subsequent victim behavior? The answer might at least partially lie in the extent to which victims decide to report revictimization based on their prior experiences with the police.

As described in Chapter 5, it has been known that a relatively large percentage of victims of domestic violence never report such incidents to police. This observed reluctance to call the police has been reported in many studies and in many different jurisdictions (Buzawa & Buzawa, 2003; Felson, Messner, Hoskin, & Deane, 2002; Felson & Paré, 2005; Kruttschnitt, McLaughlin, & Petrie, 2004). Nor, despite vast amounts of money, time, and effort spent to encourage calling the police has there been any significant increase in the percent of victimizations reported by victims covered by these domestic violence laws between 2004 and 2013 overall (56.6% reported in 2004, 56.9% in 2013), and only a slight increase in reporting by intimate partner violence victims (56.4% to 57%; Truman & Morgan, 2014).

In the past, many victims realistically feared that the police would simply fail to act appropriately and, at best, respond perfunctorily or even exacerbate the situation by demonstrating that the offender’s conduct was tacitly condoned when no police action was taken. This dynamic, however, clearly should have changed as police became increasingly committed to more proactive intervention, include making mandatory arrests.

Today, it simply cannot be said that police as a group trivialize domestic violence. In fact, the primary critique of police action today is that with mandatory arrest policies it is too uniform, with arrests made regardless of whether appropriate for the situation because of overly rigid policies or statutes. As a result, many victims might be prospectively deterred from calling the police because of fear of further losing control of the situation.

For this reason, reporting subsequent abuse or revictimization to the police
becomes an extremely interesting subset of the interaction between police and victims. In such cases, by definition, the victims have already encountered the aggressive actions of the police. For this reason, an analysis of victim re-reporting behavior would either reinforce (if victims are not deterred from further reporting of violence) or undermine (if they are deterred) the impact of an aggressive, system-wide intervention.

Proponents of mandatory arrest have assumed that the initiation of aggressive intervention strategies would result in increased victim willingness to participate in the criminal justice process should a reoffense occur. Specifically, victims would be empowered through intervention and, therefore, more likely to report subsequent problems with the offender. Most research simply did not address the factors that might predict which victims report revictimization versus those victims that do not, nor did it disentangle the effects of other criminal justice components (e.g., prosecution, sentencing, or corrections) on the subsequent behavior of victims.

Logically, and supported by research, victims often become frustrated with the criminal justice system if it is unsuccessful at preventing reabuse and, therefore, might not report it (Buzawa & Hotaling, 2006). Revictimized individuals were far more likely to have taken out prior restraining orders and had the offender arrested. Despite their intervention, the victim was revictimized. It is certainly understandable that many of these victims become discouraged with the efficacy of current intervention strategies and decide not to report subsequent victimizations to the police.

Moreover, it is possible that victim frustration resulting in nonreporting of current abusers is related not only to the criminal justice system’s response to the immediate incident but also to a series of prior victimizations. Revictimized women who failed to report their revictimization to the police were far more likely to have endured childhood sexual abuse and have been subjected to serial victimizations throughout their lives.

One avenue of research on criminal behavior in general that has been explored particularly during the past decade is the discussion and an exploration of crimes throughout the life course. Equally compelling is the notion of how victims react throughout their life course. Although research has paid considerable attention to offender careers in crime, less attention has
been spent on studying victimization careers, not only in terms of individual victimization but also in terms of family victimization through the life course.
The Increase in Dual Arrests

Much of the increase in female arrests is the result of the increase in cases where the police have arrested both parties (e.g., a dual arrest in which both the male and the female partners are arrested). This is a relatively recent phenomenon, directly related to increased police enforcement of domestic violence laws.

In the first detailed study of dual arrests, Martin (1997) examined the disposition of domestic violence cases handled by the criminal courts in Connecticut just after implementation of a mandatory arrest policy in 1988 and found the dual-arrest rate in adult intimate family violence cases approached 33%. Research has subsequently shown wide variations in dual-arrest rates. Where statewide data are available for domestic violence cases, dual-arrest rates are as high as 23% in Connecticut (Y. Peng, personal communication, July 10, 2002) and as low as 4.9% in neighboring Rhode Island (Domestic Violence Training and Monitoring Unit, 2001). One study in Massachusetts reported that, in cases of domestic violence where both parties were injured, it was common practice to arrest one party and summon the other to court. As a result, dual-arrest rates including summons were higher than originally reported and were really at 16% (Rice, 2007).

Dual arrests are clearly related to domestic violence statutes, and, most acutely, to mandatory arrest practices. In 2007, findings from a large-scale national study on dual arrest were released. The researchers reported that dual-arrest rates were higher in mandatory arrest states compared with preferred or presumptive arrest rates and that discretionary arrest states have the lowest dual-arrest rates. In addition, there were no significant differences in dual-arrest practices between men and women in heterosexual intimate partner violence. The significant differences in dual-arrest rates for same-sex intimate partner relationships were surprising, where the odds of a dual arrest were ten times greater than in a heterosexual intimate partner relationship (Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007).
The Violent Family and Dual Arrests

A different problem exists when police are confronted with families in which violence appears to be a normal, or at least expected, part of family dispute resolution. We discussed previously how violence in some families might be mutual, forcing police to judge who initiated a particular violent incident, rather than who is generally the primary aggressor. Even when it is clear that one party is at fault, the victim–offender dichotomy required in criminal law often precludes police from viewing domestic assault as a type of interaction that, in some cases, might be a response to conflict. A person’s status as victim or offender might not only be difficult to identify when the officer first approaches the scene, but also may not remain constant over time.

We do know that in some violent relationships both partners can be violent and victimized at various points in their relationship (H. Johnson, 2001; Straus, 1999). M. P. Johnson (1995) reported that in situations with common couple violence—so-called battling couples—minor but recurrent acts of violence may be initiated by either party, but the type of violence generally viewed by the police (and in shelter and clinical samples) is more likely to involve serious and frequent beatings as well as the terrorizing of women.

Unfortunately, police typically do not (or are not allowed to) consider these factors when determining which party is a victim. They are forced to identify a victim and an offender or, alternately, make a dual arrest for which they are in turn criticized. Although this process seemingly could be simply deciding that the person with the most serious injury is the victim, research by Buzawa and Hotaling (2000) indicated that this is not always true. More insidious factors such as police adoption of social norms enter into the arrest decision. This study reported that women were most likely to be seriously injured, but even considering the extent of injury, they were also less likely to be arrested proportionate to their offenses and the injury they inflicted. In effect, the default position of police seemed to be that the woman in a battling couple scenario is the preferred victim, regardless of comparative injuries.

Many researchers and battered women’s advocates believe that dual arrest in some departments may discriminate against women who are typically the
primary victims of serious domestic assaults and whose acts of violence are often of self-defense.

The Buzawa and Hotaling (2000) study reported another context in which police arrest practice did not seem to follow statutory guidelines neutrally. It reported that minors were six times more likely to be arrested under domestic assault statutes compared with either adult men or women. Despite child abuse laws that seemingly protect juveniles until the age of 18 years old, an arrest is far less likely to be made when a minor is the victim of domestic assault by a parent than if the parent were assaulted by the child (Buzawa & Hotaling, 2000, 2006, 2007).

In sharp contrast, some jurisdictions have avoided high rates of dual arrest in favor of rigidly classifying women as the victims in battling couple scenarios. In these jurisdictions, again for organizational or political reasons, officers appear discouraged both from arresting women and from making dual arrests. For example, if a woman initiated violence by throwing an object at her male partner, resulting in a bruise or cut, and he retaliated violently, causing similar bruising, many officers either make no arrest at all or simply arrest the man.

Research conducted in three Massachusetts towns found that only 3 (less than 1%) of 319 domestic assault cases produced dual arrests and that none of these dual arrests involved a woman committing violence against a male intimate partner. Although these towns did not have high dual-arrest rates, many domestic assaults that by a reanalysis of police data should have been defined as mutual violence seemed to be redefined by the police so as not to merit even a single arrest. This occurred even though, in 18.8% of non-arrest cases in which both parties acted violently, one of the parties was injured (Buzawa & Hotaling, 2000).

A fundamental question is when and how often is dual arrest appropriate? There is no easy answer to this question, particularly because there is no empirical data quantifying the extent to which some families have two violent partners (M. Johnson, 1995, 2000; Straus, 1999).
Is a Uniform Arrest Policy Justified in the Context of Victim Needs?

It is clear that the primary goal of all domestic violence legislation is to prevent subsequent violence. Will the implementation of mandatory arrest practices, however, disempower victims and possibly work against their best interests? In many cases, the goals of assisting and empowering domestic violence victims are not as straightforward as in other criminal contexts. Even among violent crimes, victims of domestic violence might differ from other victims if only based on their intimate knowledge of the offender and the relationship.
Victim Preferences

The previous discussion did not intend to suggest that victims do not want police intervention; most do. However, many victims want (and need) police intervention without necessarily wanting arrest. One study found that victims of both domestic and nondomestic assaults consistently wanted the police to respond, even when arrest was not desired. In this study, more than 84% of all assault victims wanted a police response, with no real difference between domestic assaults (83%) compared with nondomestic assaults (88%). A follow-up question asking the victim’s first choice for who should handle the incident (e.g., the police, themselves, medical or counseling personnel, family neighbors, or family members) found that, for both domestic and nondomestic assault cases, more than two thirds (67% and 68%, respectively) wanted the police to handle the assault (Hotaling & Buzawa, 2001).

Interesting data were uncovered in terms of the primary action that the victim wanted the police to take. Choices given were “arrest,” “control the offender,” “do nothing,” or “do not know.” The overall result showed that 47% wanted an arrest, 39% wanted control, 9% wanted to do nothing, and 5% did not know; however, this result conceals data that reveal a major difference in the two populations. In domestic assault cases, only 33% wanted an arrest made compared with 52% who wanted the offender controlled but not arrested. In non–domestic assault cases, 76% wanted the offender arrested and only 12% wanted the offender controlled.

These data show, as reported in many other jurisdictions, that most victims of domestic assault do not prefer arrest as their first option. Given the current policy preferences for domestic violence arrests, data also show that police refuse to follow the victim’s request more frequently in domestic assault cases (25%) than in non–domestic assault cases (4%). Not surprisingly, the victim disagreed with arrests made in 60% of domestic assaults compared with only 12% of nondomestic assaults; situations in which the suspect was not arrested but the victim disagreed occurred in 4% of domestic assaults and in 44% in nondomestic assaults. Clearly, the police in the jurisdictions studied determined the need for arrest independently of victim preferences in cases of domestic assault.
In contrast, the areas of agreement in which the suspect was arrested and the victim agreed with the arrest were less (29%) for domestic and more (36%) for nondomestic assaults or when the suspect was not arrested and the victim agreed (8% in both domestic and nondomestic assaults).

Mandatory arrest statutes or policies might, therefore, lead to adverse consequences in which victims are, at least, disempowered and, at worst, deterred from calling the police in the future because unwanted arrests are made. These data strongly suggest there might be significant numbers of domestic assault cases in which the offender was arrested and the victim disagreed, dramatically increasing the potential of adverse impact on the victim.

❖ The United States, in virtually all of its jurisdictions, has developed extremely detailed, rule-based systems directing police, court officials, and others on how to deal with domestic violence. Other systems may be more appropriate in other cultures.
An International Perspective
Innovations in Policing Domestic Violence in the United Arab Emirates

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The general strategy of the Ministry of the Interior in the United Arab Emirates has been to increase their use of innovative community policing methods to deal with family violence in its various forms. In fact, community policing and social support centers are considered essential means in this area at policing, social, and professional levels.

Family violence is defined by UAE police as any assault, threat, misdeed, or damage inflicted on family members including physical, psychological, and sexual abuse. However, currently, the UAE does not have specific legislation that provides specific protection for spouses and their children. As a result, when confronting the problem of family violence in the UAE, the police operate within the framework of international human rights initiatives. In this context, while federal legislation is currently under discussion, the police have already taken the initiative to identify this as a social problem and have taken steps to proactively intervene. It is important to understand that, in the UAE, families historically have not disclosed problems to outsiders, including government agencies. In part, this is the result of a cultural emphasis and expectation to preserve the family and divorce is infrequent and typically undesired.

What is different than in many western countries is that, in the UAE, the police are taking initiatives to support victims of family violence before legislation is put in place mandating action. The police have asked researchers to provide them with research to better understand the emotional and psychological, as well as the physical, effects of family violence on individuals and their society.

They have drawn upon the expertise of police researchers and social workers to establish social support centers housed within the police department and staffed by female police officers. These centers allow victims to contact them through a hotline that deals with such cases in strict confidentiality, or by visiting a special center dealing with family violence.

The case is then analyzed by these police officers and appropriate interventions are recommended. Services offered to victims include treatment and protection services, victim support, and parental care special initiatives. Officers from the center will also regularly follow up with victims to ensure their continued safety. In addition, the police now offer workshops for the general public and have engaged in a variety of prevention and education initiatives.

Unfortunately, because victims historically are uncomfortable having these crimes officially
disclosed, there is a lack of existing data on the incidence and prevalence of family violence. In addition, even though police are not trying to respond proactively, they find it necessary to do so in a manner that maintains the privacy and safety of the family members, as well as ensure that they are not publicly labeled or censured.
Does Failure to Follow Victim Arrest Preferences Deter Future Reporting?

It is unclear as to whether the failure to honor victim preferences to not make arrests will dramatically deter future reporting of victimization. In the study reported immediately above (Buzawa & Hotaling, 2007), 62% of victims said they would report future crimes, 12% said they would probably call the police, and 27% said they definitely would not report future crimes. The willingness of victims to report a subsequent incident also were studied by Apsler, Cummins, and Carl (2003), who reported that 80% of victims interviewed in a Boston suburb would report a future incident, regardless of whether their initial preference for arrest was followed. Similarly, a study in Toronto reported that 76% of women surveyed would report a future incident (Lanthier, 2008). An analysis of NCVS data from 1992 to 2002 was less optimistic in its findings of actual victim reporting. Felson, Ackerman, and Gallagher (2005) reported that, although 17% of victims were reassaulted, only 56.5% of these were reported to police and these cases included incidents reported by witnesses as well as by victims.

More recent research suggests that the dismissal of victim preferences might indeed discourage the future use of the system both by victims who wanted the system to do more (those who wanted more severe criminal charges brought against the offender) as well as by those who wanted it to do less (those who felt taking the case forward would decrease their safety; Buzawa & Hotaling, 2006).

The study attempted to quantify differences between reassaults based on official records and the actual rate of revictimization based on interviews of the victims themselves. Official data suggested that only 22.1% of victims in this sample were revictimized. However, the results of victim interviews conducted by the researchers indicated that more than 49.2% were in fact revictimized, indicating a substantial number (55% of those that were revictimized) were somehow deterred from reporting the subsequent assault to the police.
If prevention of revictimization is the goal of policymakers, then this finding suggests that new strategies must be developed simultaneously in two areas: (a) New methods need to be used to persuade victims to report subsequent victimizations to police, and (b) new strategies need to be developed that make the identification of subsequent revictimization a community concern rather than a problem of victim notification.

In terms of this latter point, it certainly seems possible that the strategies employed vis-à-vis the federal government’s reentry partnership initiatives (see, e.g., Taxman, Young, & Byrne, 2003) could be applied directly to the problem of domestic violence. Specifically, one avenue to explore is the use of local community police agents in conjunction with the courts and corrections system as part of a proactive, system-wide revictimization detection strategy. This strategy would allow the police to respond proactively to the problem of potential revictimization by identifying offenders of domestic violence, talking directly with offenders about the implications of reoffending on their liberty and lifestyle prior to sentencing, and then directly monitoring offender behavior toward the victim in particular and the community in general. By redefining domestic violence as a community problem, the new domestic violence partnership would effectively take the primary responsibility to detect and report revictimization out of the hands of the victim, thereby reducing the potential control of the offender over the victim.

Given the empirical evidence regarding prior substance abuse or criminal histories of these offenders (including the serial domestic abuser subgroup members who seem to continue their abuse with new partners), it certainly makes sense to view this group of offenders as a potential continued threat to the community.
The Limitations of Police Arrests in Response to Stalking

Anti-stalking legislation, beginning with the 1990 California anti-stalking statute, has now been enacted in every state, typically but not exclusively as part of their domestic violence statute. The proper police response to stalking is, however, even more difficult to determine than in cases of domestic assault. The issue posed here is typically not simply whether to make an arrest but what constitutes an offense for which an arrest might be made. The actual effect of an arrest on a stalker’s propensity to continue stalking as opposed to other possible law enforcement actions has not, to the best of our knowledge, been examined empirically to date. Unless stalking occurs as part of an overall mixed pattern of violence, harassment, and threats, stalking might simply be a precursor offense to other, more traditional, acts of domestic violence. As such, although there are now criminal statutes on the books, realistically it is difficult to expect police to arrest someone for what might initially be perceived as random or relatively minor occurrences—at least in the absence of knowledge of a pattern of coercive control. In some states, it might even be impossible to make arrests because of statutory restrictions that allow arrest only for cases of actual threats. Unfortunately, we know that subsequent violence cannot be predicted easily based on the specific harassment activity.

In such cases, the only realistic police intervention strategy might be to support stalking victims by helping them seek and enforce restraining orders, the violation of which can justify an arrest. The responding officer should assist a stalking victim in developing sustainable evidence of such behavior. For example, the victim’s first impulse might be to remove or destroy obscene messages from the stalker. As stated by J. Reid Meloy (1997), a noted forensic psychologist,

[i]n all cases of relational intrusion, both before and after the behavior has passed the threshold of criminal stalking, the victim should thoroughly document each incident (date, time, place, and
event) in a daily log, and keep any tangible proof of its occurrence. This may include, but is not limited to, photos, audio tapes, videotapes, letters, notes, facsimile transmissions, printing of e-mail messages, unwanted gifts, and suspicious, inappropriate, or frightening items (one perpetrator scratched the name of his victim on a bullet cartridge and mailed it to her). Evidence such as this establishes a course of conduct in stalking cases and may be central to convincing the trier of fact that the victim was in reasonable fear. (pp. 176–177)

To establish a pattern to justify a subsequent arrest, activity of this nature would need to be coordinated closely between a specific police officer (or domestic violence unit team) knowledgeable about the circumstances (and who has investigated the prior criminal activity of the alleged perpetrator) and a prosecutor willing to maintain a case despite lack of physical violence. In addition, either that officer or other crime prevention officers should assist the victim in target hardening as well as in documenting any incident.
Summary

This chapter addressed why arrest has come to be viewed as the preferred intervention for domestic violence. Although considerable variations existed in the police response, these differences did not seem to coincide with legal variables. Instead, they often were the result of officer socio-demographic characteristics and belief systems; characteristics of the victim, offender, and incident; and organizational incentives including policies, supervision, and training. These factors often would impact the likelihood of victims receiving assistance or of offenders being arrested. As realization grew that domestic violence cases were less likely to result in arrest compared with nondomestic cases, emphasis began to be placed on showing the same level of formal intervention in domestic violence cases compared with nondomestic cases.

We now have a better understanding of those factors that impact the arrest decision, as well as how practices need to be changed. As a result, in recent years, considerable emphasis has been placed on developing pro-arrest or mandatory arrest policies in response to legislation. All states have passed statutes demonstrating their commitment to an aggressively pro-arrest response to domestic abuse.

These statutes and corresponding police policies vary considerably but center upon either mandatory policies or preferred (or presumptive) arrest policies. This categorical distinction is highly significant as this theoretical difference might impact actual police behavior both in intended and unintended ways.

As the use of mandatory arrest is viewed by many as the preferred model and has been growing in prominence, in-depth analysis of the rationale and impact of this policy suggests a number of unexpected outcomes have occurred, not all beneficial.
Discussion Questions

1. How does the criminalization of domestic assault fit into overall societal trends toward treating crime?
2. Are there logical, less-intrusive alternatives to arrest for many domestic violence situations?
3. How has deterrence theory been applied to domestic violence interventions? How well do you think it has worked?
4. Should the characteristics of a victim or offender impact the police response to a domestic violence incident? Why or why not?

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8 Prosecuting Domestic Violence The Journey From a Roadblock to a Change Agent
Chapter Overview

In an earlier chapter, we discussed the varied reasons why many victims never call the police or how cases brought to police attention never result in a formal arrest, therefore never triggering further action. Now, because of mandatory or presumptive arrest policies, many more cases do reach the prosecutor’s office. What is the result? Perhaps inevitably, in domestic violence cases, victim or attrition dismissal rates have remained stubbornly high either because the victim dropped charges (or refused to cooperate with prosecution) or because the actions of the prosecutor in some ways discouraged her involvement. These types of failures are critical, since experience has shown that simply making an arrest, without follow up by prosecution and, when necessary, the courts, does not deter and may even enrage the most violent batterers.

Much has therefore been written about the lack of assistance and support that have historically been provided by prosecutors and the courts to victims of domestic violence. We describe briefly the victim’s experiences and how victims’ access to the justice system in the past had been hindered by these factors. We study this now not only—or even primarily—for historical significance but also because victims still receive this response in some jurisdictions.

After this discussion, we will cover extensively how prosecutors’ offices now tend to interact with victims, the growing use of victim advocates (often sponsored by prosecutors), and, finally, the development and implications of various forms of mandatory prosecution or no-drop policies.
The Varied Reasons for Case Attrition
Case Attrition by Victims

A series of studies in different jurisdictions conducted during the early years of criminal justice reforms demonstrated that, absent unusually aggressive measures, case attrition rates prior to any conviction hovered between 60% and 80% (Cannavale & Falcon, 1986; Ford, 1983; Rebovich, 1996; Ursel, 1995). Despite increased societal attention to domestic violence and changes in the operations of many prosecutors, the rate of prosecution is still limited by the unwillingness of victims to cooperate (Belknap, Fleury, Melton, Sullivan, & Leisenring, 2001; Hirschel & Hutchison, 2001). In fact, one study that controlled for the type of evidence, witnesses, and relationship reported that when domestic victims cooperated, prosecutors were seven times more likely to press charges (Dawson & Dinovitzer, 2001).

Why should such high rates of victim-initiated case attrition persist?

Variations in Victims’ Reasons for Prosecution

Once an arrest has occurred, Ford (1991) found that victims were, contrary to the beliefs of many prosecutors, not emotionally driven or irrational decision makers. Instead, when victims were asked to explain their reasons to support or reject prosecution, they cited instrumental and rational reasons far more than emotional attachments, which are commonly supposed to hinder their rational decision making. Logically, victims typically are not at all concerned with general deterrence as an esoteric concept. They, rightfully, are interested in using the criminal justice system to accomplish their personal goals of enhancing safety, maintaining economic viability, protecting children, or having an opportunity to force participation in BIPs.

For example, the existence of minor children in the family may present significant issues for victims who want protection from future violence but still wish to maintain an intact family structure. Financial ties (intensified by recent welfare reforms) might make some victims critically dependent on an abuser’s financial support for minor children, a factor at odds with strict punishment models. Financial rationales for victims to stay with offenders
and not support prosecution, may depend markedly on state policy, reflected by funding decisions that may dramatically affect the viability of alternatives outside the abusive relationship. For example, in July 2009, former California Governor Arnold Schwarzenegger cut all state funding for the 94 agencies that provide services for domestic violence victims (Castelan, 2009). Furthermore, many victims may find that a simple threat to have a person arrested or to initiate prosecution might terminate the immediate abuse. Therefore, pursuing prosecution past that point might not be in their perceived interests because it might increase risks of family breakup while forcing the victim to commit to a process with little tangible benefit, at least from her perspective. Similarly, many women have experienced retaliation in the form of aggressive stalking or other forms of intimidation, without much apparent willingness or ability of the police or the court system to prevent the myriad forms of this rapidly growing offense.

As a result of these factors, although the goal of assisting and empowering victims might be understood in the abstract as a benefit to society at large, that understanding may be lost in practice when a prosecutor’s primary agenda is to obtain convictions or support a larger societal goal of punishing all offenders and deterring other potential batterers. In short, the generalized assumption that mandatory prosecution is always in the victim’s interests might not be accurate. In fact, at times there might be an irreconcilable dilemma: To assist and empower a victim might not involve the offender’s subsequent case processing.

Several studies have shown the extent of disconnect between the victim’s desires and those of the prosecutor. In one study conducted by several of the authors (Buzawa & Buzawa, 1996), it was apparent that prosecutors did not listen to victim desires. We found that victim preferences were rarely solicited and, when known, were rarely honored if they contravened the official policy to prosecute most cases for the societal goals of punishing the immediate offender and of deterring potential future offenders (Buzawa & Buzawa, 1996). Because victim choices normally influence the actions of the criminal justice system to some degree (and the quest for restorative justice is pushing this to the forefront), such explicit policies removing or limiting victim input into decision making are unusual, and at the least present barriers to prosecutor–victim cooperation.
Although many victims might not desire arrest, let alone subsequent conviction, we recognize that in reality, many—perhaps most—truly need law enforcement and court involvement, at least initially. In the more traditional society of past decades, the family, church, or friends might have provided such support. In the highly mobile and much more fragmented 21st century, such nonlegal assistance is more problematic, making victim reliance on formal agencies more acute. Despite the growing presence of social service and nonprofit agencies, the reality is that victims of domestic abuse often do not find or use these agencies at critical moments without encouragement and support from criminal justice agencies. For this reason, criminal justice agencies, especially law enforcement, not only enforce their own mandates by making an arrest but also serve as critical gatekeepers to the provision of victim services. In the context of mandatory arrest policies, such referrals are far more likely to go to the prosecutor’s office—despite whether they are desired by a victim.
Self-Doubts and the Complexity of Motivation: Changes in Victim Attitudes During the Life Course of a Violent Relationship

It is not surprising that the complexity of victim motives predicts high voluntary dropout rates without some form of a push from the office of the prosecutor. The predominant motives for the initiation of prosecution by a victim are: (a) curiosity over how the criminal justice system might assist her specific needs, (b) confirmation of her status as a victim reporting a crime and getting control over an abusive partner in an ongoing relationship (a sort of “coming out” as a battered woman), (c) a promised increase in her own legitimacy as a victim in subsequent police encounters or, more problematically, in subsequent divorce or custody hearings, (d) a desire for restorative justice (e.g., being compensated for her victimization), (e) a matter of principle (i.e., a crime against her has been committed and should be reported, and punishment for the offender should be meted out), as well as (f) fear for her safety if there is no prosecution.

Let us examine how each one of these rationales might weaken over time. This analysis is important because if we are not to become advocates of prosecution for its own sake, we must understand that there are varied reasons for a particular victim to seek or not seek prosecution. Some might be easily settled at early stages of prosecution, and others might require conviction of an offender. What we can see, however, is that there might be a logical basis for explaining the fact bemoaned by a generation of prosecutors that many, perhaps most, domestic violence victims simply are not as deeply committed to continued prosecution as are victims of other forms of criminal behavior.

As to the first reason, an effort to determine how courts might assist a victim might seem to be an unusual motive. Until recent passage of victim right’s laws, the legal system, commencing with the initial police intervention, typically provided little initial substantive help to victims. Given the known desire of the criminal justice bureaucracy to rapidly resolve such cases, one might cynically observe that information on alternatives to prosecution is
provided because the victim’s demands have become a nuisance.

The second goal, confirmation of her status as a victim, was probably attained when the offender was arrested. Certainly if it is made clear that she, as the aggrieved party, can press charges, this goal might be satisfied relatively early and actual conviction might not be necessary. Ford (1991) suggested that initiating prosecution might be the only available alternative for many women to gain control in a relationship. The actual course of the prosecution would then really be of only secondary importance to the control gained as a power resource through the threat of prosecution. In this manner, the victim is primarily using the criminal justice system as a strategic tool rather than to achieve conviction. In any event, the goal of learning about and using available resources is quickly satisfied either by the police or by initial contact with victim advocates or other personnel in the prosecutor’s office.

The third goal, an implicit recognition of her legitimacy as a victim in future encounters with the police, might, from the victim’s perspective, be satisfied by the police making the initial arrest. In addition, most courts now rapidly grant ex parte temporary restraining orders and often expeditiously grant permanent injunctions. Actual case prosecution is not needed to achieve this objective.

The victim’s fourth possible goal—finding out whether the courts will assist her—may not require proceeding to trial and conviction. In many judicial systems, as we will discuss later, she might find that court personnel, especially victim advocates, provide vital assistance both in stopping future abuse and in providing pathways for her to receive significant and needed resources, including links to shelters and short-term financial support for her and her dependents.

Moreover, as Labriola, Bradley, O’Sullivan, Rempel, and Moore (2009) noted, the actual incidence of prosecution and courts providing such victim-oriented assistance, even in the context of highly specialized criminal domestic violence courts, remains a hit-or-miss proposition.

In more traditional courts, prosecution is even less likely to occur. As we will report in a subsequent chapter, satisfying a victim’s desire for restorative justice (i.e., being compensated for her victimization) is not something that
prosecutors and courts do particularly well. Their process is largely mechanistic and offender-centered in the context that punishment of the offender for his crime against the state is paramount—not providing recompense to the victim, especially if the victim and offender have resumed cohabitation.

To be fair, the failure to attempt restorative justice in a court setting is difficult. After all, if a couple continues to cohabitate, can money taken from the offender and given to the victim realistically provide meaningful recompense? Indeed, the entire premise of the restorative justice movement derives a large part of its legitimacy from the recognition that traditional modalities of court sanctions are ineffective at providing victim-centered restorative justice. If a victim seeks such recourse, then typically she will learn that the prosecutor and courts do not view this as their primary (or, in most cases, ancillary) mission in case processing. When the victim learns this, the value for her to seek continued prosecution essentially disappears.

Fifth, many victims seek prosecution for the potential to obtain retribution or punishment for the crime committed against their person. Reasons for this vary. Some simply want to punish and teach the offender a lesson. This goal might not be satisfied until a final guilty verdict is achieved; however, for many, simply having the offender arrested and thereby publicly shamed accomplishes this goal. Also sheer desire for punishment can weaken over time as many victims simply want to forget about the incident and move on with their lives. In this context, the typically extended period between arrest and any trial works, perhaps unconsciously, toward weakening the resolve of victims.

The sixth victim goal may be much more permanent and bears closer examination. Many victims are rightfully scared of future abuse and hope that the involvement of the prosecutor and the courts will prevent the offender from committing further violence. Many also are aware of concomitant substance abuse or anger control issues with a person with whom they still want to remain in a relationship. For these victims, having the offender prosecuted and sentenced to attend a batterer intervention, anger control, or a substance abuse program presents the possibility of rehabilitation and even of reforming a bad, but still desired, relationship. Other victims want no such
reconciliation, but still fear for their safety. They hope that the courts, through either punishment or incarceration, can protect them and their families. If the victim believes that an offender’s criminal history indicates a low chance that the offender will be rehabilitated, she might enthusiastically seek conviction and a sentence of extended incarceration. Others might be satisfied by the early willingness of an offender to attend a court-monitored batterer intervention program, and may have little inclination to press for a conviction. This last goal can therefore be seen as the most likely to support further prosecution through conviction.

In addition to the diversity of victim goals in initially supporting prosecution, in many cases, a victim’s attitude toward the crime and the offender alter over time. Memories of the crime and the perpetrated harm recede after an extended period. As discussed earlier, many victims who are in a continued relationship with a batterer often experience a prolonged honeymoon period after a particularly violent episode. At that point, the offender seeks reconciliation with the victim because of atonement or fear of prosecution. Alternatively, he might have ceased battering altogether. In time, continued prosecution might become the only event that reminds her (and the offender) of the battering incident and threatens to end the current harmonious period. Finally, the victim might have successfully left the batterer and negotiated acceptable financial support or terms of custody. She might now justifiably fear that prosecution would simply needlessly anger the batterer, or his friends and relatives, jeopardizing this often hard-won status.

Also, although largely inappropriate, many victims tend, at least partially, to blame their own behavior for a violent incident. Self-doubt and guilt in relationship cases in general—and especially where intimate violence has occurred—is far more significant than in other types of violent crime cases. Such doubts might coexist uneasily with the victim’s desires for retribution, deterrence, and perhaps rehabilitation that have led the victim initially to help in charging the offender. Many victim advocates would, of course, know that such a result is predictable given the socialization process reinforced by constant societal pressure. Regardless of reasons, victim self-doubts might result in prosecutor attitudes that high-dropout cases are not worth spending scarce financial resources.
In addition to satisfaction of a victim’s goals, there are many objective barriers for a victim who might otherwise support prosecution. Some obviously fear physical retaliation by the offender or his friends, or ostracism by the community at large, a factor particularly prevalent in more insular minority and immigrant communities. Often there is a shame factor along with concerns about stigma and impact on children (Rhodes et al., 2011).
Traditional Agency Attitudes Toward Prosecution and Case Screening

The problem of widespread agency personnel’s indifference to domestic violence offenses still exists, even in far more subtle forms than in the past. The skepticism of many prosecutors and members of their staffs has been well documented, long after reforms were supposed to change agency practices (Belknap et al., 2001; Dawson & Dinovitzer, 2001).

After all, prosecutors in general disfavor relationship cases as they tend to be more complex, force jurors to imply motivation to ambiguous or contested facts, and threaten to become far more emotionally laden than more clear-cut cases of crimes committed against strangers. Unlike most other prosecutions, the natural tendency of court personnel in such cases is to cross-examine the victim to determine the strength of the case. Perhaps unintentionally, this often makes victims feel personally responsible for case outcome. This occurs because, in other contexts, although the victim is considered to have suffered the most direct harm, the public order also has been affected. For this reason, prosecutors often encourage, or even require by subpoena, victims in non-relationship cases such as stranger assaults to support resultant prosecutions.

In domestic violence incidents, the violation to the public order is not as immediately evident to the prosecutorial staff, leading, at least in the past, to profound agency ambivalence about intervention. Not unexpectedly, these court officers subtly, or even at times overtly, encourage victims to drop charges. Hence, prosecutorial attitudes and behaviors might contribute to high rates of victim attrition.

The prosecutor’s office often does not act to facilitate victim cooperation. For example, research in the early 2000s (conducted in Denver, CO; Boulder County, CO; and Lansing, MI) reported that 20% of victims who did not go to court on the scheduled date did not appear because they had not been informed of the proper court date (Belknap et al., 2001). This study also noted that women reported numerous other obstacles that, if reconsidered by
the prosecutor’s office, could dramatically increase the likelihood of their appearance in court, including the provision of childcare and transportation difficulties and addressing safety needs. As described more fully in our discussion of the courts, even the most innovative often do not take the most rudimentary steps to help victims. For example, in domestic violence criminal courts, only a small proportion—25%—provide childcare services or transportation, and relatively few provide structural safeguards such as separate waiting areas or separate facilities in courtrooms (Labriola et al., 2009).

Regardless of the reasons for the high attrition rate sought by domestic violence victims, these victims have served to reinforce frustration and cynicism among agency personnel. Prosecutors’ offices overall typically lack sufficient trained personnel and simply lack the time, background, or inclination to understand why victims drop charges. They often express cynical thoughts to the authors in interviews, such as “no real harm must have occurred,” “the victim was never serious about the charges,” “the victim is a ‘masochist’ for continuing to live with the man,” or “the victim had lied earlier to the police to obtain revenge on an unrelated dispute” or “to influence a pending divorce, custody, or child-support proceeding” and was now “scared she would be caught in a lie.” Some personnel were more sympathetic to victims and understood that the victim might be realistically trapped in an unsafe relationship. However, they generally believed that “the criminal justice system cannot help” when a victim maintains that the continuation of a relationship is her primary concern.

The failure of many prosecutors to understand that a victim may have already met her goals for criminal justice intervention can cause undue cynicism and frustration on the part of prosecutorial staff. Many prosecutors also tend to treat victim cooperation as a dichotomy between apathy/non-cooperation and fully cooperating victims all the way through trial. This is a great oversimplification of reality. Many victims who ultimately do not want to proceed through to conviction have already successfully used the criminal justice agencies as a whole as an important power resource (Ford, 1991). They may have called the police, provided a complete account of the incident to the responding officers, worked with judicial intake staff, and met with the prosecutor or victim advocates, but at some point no longer feel they need the
further protection of the prosecution or the courts. This decision may be wholly rational.

Findings (of a study conducted in Kalamazoo, MI) call into question the issue of prosecutorial frustration with victims who initially press charges and then later want to drop the charges or fail to follow through with participation in the prosecution process. A victim’s decision to drop charges or to let charges drop through nonparticipation does not necessarily indicate that the criminal justice system has failed to assist her. Rather, it is likely that the system has served the victim’s needs without (continued) prosecution, or that the costs of moving forward with charges outweigh the benefits. Qualitative findings have suggested that victims make these decisions after great deliberation and over time may change their mind about the best course of action (Rhodes et al., 2011).

In the study cited earlier, there is good evidence that the victims were, as a group, quite rational as to when they continued to seek prosecution assistance. Victims who had experienced prior violence (and who, statistically, were far more likely to be reabused in the future) were more than twice as likely to seek full prosecutor involvement as those that were never abused in the past. This clearly indicated a rational, if rough, appraisal of likely future risk of victimization. Similarly, victims tended to want prosecution when their abusers were active substance abusers, another factor highly correlated with future abuse (Rhodes et al., 2011).

Regardless of the validity of a majority of victim decisions, a high victim-dropout rate clearly reinforces prosecutorial cynicism and fuels their attitudes toward dismissing charges. One result has been that both victims and offenders are faced with a prosecutorial office and judicial system that seems to have little predictability. Cases that would be continued in another context or a different jurisdiction are dropped (even against the express wishes of the victim), despite clear evidence that would sustain successful prosecution.
The Role of Victim Behavior and Motivation in the Decision to Prosecute

Prosecutors formerly used a variety of extralegal variables to screen out cases (Hirschel & Hutchison, 2001). Perhaps of greatest significance are those prosecutors who believe they have the right to evaluate a victim’s motivation and thereby assess her commitment to continued prosecution. This is considered a legitimate case discriminator independent of the inherent strength of the case. As a result of many prosecutors’ attitudes, one study conducted after the first wave of statutory reforms found that the victim’s continuing relationship with the offender was a key factor in decisions about whether to continue prosecution (Schmidt & Steury, 1989).

Schmidt and Steury reported that charges were far more likely to be filed if the victim claimed to have no continuing sexual intimacy with the offender. Hirschel and Hutchison (2001) confirmed this in a report published 12 years later, finding that separated couples were far more likely than those currently married or cohabiting to have their cases prosecuted. Although these studies contradicted other research that had found little effect of marital status per se, there existed a significant negative correlation between prosecution and continued victim–offender cohabitation. This result could be attributed to the different needs of these two classes of victims, specifically a victim-oriented concern that prosecuting while a couple cohabitated might increase her future risk. However, it could also reflect the office’s desire to maintain a high rate of convictions and a realization that cohabitation lessened the probability that they would do so.

In a position paper advocating an increasing commitment to domestic violence cases, the National District Attorneys Association (NDAA) stated in 1980 that, in deciding whether to prosecute, a district attorney should consider whether it is likely that a victim will cooperate, whether the victim agreed to live apart from the defendant, and in general to consider “the relationship of the parties” (National District Attorneys Association, 1980). The NDAA position has more recently been explicitly changed to recognize that a domestic violence victim might be subject to pressures not to continue
prosecution, so that the victim’s preference could not always be followed. Although the initial position was subsequently reversed in the face of stringent criticism by researchers and victim advocates, we suspect that, as a matter of practice, many prosecutorial charging decisions are made on the basis of whether a victim is judged likely to support prosecution.

Inherent in such a position is the assumption that a victim’s unshakable commitment to continue prosecution is a valid case discriminator. We believe this is profoundly incorrect as a basis for the exercise of prosecutorial discretion. If a primary concern is for injuries suffered by the victim and the prevention of future violence, then the bureaucratic goals of achieving high conviction rates should be subordinated.

Nevertheless, the reality is that, in the past, prior to statutory reforms and political pressure to act, concern for the misfortune of victims has not always been prosecutors’ prime motivation in charging decisions. Instead, the critical factors have been whether the injury was of a type and quality that could not be ignored—for example, death or an overwhelmingly vicious and publicized attack—or if the victim stubbornly refused to drop charges. If the charge was filed and abandoned, then conviction metrics might be adversely affected. The possibility that the victim might have achieved her goals in the interim would, of course, be irrelevant for this goal.
Prosecutorial Assessment of Offender Likelihood to Recidivate

An extremely important factor in deciding to prosecute is whether the prosecutor believes that the offender is likely to commit battery again. How can this likelihood be determined when all but the most callous offenders appear contrite and most effusively attest that they will never hit the victim again?

Past record may be the crucial link. Survey research certainly shows that a history of past violent behavior, whether against domestic partners, acquaintances, or even strangers, closely correlates with the likelihood of future domestic violence as does membership in criminal groups such as gangs. As demonstrated in an earlier chapter, this prior criminal history has become very important in police decisions to arrest. It is therefore no surprise, and consistent with statutory guidance regarding risk assessment, that a prior history of abuse is strongly related to prosecution of current charges. One study even reported that a prior record of similar assaults seems to influence the prosecutor even more than the evidentiary strength of the present case (Schmidt & Steury, 1989).

For many offenses, use of drugs or alcohol has been taken by officials to mitigate the intent and, therefore, the nature of a crime. In domestic violence cases, the reverse seems to be true (Schmidt & Steury, 1989). Although this might be a result of a generalized phenomenon of tougher law enforcement against substance abusers, it also might be a result of the prosecutor’s recognition that drug-induced violence is likely to reoccur at higher rates among addicts than nonaddicts unless the underlying addiction is subject to mandatory treatment.
Organizational Factors Within Prosecutors’ Offices That Affect Prosecution Decisions

Organizational imperatives beyond the knowledge or control of most victims have, at least in the past, affected the decision to initiate or continue prosecution. Perhaps the most significant of these is the tendency of prosecutors to treat police-initiated arrests more seriously than a victim’s complaint. This is understandable. Both agencies employ people who have an inclination to use criminal law to punish wrongdoers.

Police and prosecutors also require each other’s mutual support. In this context, subsequent prosecution legitimizes an officer’s arrests, and the police reciprocate by providing prosecutors with the needed evidence to sustain high conviction rates. If a police officer arrests a suspect and the prosecutor declines to pursue a charge, then the police officer might interpret this decision as questioning his or her competency or authority.

Also, the prosecutor might view police-initiated charges as somehow having been screened for content. Whatever the reason, police-initiated charges have long been organizationally considered to be more legitimate (Schmidt & Steury, 1989). In contrast, citizen-initiated complaints by victims are treated as having no organizational sponsor and no designated bureaucrat having responsibility or accountability for any decisions. We are somewhat uncertain as to whether this result would be consistent in all prosecutor offices. After all, a victim-initiated case demonstrates the victim has initial support for and increased commitment to prosecution. This at least implies the likelihood that the victim would cooperate as a vital witness for the prosecution.
Imposing Procedural Barriers: Why the System Encouraged Victims to Abandon Prosecution

Even if the prosecutor’s office does not formally dismiss charges, requiring the office to take visible responsibility for the failure to proceed, a variety of procedural barriers often have been imposed, either formally or through a process of accretion, to prevent charges from being filed, or if filed, subsequently pursued. For example, Ford (1993) reported that at one point in Marion County, Indiana (Indianapolis), several time-consuming procedures needed to be followed before a domestic violence–related arrest warrant could be issued on a victim’s behalf. In nondomestic cases involving violent activity, an arrest warrant was issued within 1 to 2 days of the victim filing a complaint.

This rapid response also happened in some domestic violence complaints, but only when the victim was accompanied by a police officer, thereby showing the prosecutor that the officer had a personal attachment to the matter and demonstrating the officer’s appraisal of the case’s legitimacy.

However, when the complaint was initiated solely by the victim, it took 2 weeks or longer to issue a warrant. Also, after this 2-week period, an arrest warrant often would not be issued at all. Instead, a summons to appear in court later would be mailed to an offender. As a result, in only one third of the cases was any arrest made within 1 month after a victim initiated a complaint; and incredibly, in only 62% of cases was an arrest made after 6 months (Ford, 1983). Obviously, the prosecutor’s office was not trying to process these complaints and the police were not eager to serve warrants.

Other procedural hurdles have been used to screen out undesirable victim-initiated cases. In the Indianapolis study, a mandatory 3-day waiting period existed before the court would receive a domestic violence complaint. This forced a second victim-initiated action before any organizational evaluation of the merits of the case took place (Ford, 1983). This particular procedural hurdle is virtually unheard of outside of domestic violence complaint processing. The net effect was to force the victim to reaffirm what might have
been a traumatic initial decision to prosecute before there was evidence that
the prosecutor’s office would provide any degree of commitment to the case
or assistance to the victim.

Not surprisingly, this served as an effective mechanism for discarding
domestic violence complaints. In the Indianapolis study, Ford noted that 33%
of married women filing domestic violence complaints had these placed on
hold and 78% of those placed on hold failed to return. This result compared
with corresponding figures of 60% and 52%, respectively, for those who had
filed for divorce and 46% and 59%, respectively, for those who actually
divorced. In this case, the screening device ostensibly used for organizational
reasons to eliminate frivolous domestic violence complaints might have
frustrated approximately two thirds of the small minority of women victims
who had already called the police and then taken the further initiative of
filing a criminal complaint.
How Did Prosecutor Offices Initially Respond to New Pro-Arrest Policies?

Initially, pro-arrest domestic assault policies might have dramatically increased the number of domestic violence cases referred to prosecution; however, because of the factors cited earlier in this chapter, large increases in arrests were, to a certain extent, offset by corresponding increases in the rate of case dismissals. Thus, in many prosecutors’ offices, there was, and in many jurisdictions still is, not as great a difference in the number of cases resulting in conviction than might be expected as a result of the change in arrest practices. Prosecutorial actions effectively created a funnel in which domestic violence cases were channeled out of the criminal justice system, thus nullifying police charging behavior and, ultimately, undermining pro-arrest policies.

According to one study in the 1990s, the major effect of the institution of mandatory arrest policies was simply to move discretion from the time of arrest to the time when prosecutors screen cases (Davis & Smith, 1995). This same study, conducted in Milwaukee, Wisconsin, after mandatory arrest policies for domestic violence were implemented, presented data that supported such concerns. These researchers reported case rejection rates of 80% at the prosecutors’ initial screening. They speculated that the underlying reason for this high rejection rate was to avoid the enormous burden that a high number of domestic violence cases would bring to bear on existing resources. Prosecutors, in effect, simply developed adaptive responses to pro-arrest laws that effectively screened out large numbers of cases. Although such practices have long been suspected, empirical evidence of their existence was not provided until the mid-1990s by Davis and Smith (1995).

Case screening by prosecutors was accomplished through the use of relatively obscure and typically unpublished collateral procedures. For example, in the study by Davis and Smith (1995), the Milwaukee Prosecutor’s Office adopted a policy, not specified by statute, wherein misdemeanor domestic violence offenders were charged only when the victim came to a charging conference the day after arrest. This resulted in a mere
20% of cases being prosecuted while the remaining 80% of cases were screened out. In 1995, when the Milwaukee prosecutor changed this policy to stop requiring victims to attend charging conferences, the rate of accepting cases tripled overnight from 20% to 60% of cases. The authors of this report strongly suggested that the analysis of criminal justice impact on the handling of domestic violence should change focus: “Whether this same displacement of discretion from the decision to arrest to the decision to prosecute has occurred elsewhere as a result of mandatory arrest laws is unknown, but it is certainly an important subject for investigation” (Davis & Smith, 1995, p. 546).

What happened when the policy in Milwaukee changed? Did this event increase everyone’s satisfaction? Unfortunately, it did not. This research also found that after the new charging policies were implemented, case backlog increased greatly; time to case disposition doubled, conviction rates declined, pretrial crime increased, and victim satisfaction with case outcomes and the prosecutor’s handling of the case actually decreased (Davis, Smith, & Nickles, 1998). Hence, the failure to add sufficient resources in effect unintentionally sabotaged the new prosecutor’s well-intentioned efforts.

The degree to which prosecutors expressly face this dilemma is uncertain. Certainly, prosecutor’s offices are now aware of the heavy new emphasis on aggressive handling of domestic violence. Often, no-drop policies (which will be described subsequently in this chapter), which mandate prosecution, are instituted typically with great fanfare. The actual effect is less clear. One researcher reported that although two thirds of the prosecutors’ offices now had official no-drop policies regarding the handling of domestic violence cases, fewer than 20% of these offices admitted that their decision-making policies and plea-bargaining negotiations had actually been affected (Rebovich, 1996).

It is apparent that, at least in the past, a complex interaction has evolved between the motives and the actions of the domestic violence victim and the prosecutor’s office. Each profoundly misunderstood the other’s individual and organizational motives and needs.

Victims of most crimes assume that once criminal justice processing is commenced, the procedure is straightforward. Few realize at the outset the
inherent complexities and the need for their continued involvement or the uncertainty due to the requirement of protecting the offender’s constitutional rights. Unfulfilled expectations, normal to most victims of criminal conduct, are coupled with the domestic violence victim’s often ambiguous or conflicting motives for prosecution and the apathy and, at times, even hostility of a bureaucracy nominally dedicated to protecting her interests.

Under such circumstances, it would be unrealistic to assume anything other than high rates of victim attrition. Similarly, the prosecutor and his or her staff often cannot understand why many victims refuse to leave abusive partners or fail to rigorously assist prosecution. This misunderstanding, in turn, changes their behavior in a manner that implicitly reinforces these misperceptions—that is, even more women drop charges or fail to appear because of the indifference or cynicism of prosecutors or the erection of byzantine barriers that test victims’ commitment to prosecution. Although, for the reasons we described previously, some victim-initiated drops might be unrelated to prosecutorial or court behavior, the experiences of the victim with agency personnel influence the rates of many victims’ voluntary decisions to end cooperation.

In turn, subsequent victim actions to drop a case voluntarily reinforce negative staff attitudes, which affect the whole criminal justice system by greatly increasing the deleterious effect of the prosecutorial funnel noted earlier. Furthermore, low rates of prosecution and conviction reinforce and justify the reluctance of police officers to become involved in “no win, no outcome” domestic violence cases. Thus, two negative feedback loops are strengthened by initial victim–prosecutor misperceptions.
The Changing Prosecutorial Response
Have Prosecution Rates Actually Increased?

Evidence of the extent of the change by prosecutors is mixed. One study reported only modest change. Evidence suggests also that the increase in arrests has not been met with a similar increase in cases prosecuted. An analysis of a large-scale national data set reported that mandatory arrest jurisdictions had lower rates of prosecution than preferred arrest jurisdictions (Hirschel, Buzawa, Pattavina, & Faggiani, 2007; Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007). However, what is interesting is that mandatory arrest jurisdictions had a greater proportion of simple assault cases compared with preferred arrest jurisdictions, an unexpected finding.

Another comprehensive study reported that it was now far less likely than in the 1990s that prosecutors will routinely drop domestic violence cases. This report reviewed 120 research studies conducted on prosecution rates between 1973 and 2006. An average prosecution rate of 64% was found, and the reported prosecution rates were steadily increasing for this crime (Klein, 2008).

Similarly, a special report issued by the BJS in 2009 summarized the findings from an examination of state courts contained in 15 large, urban counties. It found that, overall, domestic violence cases were more likely to be prosecuted than non–domestic violence cases. They reported that domestic violence offenders who committed aggravated assault were less likely to have their cases dropped compared with non–domestic violence offenders. These offenders also were more likely to be convicted for their offenses (87% domestic violence offenders versus 78% non–domestic violence offenders). Similarly, they were less likely to be diverted out of the system (12% versus 20%, respectively; Catalano, Smith, Snyder, & Rand, 2009).

How can such different survey results be reconciled? Perhaps the best answer is that these studies suggest that cases are not being dropped as frequently as in the past when most cases were dismissed by the prosecutor. However, when the prosecutor’s office is flooded with marginal cases, more likely in a mandatory arrest jurisdiction, the system adapts to weed out the low-priority cases. More cases are dismissed early in the process to preserve the limited
resources of the rest of the criminal justice system, thereby largely negating (or at least limiting the effect of) mandatory arrest policies. In theory, mandatory arrest is intended to ensure that cases are prosecuted and that a judicial disposition is imposed. Those researchers who are familiar with how organizations respond to new demands without additional resources will not be surprised by such an outcome.
Maricopa County

Sometimes meaningful results can be achieved from relatively modest operational changes. Prosecutors in Maricopa County (Phoenix metropolitan area) believe that one such change they instituted has resulted in more cases prosecuted and fewer domestic violence deaths. In 2012, they resolved to collect more evidence at the time of the crime when strangulation was suspected. Strangulation, a particularly dangerous form of violence, can easily result in serious injury or death and is one of the prime risk factors predicting future serious assault (estimated risk of future fatality is increased by 700% according to Maricopa County Attorney Bill Montgomery). Unfortunately, in addition to being particularly brutal, it is difficult to prove unless evidence is immediately collected.

Under the auspices of the Scottsdale Police Department, the County Attorney and the Scottsdale-Lincoln Health Network, police, advocates, and prosecutors developed the Strangulation Treatment and Offender Prosecution Program that included training police, emergency and forensic nurses, and prosecutors in the following procedures:

1. Clothes and hygiene products were made available for victims of attempted strangulation so that their belongings used as evidence may be rapidly replaced.
2. Forensic nurses were placed on call 24/7 to do a full exam, take swabs when needed in cases of sexual assault, and take a victim statement using an in-depth 6-page interview format questionnaire that documented past and current assaults. Recognizing that deep bruising and swelling may take up to several days to initially present, the nurses were also trained to encourage timed follow up visits in strangulation cases, both to photograph and further document injury and because strangulation injuries may cause swelling that can kill days after the actual incident.
3. High resolution digital cameras costing $20,000 to $25,000 were purchased to document burst capillaries, bruising, and swelling, and the forensic nurses were trained in their use.
4. The evidence developed was admissible in subsequent felony prosecutions for attempted strangulation.
5. Officials supplemented departmental budgets with targeted assistance for victim needs from a nonprofit, www.thevictimnextdoor.org, specifically set up to assist the forensic nurses.

Before the change, fewer than 15% of strangulation cases in the county were prosecuted. More than 60 percent of domestic violence cases involving strangulation have been prosecuted since the change in procedures. Since the program was launched, more than 38% have resulted in sentences ranging from 3 months in jail to prison terms of up to 8 years, Montgomery said. Montgomery also attributed a slow but persistent death rate reduction to the institution of this program. In 2012, there were 139 fatalities in the county; in 2013 there were 125, and in 2014 there were 106 (Maricopa County Attorney Bill Montgomery quoted in the Arizona Republic March 3, 2015).

This protocol is now being nationally recognized by the National Family Justice Center Alliance, which administers the training institute on strangulation prevention for the US Department of Justice. They are promoting the program as a national model when training...
other jurisdictions, said Scottsdale police Sgt. Dan Rincon, the developer of the protocol (D’Angelo, 2015).

It is probable that what made the program effective, in addition to its carefully developed framework and a willingness to invest scarce money on equipment and training, was a carefully thought out implementation program including obtaining sponsorship by high-level officials, resolving issues during a pilot program at several local police departments, and an unusual degree of coordination among criminal justice agencies, local health care providers, and charitable nonprofit victim support agencies.
Victim Advocates

Many prosecutors, especially in larger jurisdictions, have added victim advocates to their staff or work with them as staff to the court. Typically, victim advocates are not attorneys but are highly trained and motivated professionals in the field of the control of domestic violence. In addition, many jurisdictions that have a comprehensive response to domestic violence provide victim advocacy via a protocol that assigns such services to affiliated agencies such as family shelter service agencies, general social welfare programs, or other non–criminal justice agencies. Although we recognize that such programs might have their own agendas separate from the prosecutor’s office, in this context we treat their contribution in the same light as if the advocates are formally retained by the prosecutor’s office.

The primary purpose of victim advocates is to assist the victim in coping with the unfamiliar and often threatening process of the criminal justice system. To understand the unique importance of such advocates in the case of domestic cases, we must understand that being battered by a close intimate often inflicts significant long-term psychological PTSD. In turn, this often leads to self-doubt and an inability to initiate decisive action against the abuser.

Victim helplessness is often reinforced by lack of knowledge of the criminal justice system, making it difficult for them to know how to access the police, the prosecutor, and the courts. Lack of effective knowledge is pervasive. In one study, Jaffe, Hastings, Reitzel, and Austin (1993) reported that the single most common suggestion of abuse survivors was for someone who would provide them with more information on available court proceedings and community services. That is extremely important since victims self-report that one of the most important factors in their leaving was giving them knowledge of the available resources (Davis & Srinivasan, 1995). Victims use advocacy services to fill basic gaps in their knowledge of the operations of the police and the courts and in how to obtain economic and legal assistance and other services.

A concerted program using victim advocates also has the advantage of
sensitizing prosecutors to the problems of prosecuting domestic assaults. The concept of a knowledgeable victim advocate might provide critically needed support to a woman who, with relatively few resources, has to confront an indifferent bureaucracy. Finally, such advocates are expected to explain to the victim the availability of shelters, prior restraints, and the services of other social welfare agencies. A lack of knowledge about such services undoubtedly led to many victim-initiated dismissals in the past.

The growing use of advocates was supported by the 1992 recommendations of the National Council of Juvenile and Family Court Judges. These included providing victim assistance in initiation and management of cases and a commitment to pursue prosecution in all instances in which a criminal case could be proven, including, when necessary, proceeding without the active involvement of the victim.

We do note that a tension exists between advocacy to provide information and support to a victim who, out of preference or necessity, remains within a relationship that has in the past been abusive and advocacy (as will be described subsequently in this chapter) that encourages victim participation in support of the criminal justice process but ultimately defers to her judgment.

It is a common generalization that advocates housed within the prosecutor’s office are often perceived to act in the overriding interest of ensuring efficient case processing for their employer, the prosecutor, whereas victim advocates whose agencies act autonomously are more likely to prioritize victim needs. This was indeed observed in one cross jurisdictional study that reported that victim advocates associated with prosecutors’ offices were more likely to persistently push for victim support of prosecution compared with victim advocates associated with private agencies that assisted victims regardless of whether the victim supported criminal prosecution (Labriola et al., 2009).

The Impact of Victim Advocates

A series of articles during the past several decades has described how advocacy helps victims learn about their legal options. Advocates help a victim obtain a better understanding of the context of her abuse as well as provide a better ability to communicate with support agencies. They may be
recruited as specialists from domestic violence shelters and hired by prosecutors or, at times, by hospitals, the police, courts, or by the domestic violence coalition itself.

Victim advocates, when they are well-trained, often graphically demonstrate the system’s sensitivity to a victim’s needs and provide needed coordination of services both within and apart from the actual prosecution of offenders. In addition, victim advocates can assist victims in gaining a better understanding of the criminal justice process and its capabilities in providing assistance. Not surprisingly, doing so has immediate benefits to the system as well as the victim. Battered women who receive advocacy services, according to one source, are more likely than others to continue processing their cases through to conviction (Weisz, 1999).

It is likely that a critical component in the growing levels of victim satisfaction with the criminal justice system is the increasing use of victim advocates. Although victim advocates can provide assistance and support throughout the process, they also provide victims from the beginning with more realistic expectations of the likely outcomes and information about how to maximize safety and well-being.

Empirical evidence supports the finding that such approaches will, at a minimum, increase victim satisfaction. Whetstone (2001), who reported on the impact of a specialized domestic violence unit (which included a victim advocate), found that most victims were “overwhelmingly positive about their experience with the unit.” Victims were satisfied with services received, their understanding of the process, and the belief that their safety was improved by their experiences with the police and victim advocates. Similarly, Jolin and Moose (1997) reported that, after working with victim advocates, victims increased their levels satisfaction and felt more empowered even when reoffending occurred.

In general, women who are assisted by victim advocates state they are more likely to achieve their goals than they would be if services had not been provided (Sullivan, Tan, Basta, Rumptz, & Davidson, 1992). In the Quincy District Court of Massachusetts (QDC) study, Buzawa, Hotaling, Klein, and Byrne (1999) reported that a well-developed victim advocacy program engendered high levels of victim satisfaction. Eighty-one percent of
recipients of such services were either very satisfied or quite satisfied with the services; 77% said they would use such services again if confronted with a similar problem. Similar findings were found in the Orange District Court (Massachusetts). More than 77% of the victim advocates reported being “very” or “somewhat” satisfied with the victim advocates (Hotaling & Buzawa, 2001).
Potential Limits of Victim Advocates

Despite the potential of these programs, they might produce undesirable effects for particular victims. Currently, in a climate of budget austerity for public agencies, virtually every institution competes with each other for available funds to justify its actions with empirical metrics. A victim advocate program might be judged by the rather simplistic empirical metric of lowered case attrition as opposed to more appropriate holistic, victim-centered measurements. We are concerned that the use of more important goals like cessation of battering or victim satisfaction can easily be subverted to serve organizational goals to better justify budgets in the face of austerity regardless of victim needs or desires.

For this reason, prosecution-based programs have the potential to be counterproductive when agencies try to measure success primarily by their ability to commit victims to the prosecution process, thereafter defining success solely by their own vested interests (Labriola et al., 2009). This is not just a theoretical concern. Prosecutorial organizations are regularly faced with high caseloads and increasing backlogs. They might find their agency’s interests are best served by having fewer total cases but with a larger percentage of convictions. This, of course, directly conflicts with legitimate expectation of victims to access a judicial system staffed with helpful, but not domineering, personnel.

This role conflict might perpetuate misunderstanding between victim advocates and victims. This is reflected in some complaints we have heard from quite committed personnel, who have stated variations on the theme of, “Look what we’ve tried to do without any success or gratitude.” These in turn are met with equally vehement victim responses, to the effect of, “They don’t understand me and my family.... They are trying to run my life.” Ultimately, we believe that a system that largely measures success by the reduction of case attrition might actually diminish victims’ access to justice by deterring them from pursuing otherwise available alternatives. Subsequent research should be conducted to determine whether this concern is widespread or only of limited scope.
It has indeed been shown that victim advocacy services provided outside a prosecutor’s office (or a court) were less likely to result in a negative interaction (Labriola et al., 2009). At its best, the victim advocacy should be supportive, helping the woman learn about her legal options. If the legal advocates are not necessarily bound by organizational imperatives to achieve high levels of conviction, then it is certainly possible that advocacy might be tailored more to the needs of the particular victim, which might or might not involve prosecution through conviction. Of course, if such victim services are funded privately, then it might be the case that there is less control over the quality of services. Some advocates might be exceptional in terms of their commitment to victims and their knowledge of the system. Others, especially if they are part-time volunteers, simply might not have the level of training or the detailed knowledge of how the prosecutor’s office and the courts work to assist victims in the best possible way.

To us, the organization and service model most likely to be successful, wherever it is organizationally housed, depends on whether victim advocacy is designed to promote an “empowerment model.” If done with an effort to give the victim informed choice, victims are likely to be both more satisfied (Zweig and Burt, 2006, 2007) and more likely to support further prosecution in appropriate cases where they would benefit (Moe, 2007).

One advocate-writer explained how this result can occur:

Survivor-defined advocacy (also called woman-centered advocacy, feminist advocacy, or the empowerment model) works under the assumption that victims are capable of making their own decisions and their individual needs should be considered when providing advocacy. Advocates work to explain different options and choices and supply information so victims can make their own informed decisions (Goodman & Epstein, 2008; Lehrner & Allen, 2009). Survivor defined advocacy is labeled as a feminist, gender-based model because it recognizes the individual needs of women, assumes women’s agency, and recognizes the gender dynamics of intimate partner violence. In feminist models, advocates work to avoid controlling behaviors that parallel the control experienced in abusive relationships and to not take part in victim-blaming
practices (Shepard & Pence, 1999). In contrast, gender-neutral advocacy ignores gender dynamics of intimate partner violence, works to create standardized responses, does not assume women’s agency, and is more likely to foster victim-blaming practices (Abrahams & Bruns, 1998; Weisz, 1999; Zweig & Burt, 2006, 2007).

Importantly, women report better outcomes and higher satisfaction with services involving feminist advocacy (Zweig & Burt, 2007). Women’s agency is central to the practice of feminist advocacy and research bears out that it is critical to shaping outcomes (Nichols, 2011, pp. 114–115).
The Impact of No-Drop Policies
Description of No-Drop Policies

Advocates for domestic violence victims have long pointed out the lack of efficacy of traditional prosecution policies dependent on victim support. Even in the most supportive courts, victims of domestic assault do not prefer prosecution. In one activist court, domestic assault victims were more than nine times more likely than non–domestic assault victims to report that they wanted the prosecutor to drop their cases, often intensely frustrating court personnel (Hotaling & Buzawa, 2001).

Concern over excessive case attrition has led many local jurisdictions to promote measures that limit the freedom of both victims and prosecutors to drop prosecution. All models expressly restrict the victim’s role in charging and case disposition decisions while, to a varying extent, retaining the prosecutor’s discretion.

While all such policies try to limit prosecutorial discretion they have many variations. Some begin with a mandatory filing policy in which prosecutors are instructed to file charges in every case regardless of victim desires or the prosecutor’s assessment of the evidentiary strength of the case as a whole (Peterson & Dixon, 2005).

Some no-drop policies limit discretion after charges are filed, even when the prosecutor believes the case may be weak. Other jurisdictions follow a so-called evidence-based policy, which still allows a prosecutor to drop certain cases—but not at the victim’s request—and ostensibly to be guided solely by evidentiary considerations (Davis, O’Sullivan, Farole, & Rempel, 2008).1

The mildest and by far the easiest to justify and embrace is a policy where prosecutors might be told to follow victim preferences for prosecution unless there is a compelling state interest to the contrary. The most controversial policies have been to impose both a mandatory filing policy as well as restrictions on subsequent dropping of charges—that is, a no-drop policy. At its most coercive, this policy might even compel a victim to serve as a witness. When carried to its logical conclusion, she might be subpoenaed and, if recalcitrant, held for contempt of court.
It is important to recognize that such policies often use these terms interchangeably yet vary considerably both in writing and in application. In general we might refer to “hard” no-drop policies that profess never to follow victim preferences for case dismissals, whereas “soft” no-drop policies permit prosecutors and victims to collaborate and drop charges under certain limited circumstances, such as if the victim has left the batterer or perhaps for first-time offenders.
Current Use of No-Drop Policies

Before we cover the use of no-drop policies, we need readers to understand that the terminology used might not reflect reality. For example, a study of no-drop policies in four jurisdictions (San Diego, CA, the first jurisdiction with such policies; Omaha, NE; Everett, WA; and Klamath Falls, OR) suggested that “no drop” really did not mean “no drop” per se. Instead, it was more of a philosophy rather than a strict policy—at least in these cities—with none of the jurisdictions prosecuting every case filed. What did they do to put teeth in the policy? The jurisdictions each required a coordinated intake process to determine which cases should be screened out before the imposition of a no-drop policy; provided for coordination with the judges, who would then relax the rules of evidence; and, perhaps equally important, made available additional resources to make the policy feasible (Smith, Davis, Nickles, & Davies, 2001).

Officially, at least, no-drop policies have been instituted widely in many large jurisdictions in the United States. Rebovich (1996) noted that 66% of a sample of local prosecutors in jurisdictions with populations of more than 250,000 officially had no-drop policies, with 83% stating it made no difference whether the police or the victim initiated the complaint. Of these, however, 90% reported “some flexibility” in the application of these policies.

The widespread nature of such official policies was partially a result of the initial federally funded demonstration programs in Cleveland, Los Angeles, Miami, Santa Barbara, Seattle, and Westchester County, New York (Lerman, 1981), followed by a consensus among policymakers that this was the way to proceed.

No-drop policies have also been adopted in one form or another in several other jurisdictions. For example, in England and Wales the Crown Protective Service (CPS) has established legal guidance on prosecuting domestic violence stating that prosecutions “can and will go ahead without the consent or participation of the victim, particularly where the violence is serious.” Furthermore, legal measures may be taken to compel a victim by summons to provide evidence as a witness if the prosecutor determines that the victim or
her children will not be at risk and the case cannot otherwise proceed (Cowan, 2012).
Rationale for a No-Drop Policy

Although rarely stated as a justification for a no-drop policy from an organizational perspective, such policies have the potential to be productive. At an organizational level, more so than at a societal level, no-drop policies limit unproductive dropped cases, thereby increasing clearance rates through convictions.

The more appropriate theoretical underpinnings of no-drop policies derive from the belief that unless abusers are adequately prosecuted, their violence will continue, causing additional physical and emotional damage to victims, their children, or perhaps even other victims. At its root, the state interest centers on the theory that even if individual victims are successful and no longer battered, an overriding state interest in aggressive enforcement remains.

As such, these policies rely implicitly on the concept that domestic violence is primarily a crime against the public order of the state, not against the individual victim whose interests could in theory be protected by civil action, protective order, or a victim’s decision to self-initiate prosecution. Like the mandatory arrest policies that they are patterned after, no-drop polices are meant to encourage a higher level of specific and general deterrence as the perceptions and reality of a conviction after a domestic violence arrest is increased—a fact that will presumably rapidly become known to current and potential batterers, thereby preventing future abuse.

Many well-intentioned, dedicated prosecutors believe that a goal of consistent prosecution transcends and, hence, supersedes the victim’s interests. As one prosecutor noted,

[t]he prosecutor’s “client” is the State, not the victim. Accordingly, prosecutorial agencies that have opted for aggressive prosecution have concluded that their client’s interest in protecting the safety and well-being of all its citizens overrides the individual victim’s desire to dictate whether and when criminal charges are filed.
Aggressive prosecution is the appropriate response to domestic violence cases for several reasons. First, domestic violence affects more than just the individual victim; it is a public safety issue that affects all of society. Second, prosecutors cannot rely upon domestic violence victims to appropriately vindicate the State’s interests in holding batterers responsible for the crime they commit because victims often decline to press charges. (Wills, 1997, pp. 173–174)

In addition to these societal goals, advocates for no-drop policies assert that victims benefit even if they do not currently appreciate it. Several reasons are cited. Limiting discretion alleviates the problems of victims with uncooperative agencies by forcing such officials to justify dismissals only by insufficiency of available evidence.

This attitude, to be truly benevolent to victims, must assume that a no-drop policy causes batterers to be identified and then treated better than simple arrest. This belief is implicitly trusted over the opinion of the victim when determining whether offenders should be incarcerated or placed into BIPs. This would implicitly reduce the likelihood of future battering incidents, providing potential victims with the knowledge that they are consorting with a batterer and increasing the likelihood for heavier sentencing for reoffending.

Although we might not agree entirely with this policy, supporters of such no-drop polices often have a solid understanding of the limits of trying to change batterer behavior. Batterers clearly have historically subverted the normal operation of the criminal justice system. As a group, batterers include many that are master manipulators. They do just about anything to convince victims to get the prosecution to drop charges. Many even call from jails pleading contrition. When released they continue to cajole their victim with promises of reform, pledging future bliss and happiness. Some will stress (often truthfully) that they might lose their jobs, and hence the family income will plummet as a result of a conviction.

They also can terrorize victims from jail by having their family members engage in such behaviors as turning off her utilities, harassing her at work, or
threatening to retaliate physically. We have heard from victims that an offender might even pay for the victim to leave town so that she cannot be issued a subpoena. Still others prey on the victim’s personal weaknesses, especially drug and alcohol abuse, physical and mental disabilities, and her love for their children. They use these incentives to cause acute memories of the incident to fade. Prosecutors not inclined to take a case to trial might inadvertently allow these vulnerable victims to succumb to their batterers’ manipulation or intimidation. In contrast, no-drop prosecutors hold the batterers responsible for their past violence regardless of the reasons for the victims’ failure to cooperate.

Supporters of no-drop domestic violence policies thereby claim that the logical alternative, empowering victims by giving them the discretion to prosecute but deferring prosecution if a victim makes an informed choice to not proceed, in many cases, empowers batterers to manipulate and endanger victims’ and their children’s lives and the safety and well-being of the entire community. They note that by proceeding with the prosecution with or without victim cooperation, the prosecutor minimizes the victim’s value to the batterer as a potentially unwitting, or at least intimidated, ally to defeat criminal prosecution. A no-drop policy is, therefore, said to be preferred as it does not allow batterers to control the system of justice through the manipulation of their victims (Wills, 1997, pp. 179–180).
Protection of Children as a Rationale for No-Drop Policies

Finally, although the interests of the state might seem somewhat esoteric compared with the concrete needs of the victim, recognize that there are other more indirect victims of violence, primarily minor children, whose interests might not be adequately protected by the victim without prosecution of an abuser. As stated by Wills (1997):

Most notably, children are secondary victims of violence in the home. The link between domestic violence and child abuse, both emotional and physical, cannot be ignored. Each year, between 3 and 10 million children are forced to witness the emotional devastation of one parent abusing or killing the other. Many are injured in the “crossfire” while trying to protect the assaulted parent, or are used as pawns or shields and are harmed by blows intended for someone else. Some are born with birth defects because their mothers were battered during pregnancy. Children of domestic violence are silent victims who suffer without the options available to adults. Thus, aggressive prosecution furthers the State’s goal of protecting not only the victim, but also the children in homes where domestic violence occurs. (p. 175)

As we noted in a previous chapter, the exposure to ongoing domestic violence threatens the mental health of children severely and greatly impacts their thought processes. It also can increase the risk of an intergenerational cycle of abuse as both sons and daughters are conditioned to violence in the family.
Evidence That No-Drop Policies Might Be Effective

Some evidence indicates that the institution of no-drop policies can markedly improve past practices, especially if they were substandard. In San Diego, under an older discretionary policy, it was reported that abusers were not deterred by the criminal justice system as they understood the system simply did not enforce its own stated rules. Officials found that, under the old policy, when abusers learned that a case would be dismissed if the victim refused to cooperate, levels of violence would actually increase.

In 1985, however, the city implemented a no-drop policy. Domestic homicides fell from 30 per year in 1985 to 20 in 1990 and to 7 in 1994. Thus, it has been claimed that no-drop policies both decreased serious recidivism and strengthened the message that intimate abuse will not be tolerated (Epstein, 1999).

Deborah Epstein, then director of the Domestic Violence Clinic at the Georgetown University Law Center and codirector of the Washington, DC, Superior Court’s Intake Center, noted a similar pattern. She stated that, in 1989, the prosecutor’s office tried fewer than 40 misdemeanor cases out of 19,000 emergency calls reporting family abuse. By 1995, the rates had not changed markedly. The charging rate for prosecutors was approximately 15% of those arrested, and few of those cases ever proceeded to a plea or trial. She attributed the low numbers of successful prosecutions to special policies of applicability only to domestic violence. Chief among those was a policy by which charges would be dropped at the victim’s request at any time with no questions asked.

In 1996, Washington, DC, instituted a no-drop policy with a domestic violence unit. That unit filed approximately 6,000 misdemeanor cases in the first year and 8,000 the next year. Even more interesting was the case disposition. Fully two thirds of those arrested faced prosecution. According to Epstein (1999), this is exactly the same rate as for stranger violence. In addition, the rates of convictions in domestic cases—69%—closely approximated those for other misdemeanor, nonjury trials. Clearly, a no-drop policy in this court with these committed prosecutors resulted in an
overwhelming change from an ineffective previous regime.

A recent cohort study reported the results in terms of the likelihood of future victimization for a 1-year period of a no-drop policy as practiced in 2000 in a small Midwestern county that followed a model protocol using best practices of special domestic violence prosecution units, vertical prosecution (the same prosecutor handling the case from intake through sentencing), and continuances as needed by the victim.

While many measurements of success were analyzed, victims who remained in direct contact with the prosecutor had markedly (31%) fewer subsequent contacts with the police in the subsequent year even if emergency room visits were not dramatically affected. From this, the authors concluded that victim involvement in the prosecution process was valuable regardless of whether the victim ultimately cooperated with the prosecution to the extent of conviction. Hence, the critical factor was victim involvement in the process rather than the conviction itself (Cerulli et al., 2014). It was noteworthy that minorities were less likely to call the prosecutor’s office and less likely to want to press charges. Even if they initially wanted arrest of the offender they were more likely to want to drop charges, suggesting a possible unintended problem in heavily minority jurisdictions.
Limitations of No-Drop Policies

As stated previously, we have concerns with the implementation of no-drop prosecution policies. These policies are the functional parallel of police mandatory arrest policies. Although a policy of limited victim and prosecutor discretion certainly has some obvious merits, we believe they are a blunt instrument that can be operationally impractical in many jurisdictions, threatening serious costs to both victims and agencies alike. This poses several key policy questions. Are the state’s interests actually served by such a broad policy? What are unintended consequences for the victim or her family? As a matter of public policy, should societal interests triumph over victim interests?

The state’s interest in broadly applied no-drop polices is not nearly as clear as advocates state. For example, there is the reality of limited available prosecutorial resources. We can safely assume that, given perilous, long-term trends for state and municipal finances, actual resources will not increase merely because a new policy mandates prosecution of one specific class of crimes. Therefore, any increase in prosecutor time demands as a result of this policy may be offset by a diminished capacity of that same organization to prosecute more serious domestic violence cases or even other issues.

Perhaps placing limits on prosecutorial discretion is justifiable given the past tendencies of many prosecutorial bureaucracies to underserve victims of domestic violence. It is difficult, however, to argue persuasively that in the long term, even after organizational attitudes have changed, a district attorney may lack resources to prosecute other contested criminal cases (including felonies) merely because prosecutors are mandated to try all misdemeanor domestic violence cases, even where a victim does not want the case to proceed.

Therefore, we believe that as part of an impartial justification for this position, advocates of no-drop policies should expressly quantify the displacement of limited resources attendant to such a policy and, as part of their argument, be required to state explicitly what tasks being performed by these prosecutors (with limited, if any, ability to increase resources) should
now be foregone to implement a true no-drop policy.

If this is not done, and the real-life difficult choices of harried administrators are simply dismissed, the true impact of a policy is not being debated fairly. The only way out of this dilemma is to assume that, globally, no-drop policies deter so many potential batterers that this more than makes up for the increase in resources needed for each case prosecuted. To date, empirical evidence on this is lacking, and it appears more of a desired outcome rather than a statement of reality as we know it.

The real question in a modern jurisdiction trying to enforce domestic violence laws is where should the emphasis be placed? If prosecution is discretionary, which domestic violence cases should be dismissed? If mandatory no-drop policies are advocated, where will resources be drawn from? In turn, if the suggestions are wholly impractical politically (similar to advising police to simply stop enforcing other crimes), then we must recognize that an advocate for either position has not truly faced up to the difficult choices inherent in developing realistic policies at a state and local level.

What happens in actual practice? In a study conducted in Milwaukee, an analysis was performed of an aggressive policy whereby prosecutors charged virtually all domestic violence crimes without a corresponding increase in resources. After implementing an aggressive no-drop policy, the following results were found:

- Case backlog increased greatly.
- Cases filed with the court contained a larger proportion of victims who did not want their cases prosecuted.
- The time to disposition doubled.
- Convictions declined.
- Pretrial crime increased.
- Victim satisfaction with case outcomes and with the prosecutor’s handling of the case declined. (Davis et al., 1998, p. 71)

From this, the following overall conclusion of the researchers was negative:

- The district attorney’s policy to prosecute a larger proportion of
domestic violence arrests had several effects, none of them positive, which may have been due in part to insufficient allocation of resources. One effect of the new policy was to bring into the court system a larger proportion of cases with victims who were not interested in seeing the defendant prosecuted. Victim satisfaction with prosecutors and with court outcomes declined after the new screening policy. As the special court became overwhelmed with cases, case-processing time increased back to the level that had existed prior to the start of the specialized court [thus, in effect, sabotaging the effect of a different reform, a dedicated domestic violence court]. (Davis et al., 1998, pp. 71–72)

Alternatively, in other jurisdictions, it might be the case that as a result of the lack of a planned implementation strategy that explicitly takes resources away from the prosecution of other offenses, no-drop policies revert to discretionary policies in reality and become paper-only policies. Several prosecutors have noted that even those offices widely publicized as being no drop develop procedures that, in effect, screen cases.

For example, an analysis of the practices of the San Diego City Attorney’s Office noted that under the new policy it refused to prosecute one third of all domestic violence cases; essentially, they did not prosecute if independent corroborating evidence was lacking when the victim declined to cooperate.

It is easy to understand why even the most committed office would develop such screening techniques. As one prosecutor explained, if the victim recants, then the proper prosecution for domestic abuse cases is similar to a homicide in that independent corroborating evidence has to be used in place of the victim’s testimony (Hartman, 1999).

However, except for the relatively rare occurrence of a federal grant, no additional resources are typically received. The reality is that misdemeanor cases are typically tried by the most overworked and least experienced district attorneys. If they must try cases of such complexity without additional resources, the burden may be overwhelming. Taking iffy misdemeanors to trial in my jurisdiction
is seen as wasteful, not unethical. As long as I do my trial preparation on the weekends at home, so far, I am allowed my idiosyncrasy. However, if I want the help of another prosecutor for misdemeanors, I am shown the door not only by my own prosecutorial kind, but also by legislative bodies that persist in passing statutes which amount to unfounded mandates (making the prosecution of most domestic crimes more time-consuming and intricate).... We’ve gotten tough enough already; the only real solution... is putting our money where our mandates are. So long as the domestic violence equivalent of MADD [Mothers Against Drunk Driving] encourages their elected representatives to add more “politically correct” but fiscally ignored burdens on those of us who try to prosecute these cases, we’re never going to get there. (p. 74; emphasis added)

By some official measures, societal interest is achieved only if high conviction rates result. Indeed, some jurisdictions, such as the county of Los Angeles, have high conviction rates (Wills, 1997); however, the actual impact on conviction rates of no-drop policies in other jurisdictions is unclear.

Several studies have attempted to understand more clearly the reasons for this result. One research report stated that when victims do not support prosecution or are unconvincing witnesses, the result is far lower conviction rates even in the presence of increases in committed resources (Davis et al., 1998). This concern is not hypothetical. Consider the following:

The problem is that the policies backfire. When we force arrest and prosecution on battered women, they often recant and lie. One prosecutor in Los Angeles, who will remain anonymous, estimated that most battered women are reluctant witnesses who are willing to perjure themselves when they are put on the stand against their will. (Wills, 1997, p. 190)

One researcher who interviewed a state’s attorney’s office (the local prosecutor) in a no-drop jurisdiction was told by these court officers that
between 80% and 90% of victims were uncooperative (Guzik, 2007).

Indeed, we believe the extent of this problem is difficult to overstate. Despite being an advocate for mandatory prosecution, Wills (1997), the head deputy of the Family Violence Unit of the Los Angeles County District Attorney’s Office, noted that victims in Los Angeles County recanted in more than 50% of cases. Another study using Canadian data found that, according to prosecutors, almost 60% of all decisions not to prosecute were because of the victim’s total noncooperation, including refusal to testify, recanting, or retracting testimony or failing to appear in court (Dawson & Dinovitzer, 2001; Ursel, 1995).

As such, even an advocate for mandatory prosecution had to recognize obvious practical problems with implementation of such a policy, and Wills (1997) acknowledged the real conflict between prosecutors and victims was that:

> [p]rosecutors and the courts have taken a long time to accept that a domestic violence victim’s “refusal to press charges” is the norm in domestic violence prosecutions. Indeed, prosecutors traditionally are reluctant to charge batterers because victims frequently change their minds and later drop the charges. Faced with having to testify in court, domestic violence victims, especially battered women, routinely recant, minimize the abuse, or fail to appear. (p. 177)

It is apparent why, for reasons of practicality, such a policy is almost never used for other misdemeanor offenses. Society’s interest in a no-drop policy implicitly depends on no reaction by victims to the behavior of the criminal justice system. This is paradoxical in that, to have any real long-term impact on rates of abuse, domestic violence advocates tacitly, or even at times explicitly, assume that batterers will change their behavior as a reaction to the threat of future prosecution. Can they really assume that victims will not?

We have a great deal of difficulty advocating a policy that implicitly forces many victims to lie and align with her batterer against prosecution. Can this be what advocates of no-drop policies really want? We therefore believe that,
as a generalized policy, it is simplistic and somewhat patronizing toward the 
victims of domestic violence.

Further, we are concerned with unintended consequences of these policies. 
As they become publicized (and if actually enforced as written) it is probable 
that many victims will be deterred from reporting the next incident to the 
police. This is especially likely as an unintended consequence with the 
majority of victims who state they do not agree with unrelenting prosecution 
but are faced with the situation that once a case enters the system they have 
lost any control to what seems to be an impersonal and overbearing 
bureaucracy.

To us, disempowering victims is the antithesis of the long-term goal of most 
abused women and their advocates. Those supporting this type of control are 
probably unaware that they might be inadvertently projecting the belief that 
the “helpless” or “fickle” victim is the primary reason for the system’s lack of 
responsiveness, rather than the system’s inability to flexibly address 
individual victim needs.

Data in a study of a model court in Quincy, Massachusetts (the QDC), gave 
support for this concern (Buzawa et al., 1999), reporting that a latent outcome 
of aggressive policies dismissing victim case disposition preferences was to 
discourage the future use of the system by precisely those victims who had 
the most reason to fear reabuse. Victim interviews found that these women 
were more than 2.5 times less likely than other victims to report 
revictimization in a 1-year period after the initial study incident (Buzawa et 
al., 1999):

Implicit in many of the arguments raised in favor of “no-drop” 
policies, such as victim intimidation by batterers, batterers as 
master manipulators, and prosecutors as “guardians” of the rights 
of victims, is that the victims are, as a class, incapable of assessing 
their peril. This lacks empirical support. In fact, the QDC study 
found that the victims’ preferences and perceptions of 
dangerousness were generally very good predictors of subsequent 
revictimization. Women who did not experience revictimization 
within a 12-month period were more than twice as likely as those
who were revictimized to have preferred no criminal justice involvement. A greater number of women who felt that going to court would decrease their safety were accurate in their assessment. Women who were “forced” to prosecute and who felt that going to court reduced their ability to bargain with the offender were also more likely to be revictimized. (p. 116)

Proponents of no-drop policies argued that, despite the failure of victims to cooperate, police can provide sufficient evidence for these cases to move forward, including victim statements, photographs, and medical reports. However, as we have discussed, despite improved responses by the police, prosecutors still face crucial evidentiary problems in obtaining the needed documentation from police. For example, one district attorney noted that in his county, only one police department regularly provided their office with taped victim statements (Guzik, 2007).

Therefore, in many jurisdictions, prosecutors are faced with a theoretical mandate to prosecute all cases but without any additional resources and the real prospect of an uncooperative key witness. As a result, prosecutors develop a variety of informal strategies to help resolve their dilemma.

First, prosecutors often will overcharge offenders by increasing the severity of the charge relative to the actual offense or, alternatively, by charging them with multiple offenses (Guzik, 2007). In fact, some victim advocates encourage this practice as part of a strategy for prosecutors to facilitate the prosecution of these cases.

A second strategy prosecutors use in no-drop jurisdictions is to allow offenders to avoid bail for a felony offense in response to a guilty plea to a misdemeanor offense, which typically does not require bail. Alternatively, if the offender is out on bail, then they look for a reason to reverse the decision by arresting the offender, typically for violation of a restraining order. Offenders often violate specific conditions of these orders by contacting the victim or her children or using alcohol or drugs (Guzik, 2007).

Courts also might be forced to become even more coercive. Restraining orders might then become routinely ordered by the courts, rather than issued
at the request of the victim, in the frankly manipulative hope that the conditions will be violated providing an easier crime to prosecute (Guzik, 2007). As a result, not only do victims not have control over the initial decision to prosecute, but also a restraining order might be taken out without her specific request and conditions might be set that might not be in accordance with her wishes. For example, because of dependent children or a lack of other financial income and assets, a no-contact restraining order might not be in the family’s interest.

Although guilty pleas might increase as a result of such prosecutorial strategies, and thus, in some sense be successful, we believe the process itself risks becoming extremely coercive and that the types of cases and dispositions rendered might not mirror the profile of a court with less-restrictive charging policies.

Although our primary concern might not be with an offender’s rights, such practices also might be regarded as an effort by the system to trap offenders into more serious charges. Defense attorneys might feel pressured into urging offenders to accept a plea out of concern for the judge’s reaction at the offender’s lack of cooperation with a reasonable plea (Guzik, 2007):

[T]hese tactics and powers shape the suspects’ behavior, decision making, and relation to himself and his partner in different, sometimes contradictory ways. The no-contact order and aggressive charges apply leverage intended to have him plead guilty by making the process more punishing. These tactics are buoyed by the silencing, warnings, admonishments, and accusations placed against him in pretrial proceedings. (pp. 66–67)
Can No-Drop Policies Be Justified Based on Superior Results?

What has empirical evidence shown about the impact of prosecution on deterring reoffending behavior? The classic study of mandatory prosecution was conducted in Indianapolis, Indiana (Ford & Regoli, 1992). This study was an experimental assignment of 480 men charged with misdemeanor assaults on their domestic partners. They were assigned to one of three tracks: diversion, prosecution with a recommendation of counseling, or prosecution with a presumptive sentence. The study found that the prosecution policy adopted affected batterer behavior in a surprising manner. Victims were assigned to either a “no-drop” prosecution group or to a group allowing victims to drop.

Victims assigned to the no drop group did not have the lowest rates of re-abuse. They instead had rates that were between those that had the ability to drop, but didn’t, and those that voluntarily dropped prosecution. Ford and Regoli concluded that victim complainants were at the best advantage when they were permitted to drop charges but, in fact, were persuaded to follow through with the prosecution. They went so far as to state that this was the only policy with a preventive impact; being significantly more effective than traditional processing or a no-drop regime (Ford & Regoli, 1992).

In short, empowering the victim, including educating her about her rights and the availability of prosecution rather than the actual prosecution, might be a key factor, despite the ideal situation in which the victim and prosecutor cooperate with each other to convict the abuser. Ford and Regoli’s (1992) conclusion is instructive:

The Indianapolis experiment, however, offers the surprising finding that, contrary to popular advocacy, permitting victims to drop charges significantly reduces their risk of further violence after a suspect has been arrested on a victim-initiated warrant, when compared with usual policies. We believe that under a drop-permitted policy, women are empowered to take control of events
in their relationship. Some are empowered through prosecution such that they can use the possibility of abandoning prosecution as a power resource in bargaining for their security.... Others are empowered by the alliance they form with more powerful others, such as police, prosecutors, and judges. (p. 206)

It cannot be overstated that aggressive no-drop policies are preferable to a past system of prosecutorial indifference or judicial abuse of their vast discretion. However, to some extent, that is an unfair comparison. A fairer comparison is to review results between two jurisdictions with the same statutory requirements, but where one has a no-drop mandate and one uses a preferred practice of prosecution, subject to victim concurrence, but not a no-drop mandate. Fortunately, such a comparison has been conducted and the results are interesting. Brooklyn, New York, has a universal filing policy. The Bronx, although equally committed to stopping domestic violence, does not have such coercive methods and largely follows victim preferences in the decision to file or not file a case (O’Sullivan et al., 2007).

O’Sullivan et al. (2007) studied 272 cases that were declined for prosecution in the Bronx. In Brooklyn, cases filed without victim support typically were dismissed after 3 months. A 6-month follow-up revealed no significant difference in rearrest rates under each policy, although new arrests were more likely to be charged as felonies in Brooklyn. The Brooklyn policy also was more costly and required that the prosecutor be given more resources compared with the Bronx. These additional resources were needed for victim outreach, staff court appearances, case investigation, and efforts to collect evidence. From this perspective, Brooklyn’s policy, although progressive and well intentioned, was not as viable as the Bronx. It required far greater use of scarce agency assets, undoubtedly displeased some victims (and possibly deterred their future reports of offenses), and ultimately resulted in unproductive numbers of cases that were not pursued to conviction as the burden on prosecutors to prove a case in the face of victim noncooperation made such efforts untenable. Nor did it seem terribly effective at preventing reabuse. The researchers in Brooklyn reported that, within 18 months of disposition, 41% of the defendants charged with a domestic violence felony were rearrested, with 8% for a violent felony and 11% for violation of a
protective order. The rearrest rate for violators of protective orders (a felony) was 53%, with 4% for a violent felony and 33% for another order violation (Newmark, Rempel, Diffily, & Kane, 2001).

Basically, in rearrest rates, the only other real outcome measurement, there seemed to be no difference. Based on this evidence alone, especially if duplicated in other settings, universal prosecution does not seem justified. This type of result also has been shown in outcome measures of serious violence.

Finally, some evidence has emerged that aggressive prosecution of domestic violence cases, especially if done without victim consent, actually hurts victims in cases where the assailant is known to be exceptionally violent. A study of homicide data in 48 states sponsored by the NIJ reported that increased prosecution rates for domestic assault (even when controlling for several variables) were associated with increased levels of homicides among White married couples, Black unmarried intimates, and White unmarried women—hardly the positive result anticipated (Dugan, Nagin, & Rosenfeld, 2001).

A recent study by Finn (2013) examined the relative impact in two neighboring counties in Georgia where one used a victim-led orientation toward prosecution, and the other an evidence-based no-drop policy. Finn used multiple measures of both psychological and physical aggression conducted 6 months after the initial case disposition. Victims in the study reported that there was a startling increase both of repeat psychological reabuse (3.76 times) and repeat physical violence (7.17 times) in the evidence-based county compared to its neighbor where victim preferences were followed. Such violence took a toll on victims beyond that of the violence itself, with those who had experienced reabuse being 5 times more likely to remain concerned about their future safety. Similarly case processing time increased as more cases were sent to trial (Finn, 2013). A further analysis of this study suggested that the county that used the “evidence based” approach had to devote far more resources to accomplish this rather poor result (Buzawa & Buzawa, 2013).
Does a No-Drop Policy Disempower Victims?

A no-drop policy that forces prosecution restricts victim autonomy. This concern is not insignificant. Even an advocate of no-drop policies such as Professor Epstein (1999) observed the following:

As police and prosecutors escalate their response to domestic violence cases, survivors increasingly confront a criminal justice system that can perpetuate the kinds of power and control dynamics that exist in the battering relationship itself. In many cases, prosecutors take complete control over the case, functioning as the sole decision maker and ignoring the victim’s voice. If a victim changes her mind mid-way through the litigation and seeks to drop charges so that the father of her children can continue to work and provide financial support, a prosecutor may refuse to do so, on the ground that this would not serve the interests of the state in punishing violations of the social contract. Such re-victimization can thwart the survivor’s efforts to regain control over her life and move past the abusive experience. Thus, where the bulk of control was ceded to the perpetrator under the old automatic drop system, it is now ceded to the prosecutor. Although battered women have a far greater influence over the criminal justice process today than ever before, the system’s responsiveness to their individual needs remains limited. (pp. 16–17; emphasis added)

The extent of conflicts should not be underestimated between the many victims who do not want a case to be filed or, if filed, to proceed, and prosecutors driven to prosecute without victim support. Prosecutors certainly are aware of the reality of this problem as conflicts with victims occur frequently when no-drop policies are adopted. Rebovich (1996) confirmed Wills’s previously cited observation that more than 50% of victims refused to testify. He reported that many of the larger prosecutors’ offices had considerable problems with uncooperative victims. For example, 33% of the prosecutors who responded claimed that more than 55% of their cases
involved uncooperative witnesses; 16% claimed the number to be between 41% and 55%; and 27% estimated that it was between 26% and 40%. Only 27% reported a 0% to 25% lack of cooperation (Rebovich, 1996).

Not surprisingly, to accomplish their own organizational goals, Rebovich (1996) reported that prosecutors often became coercive with victims; 92% of such officials used their subpoena power to require victim testimony. Surprisingly, the least coercive methods to overcome a lack of victim cooperation—use of victim advocate testimony and videotapes of initial victim interviews—were used the least (10% and 6%, respectively), and relatively few used expert witnesses who could testify on such issues as why victims often refuse to cooperate (Rebovich, 1996).

No-drop policies that are coupled with a strong victim advocacy program also might have an additional adverse impact. As described earlier in this chapter, victim advocates, often housed within the prosecutor’s office, are one of the great innovations in handling domestic violence cases. No-drop policies risk the advocates not being perceived as true victim advocates. The potential is there for a clear conflict of interest between the victim, who often does not want to pursue charges, and the victim advocate, whose task as defined by the prosecutor’s office is to ensure victim cooperation. Unfortunately, this conflict can cause the victim to lose trust and be less communicative with the advocate, her nominal ally. She might even find her legitimate fears of adverse consequences minimized by her nominal advocate as her case is pushed through the system.

The promotion of simplistic views of victim needs ignores the complex nature of a victim’s decision to desist prosecution. Many advocates for battered women are now better understanding that there are, in fact, unanticipated consequences to such policies. Linda Mills (1997), who was an early advocate for victim empowerment, might have best stated this concern:

A small but growing number of feminists are beginning to worry that universally applied strategies, such as mandatory prosecution, cannot take into account the reasons women stay in abusive relationships or the reasons for their denial. These feminists fear that the State’s indifference to this contingent of battered women is
harmful, even violent.... By violent, I refer to the institutional violence inflicted through the competitive dynamic that dominates the relationships between the State, the survivor, and the batterer. The State, in its obsession to punish the batterer, often uses the battered woman as a pawn for winning the competition. This destructive dynamic is abusive in itself to the woman. (p. 188)

Not surprisingly, Mills (1998) argued persuasively for what she described as a “tailored service” for victims rather than mandatory policies that fixate on offender conviction. As noted previously, a victim might prefer dropping charges after she has been successful in achieving her primary goals. The failure to allow her to use this power seems foolish. One study of cases prosecuted in several jurisdictions in Massachusetts found that, of those victims not wanting the case to go forward, 27% reported they had already obtained what they wanted from the offender or worked things out, and an additional 23% had already ended the relationship with the offender and felt no further need to prosecute (Hotaling & Buzawa, 2001).

A victim’s safety also might be theoretical. As noted previously, homicide rates do not seem to be affected positively by prosecution. Professor Ford of Indiana University noted that a victim might be safest if she retains the power to drop charges at her discretion. This gives her the ability to use the system to work toward her ends with the threat of continued prosecution as a “victim power resource” (Ford & Regoli, 1993; cf. Hotaling & Buzawa, 2001). In sharp contrast, the reality of prosecution in most crowded court dockets is that victims can wait 6 to 9 months from the time of complaint to the time of trial. During this period, significant life events might occur. Many victims, often with the support of family, friends, acquaintances, service agencies, or formal and informal mediators, will have successfully negotiated a satisfactory outcome. They legitimately might fear that prosecution would jeopardize this. This fear often is real. As a trial date approaches, many batterers begin to harass the victim, create obstacles with visitation, and jeopardize the negotiated arrangements she has already achieved.

Under these circumstances, it is not always in a victim’s interest to continue prosecution. In this regard, our perspective directly challenges the assumption of other writers (Cahn & Lerman, 1991; Waits, 1985), who have maintained
that prosecution must be completed to achieve long-term cessation of violence. Perhaps the dilemma might be resolved by understanding that many women might be safer if they can drop actions freely but should be informed that, in terms of legal rights and the knowledge of batterer behavior that her advocate can explain, she might be less safe if she does. The implication of this insight is that victims in most cases, especially in lower level routine violence, should be treated as full partners in the prosecution of the case. This necessitates that the victim advocate or the prosecutor take the time to give the victim full disclosure of the long-term trends of familial violence, including the tendency to escalate attacks, the potential of effective prosecution to end such a cycle, and a realistic assessment of the costs and delays that she will likely incur if the case is prosecuted fully.

Furthermore, we must be sensitive to the realities of US culture. The negative effects of enforced prosecution might disproportionately impact racial and ethnic minority victims, including recent immigrants—those who might most need the assistance of the criminal justice system. It has become increasingly clear that the impact of prosecutorial and judicial intervention might be affected by race, socioeconomic status, ethnicity, and cultural norms (Dobash & Dobash, 2000; Thistlewaite, Wooldredge, & Gibbs, 1998). For example, immigrants, especially those whose partners are in the country illegally, might strongly wish to avoid prosecution for fear that it might lead to job loss or even deportation of the family’s sole source of financial support.

Recent reforms in US immigration statutes mandate that even lawfully registered permanent resident immigrants convicted of virtually any major crimes, including domestic violence and stalking, might be deported. Conviction for a domestic assault might, therefore, be totally devastating in situations in which a woman needs the batterer’s financial assistance. Even without a legal sword of Damocles hanging over a family’s head, many victims of domestic violence in immigrant communities might be somewhat insular, and women held in effect responsible for deportation of a fellow immigrant by the community might find themselves and their families subjected to severe ostracism, or perhaps even violent retaliation, within their own communities (Epstein, 1999).

Some evidence indicates that this fear is widespread. Bui and Morash (1999)
reported that Vietnamese immigrant women who were victims of battering feared that new laws would lead to the deportation of their husbands after arrest and conviction of a domestic violence offense. This fear has resulted in decreased levels of reporting abuse—directly contrary to the goals of domestic violence advocates.

Many additional minority group members, even if native born, belong to ethnic groups that have had a long, uneasy relationship with police, characterized by harsh treatment of suspects and the widespread scapegoating of their community. Not surprisingly, many minority women might not want to draw the attention of these agencies, let alone be told how and when their cases will be prosecuted. They also are aware that many minority community leaders feel that convictions for such “minor” offenses perpetuate the stereotype of criminal behavior in their community and deeply resent overly aggressive law enforcement.
Victims Charged With Child Endangerment

Perhaps the most difficult dilemma is what happens to victims with dependent children. Pro-prosecution reforms are exposing latent tensions between the needs of two seemingly aligned groups—victims of domestic violence in potential conflict with their children and their respective advocates. All too often, female victims of domestic violence are aware, or perhaps more accurately should be aware, of physical or sexual abuse of minor children. Unfortunately, abused women who bring their assailants to the attention of the police might be subject to claims that they have failed to protect their children. Many have had their children removed from their custody for such reasons or have even been prosecuted.

Of course, the problem is that many advocates for child welfare are laser focused on the interests of the children. This can’t be faulted. However, consider the precarious nature of the female victim of domestic violence—a person traumatized by an intimate partner and by physical violence who, for financial, emotional, and communal reasons or because of immigration status, often cannot realistically leave her abuser. In turn, domestic violence victim advocates often fail to fully evaluate the long-term impact on children caused by exposure to relentless repetitive violence in the family, whether or not these acts are committed against children directly, or indirectly, against a parent. In addition, many (but certainly not most) victims of domestic violence, perhaps because of their own psychological issues including anger displacement or profound substance abuse, might in turn neglect or physically mistreat their children. The children as a population are definitely at risk.

One commentator noted that, in New York State, the legal system has become a source of implicit danger to battered mothers rather than a source of assistance. This came from a trend to hold mothers strictly accountable for their actions and the actions of their spouse toward their children (e.g., it was common for mothers filing for a civil protective order to face a criminal charge of child neglect for “exposing their children to domestic violence”; Lemon, 2000). In other words, even if the child had not been physically victimized, the mere exposure of violence toward the mother allegedly
constituted a crime committed by the mother. A report from the NIJ (Whitcomb, 2002) described how prosecutors nationwide have been responding to changing statutes designed to protect children from the effects of violence in the family.

Whitcomb (2002) conducted a survey of 128 prosecutors who worked in 93 offices in 49 states. They had jurisdiction over both felony and misdemeanor cases involving family violence and child maltreatment cases. She described a pattern in which children who witnessed acts of domestic violence were used as a power resource by many prosecutors to increase victim cooperation and the offender’s willingness to plead guilty to lesser charges by adding an additional threatened felony charge of child endangerment to the primary charge of domestic violence.

Three common scenarios exist when the interests of the mother might not coincide with that of her children: (a) An abused mother is alleged to have abused her children, (b) both mother and children are abused by the same male perpetrator, and (c) children are exposed to domestic violence but are not abused themselves. For each scenario, respondents answered these questions: Would your office report the mother to the child protection agency? Would your office prosecute the mother in the first scenario for the abuse of her children? Would your office report or prosecute the mother in scenarios 2 and 3 for failure to protect her children from abuse or exposure to domestic violence?

Many women who are victims of domestic violence have minor children in the household. Currently, we are expecting women to report all acts of abuse; however, the results of such reporting might expose her to loss of custody of the children (nearly automatic in some jurisdictions when a report of child endangerment is being investigated) and even in extreme cases might subject her to threats of prosecution for child abuse or child endangerment either because of her own activity or because of her inability to resolve her own battering.

As this dilemma becomes more widely publicized, many women may simply refuse to seek needed assistance despite long-term risk to their safety and well-being and that of their children. It is not surprising that litigation on this point has already begun. In fact, a class action suit was filed in federal court
against the Child Services Administration and the New York City Police Department, claiming that both had a practice of taking children from victims of domestic violence and putting them in foster care, regardless of whether the child was in physical danger (Lemon, 2000).

In addition, in many instances, continued maternal drug or alcohol abuse really does result in severe impact on a victim’s ability to care for minor children—a fact often cited by abusive fathers in custody hearings. Although one might argue that is in the ultimate interests of the children to be out of a home where either parent abuses substances or neglects their welfare, the impact of child services intervention presents a clear dilemma: If victims who call the police for assistance are often prosecuted for child abuse or neglect or are at serious risk or losing child custody, then many will simply not call the police. The problem of victim deterrence from reporting is likely to worsen as child custody policies harden, and in our view, this is likely a typical example of the law of unintended consequences.
The Likelihood of Conviction

We assume that the primary goal for bringing any criminal charges is to secure a conviction of a crime at least somewhat related to the offense that occurred. This often does not happen when victims are uncooperative. One assistant state attorney described the real life dilemma as follows:

“I got in all the evidence that I wanted to, the 911 tape got in. [The defendant] even said he put his hands on her out of anger... and I’m going against a defense attorney who is saying things like, ‘If this is a crime, then we have to open up prisons all over the state,’ ‘when you go home at night, don’t you dare touch your wife.’ Stuff that is completely inappropriate. And anyways, not guilty within a half an hour. I mean BOOM, not guilty in a half hour.” Reflecting on why he lost what he felt was a strong case, [Matt] shared what the judge told him following the decision: “It was a jury trial, but there weren’t any injuries, so you know how these cases go”…. the victim’s advocate, echoed this point, “in this county, with our juries, you will not get a conviction if a victim is uncooperative.” (Guzik, 2007, p. 49)

Therefore, unless we are to subscribe to the somewhat controversial theory that the process absent conviction should be the punishment (e.g., being ensnared as a criminal defendant is sufficient punishment for a crime), there might not be any real punishment if the victim does not agree with the prosecution strategies employed. To the extent that advocates of no-drop policies cite the punishment factor of having a defendant go through a trial and be acquitted, they should be aware that this is exactly the theory that was used by police officers in the early 19th century that condoned beating up offenders to extract street justice. After all, no one has given any right or legitimacy to prosecutors or court personnel to extract punishment independent of either a trial or a guilty plea.
Are There Effective Alternatives to Mandatory Prosecution?

We believe that it is incumbent on proponents of extreme measures, such as prosecutorial no-drop policies or those advocating coercion of victims to assist convictions, to determine whether less-authoritarian measures would accomplish the reasonable goals. Initially, we need to stop counting rates of victim-led case withdrawal as a defeat for criminal justice agencies. True, in many cases, the victim might need encouragement to continue. However, the line between encouragement and outright coercion is, in practice, obviously being crossed in many jurisdictions. We suggest that prosecutors and victim advocates be trained to more accurately distinguish between a victim who is being subjected to a manipulative offender and a victim whose reasons for case attrition are benign, a result of achieving her goals before the conclusion of the case. If her reasons seem to not be motivated by overt fear of offender retaliation, then prosecutors should decide simply to follow her preferences.

We also believe that prosecutorial concerns over undue case withdrawals could be addressed through several less-coercive practices. Implicit in this statement is the belief that victim cooperation with prosecution often depends on factors beyond the purview of the criminal justice system. Procedural improvements can, however, be made. Such options are well within the control of the police and prosecutor, who can then influence (but not coerce) the victim to continue prosecution—if such actions are indeed in her own best interests. Otherwise, we believe that victims should have a heavy voice in the decision of whether to prosecute a batterer. Some of the following less-coercive measures are obvious.

First, for many years, some police departments have used vastly improved incident report forms that require detailed information on domestic assaults. Electronically preserved photographs of bruises and or easily made contemporaneous videos can be attached to reports economically and easily. Further, time spent on interviews with parties at the time of the incident makes the officer an effective witness to a prosecution and can make later extensive victim testimony unnecessary.
Second, prosecutors could make additional efforts to address victims’ needs more satisfactorily and to provide greater support. Legitimate fears of offender intimidation might be partially addressed by making the victim’s reasons for discontinuance more visible and, therefore, more appropriate for resolution. Simply forcing defendants to appear in court at arraignment accomplishes some level of offender intimidation, providing an opportunity for the prosecutor to determine whether there are issues of victim intimidation.

At such hearings, prosecutors might insist that the defendant abide by certain restrictions, such as no contact with the victim and no subsequent battery as a condition of release. When such restrictions are imposed, a violation can be used to justify incarceration before trial and can be a very valid marker for which cases require aggressive action. When properly administered and not abused, certain pretrial diversions—a cessation of battering and attendance at treatment programs—might accomplish the same result as actual conviction, with few costs to the system or to the victim. Ignoring the efficacy of such processing in favor of no-drop policies would seem to dissipate scarce resources unnecessarily.

Third, a long-term training program to sensitize court personnel and a commitment to fund a well-staffed advocacy program, with the ability to help victims to understand and navigate through the judicial process, might serve the purpose of reducing case attrition without imposing a no-drop policy. Simple measures might accomplish alignment of prosecution and victim goals. In this regard prosecutors should have the self-awareness that they were trained and are expected to act as aggressive advocates. Little in that training fosters the innate ability to handle social problems or even to be comfortable addressing victims’ feelings. This makes it difficult for them to speak to victims in a nurturing, rather than an overbearing, manner.

Fourth, relatively modest changes in the prosecution of cases, such as inviting victims to file complaints in informal and confidential settings at locations other than the prosecutor’s office (emergency rooms, female-run facilities, etc.), might start the process of committing the victim to prosecution. Similarly, prosecutor’s offices should, if needed, offer to provide victims with transportation to court, pay for childcare if necessary, and provide
private waiting rooms so no victim intimidation might occur prior to a proceeding. An approach that recognizes barriers to victim support of prosecution and actively seeks prosecution would demonstrate that the system does not prejudge her as being either hopeless or helpless but instead demonstrates a willingness to nurture and empower her.

Fifth, in cases in which an injury did occur and is documented by irrefutable electronic evidence or sworn statements of officers or other witnesses, the victim could be told to cooperate with the prosecution unless she appears in open court and explains on the record why she wants the charges to be dropped. Along with her testimony, the criminal history of the offender would greatly assist the court in determining the likelihood of intimidation compared with the victim’s genuine belief that the case does not warrant prosecution. This would help a court identify cases of victim intimidation and expose the reasons for the victim’s decisions. If adopted, this practice would address the fact that, in many cases, alleged victim noncooperation is more a function of the failure to communicate effectively with the victim. Having a mandated but informal appearance by a victim before allowing her to drop a case would make certain that cases were not being dropped because of miscommunications among the prosecutor, court, and victim, and it would give an opportunity for the victim to be heard in court. A sympathetic judge would then be able to explain if, in his or her opinion, continued prosecution could expand the victim’s interests without coercion.

Sixth, in large jurisdictions, specialized domestic violence units in prosecutors’ offices might provide more informed and efficient prosecution of cases. In most jurisdictions, younger, less-experienced prosecutors handle a variety of misdemeanor cases on an assembly line basis. A group of dedicated prosecutors with specialized training might allow for improved efficiency in operations, thereby enhancing conviction rates. Even in smaller jurisdictions, having a designated prosecutor handle all such cases could accomplish similar results. In either case, “vertical prosecution”—having one prosecutor handle a given case from intake to final disposition—greatly increases the likelihood of involvement of the prosecutor and victim. These programs do work when funded and staffed correctly. Jurisdictions with specialized domestic violence prosecution units generally have higher prosecution rates. A study of the San Diego’s City Attorney’s Office reported
a prosecution rate of 70% of cases brought by police, whereas in Omaha, Nebraska, the prosecution rate was 88% of all cases. In addition, dismissal rates dropped considerably in other jurisdictions, for example, from 79% to 29% in Everett, Washington, and from 47% to 14% in Klamath Falls, Oregon (Klein, 2008; Smith, Davis, Nickles, & Davies, 2001).

Seventh, there is persuasive evidence that increased contact of prosecutors with victims enhances the prospects of guilty verdicts dramatically, regardless of whether coercive policies toward victims are in place. In one study, Belknap et al. (1999) analyzed 2,670 case dispositions in a Midwestern court and reported that 44% resulted in a guilty verdict, 51% were dismissed, and 5% resulted in a not-guilty verdict. Not surprisingly, prosecutors blamed the victims for the high dismissal rate. They said it was because of the victims’ failure to appear in court.

Belknap and colleagues noted that, in reality, victims often were not responsible for poor case outcomes. In many instances, the victim was not even told of relevant court dates; in other cases, there seemed to be little positive feedback from the prosecutor to encourage victim cooperation. Belknap et al. (1999) reported that

> the best predictor of court outcome is how many times the prosecutor met with the victim. The more often the prosecutor met with the victim, the greater the likelihood that the defendant was found guilty, was fined more, and received a greater number of days sentenced to both probation and incarceration. (p. 9)

She also observed that victims were at times more afraid of the courts and the law than they were of the danger posed by the offender. As a result, her recommendation of making the court system more user-friendly for victims and with more informal contacts with prosecutors could reduce the concerns of the victim, making her more likely to voluntarily testify and enhance the probability of convictions without using any coercion. Other research also has emphasized that within the prosecutor’s office, the frequency and quality of meeting with victims and victim advocates within the prosecutors’ offices (or similar advocates) are critical to sustaining a victim’s desire to prosecute a
Eighth, no-drop policies have their place, but should be reserved on a case by case basis for repeat batterers, especially those who have either previously attacked the same victim or who have a chronic unrelated history of violence—“the generally violent” or “serial” batterers, a relatively small subset of offenders. Our growing knowledge base shows that they account for many, if not most, incidents and account for the vast bulk of serious injuries. Therefore, the test of a more limited policy might provide most of the societal benefits advanced in support of general no-drop policies while targeting limited resources toward those cases that clearly deserve the attention.

In contrast, those offenders who have the greatest likelihood to respond to more rehabilitative approaches would be rapidly diverted from the criminal justice system and, ideally, be given therapy and other resources needed to access these less-coercive services to achieve lasting change.

We believe these less-intrusive measures would accomplish the bulk of the intent of no-drop policies. After all, the basic reason for such policies has been the understanding that most cases are dropped at the victim’s request; yet it is functionally difficult to determine whether the victim does so of her own volition or as a result of intimidation or discouragement by rigid practices in the prosecutor’s office. Relatively minor reforms could accomplish the needed improvements.
Summary

This chapter began by discussing the reasons why victims might choose to prosecute offenders or, alternatively, their reasons for wanting charges dropped. In addition, preferences might change over time as the result of ongoing changes in the course of case processing or in the victim’s personal life.

Next, we reviewed changes in the prosecutorial response, including factors impacting their decision making. Clearly, the growing role of victim advocates has provided additional support for victims who choose to move forward with case prosecution. However, the goal of victim advocates who are part of the prosecutor’s office might be focused primarily on obtaining a conviction and only secondarily on following victim preferences—posing a potential problem if roles and missions aren’t aligned with victim needs.

Finally, we can observe that the implementation of no-drop polices by prosecutors has been met with mixed results. From an agency perspective, there might be practical reasons why this is difficult, including lacking the needed resources and the failure of victims to cooperate. From the victim’s perspective, she might determine that her interests are better served if she is allowed to drop charges. Perhaps the real question is whether victims’ preferences should be a factor in the decision-making process. We do know that if we mandate prosecution when victims fear for their safety or the safety of their children, then we have a responsibility to ensure their protection.
Discussion Questions

1. To what extent are victim decisions to move forward with case prosecution based on valid criteria? How can prosecutors determine whether their decision is motivated instead by fear?
2. From your own knowledge base, or what you have read, do most victims truly understand the future risks of staying with someone who has battered in the past?
3. Should prosecutors be able to prosecute cases without victim cooperation? If so, how? Should they force victims to testify and penalize those who refuse if the case merits aggressive prosecution? Can sufficient evidence be obtained to ensure victim cooperation is not needed?
4. Is it worth the financial cost to the agency, the victim, and the offender of prosecuting all cases of domestic violence? Can procedures be developed to handle growing caseloads without funding increases?
5. Is there an independent societal value in prosecuting all cases?
6. Is a no-drop policy worth implementing without a jurisdiction agreeing to increase resources to prosecutors’ offices?
7. What are the benefits and drawbacks for trying to target aggressive case prosecutions to those offenders judged to be most dangerous? Is this really feasible in real life?

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1There are serious constitutional issues if a prosecutor really is committed to evidence-based prosecution. For example, it was dealt a serious blow when the US Supreme Court in *Crawford vs Washington* (2004) refused to allow a police officer to make a testimonial statement as to what the victim told the officer at the scene of the incident when she was capable (but obviously refusing to testify). Since then, with increased ability to digitally record testimony or sign affidavits on the spot, such prior statements are admissible —however, if victims know this and do not want prosecution, many will decide not to make such statements.
9 The Role of Restraining Orders
Chapter Overview

Civil courts, where a party can seek private redress for wrongs committed against them, might be expected to be a key venue for victims of domestic violence. In fact, civil law approaches have been quite problematic for victims of such crimes until fairly recently.

This chapter will discuss the developing role civil courts play in responding to domestic assault by the issuance of orders seeking to prevent future violence. These orders can be called restraining orders, protective orders, injunctive decrees, or simply court orders. Although civil courts primarily litigate suits between private parties, the power to issue injunctive decrees prohibiting improper conduct has long been available. Actual court orders in the context of domestic assault were, however, infrequent until specific domestic violence statutes were passed. In fact, prior to the 1970s, women typically had to begin divorce proceedings even to be eligible for meaningful judicial relief.
The Role of Domestic Violence Restraining Orders

The primary use of civil courts has been the gradual growth in issuance of civil protective orders. Why has such a potent resource for victims not already assumed a primary role in the control of domestic violence? As we will explain, the reality is that the latent strength of such a proceeding often has been outweighed by the limitations imposed by the judiciary.

Historically, the power to issue injunctive orders was an action in equity considered ancillary, or secondary, to the court’s substantive power to decide matters of law and try issues of fact. Since the issuance of a protective order was not the court’s primary purpose, judges historically used injunctive orders only sparingly. They were primarily initiated at the request of a prosecutor or by claimants in civil court to limit otherwise uncontrollable threats. Restraining order use also was limited because, as with lawyers, judges and prosecutors tended to be process oriented. They were acutely aware of their limited authority to issue prior restraints on conduct and were aware of the danger of infringing on a respondent’s constitutional rights. As a result, courts routinely required high standards of proof that the respondent posed a threat to the complainant, often to the degree of “beyond a reasonable doubt.”

One of the recent significant innovations in judicial responses to domestic violence has been the widespread adoption of statutes and policies that specifically encourage granting injunctive orders in cases of domestic violence.

There is no substantive disagreement that such orders may be needed by many. In one study, 68% of women seeking a restraining order had been victimized by prior violence (Carlson, Harris, & Holden, 1999). Another study reported that more than 50% of women applying for restraining orders had already been injured prior to the incident that led to the issuance of the order (Harrell & Smith, 1996).

Nor is such prior violence likely to be for a single incident. One study reported that women filing for temporary restraining orders experienced an
average of 13 violent acts during the year before filing. Similar findings were reported in a different jurisdiction where approximately one third of women filing for such orders were assaulted at least 10 times in the 3 months before filing (Johnson & Elliott, 1997).
The Process of Obtaining Protective Orders

Protective orders differ from a criminal prosecution in that they are usually heard in general-purpose or family courts and rely on the civil powers of the court or a specialized family court’s authority to resolve marital and familial matters. Because the issuance of a restraining order is not typically a criminal case, civil rules of procedure and evidence apply. Civil restraining orders were largely developed as a technique by advocates of battered women to circumvent the former reluctance of police, prosecutors, and criminal courts to handle domestic violence cases properly.

These proceedings are explicitly designed to prevent future unlawful conduct rather than to punish past criminal behavior. Hence, in most states, the evidentiary standard is preponderance of the evidence rather than the more rigorous criminal standard of beyond a reasonable doubt.

Courts typically attempt representation of both parties at a hearing prior to issuance of any permanent or even most preliminary injunctions. If the matter is urgent, however, such as the threat of immediate violence, most courts now will authorize ex parte orders effective for a short time without the alleged offender being present or even represented by counsel, or even at times, without formal notice (hence, “ex parte”). Such orders of a short duration often are called temporary restraining orders (TROs). In addition, although not directly related to their customary mission, several jurisdictions have given criminal courts the ancillary power to issue permanent and preliminary injunctions as well as TROs apart from an ongoing criminal case. For example, as early as 1977, New York State gave both criminal and county civil courts concurrent jurisdiction over domestic violence with equal powers to issue TROs and permanent injunctions. This enhanced the ability of criminal courts to intervene. Violation in the context of future domestic violence against the terms of a restraining order is now punishable not only by a contempt of court finding, but also may constitute independent grounds for justifying, or in many states mandating, a warrantless arrest. In Massachusetts, a fairly typical state in this regard, violation of a civil order is itself a misdemeanor punishable by incarceration for up to 30 months in the County House of Corrections. In other states, violation remains punishable by
contempt of court, the traditional mechanism for enforcement. This process might be slow and cumbersome, but it does allow for severe punishment.

Several types of domestic violence–related protective orders have become common. In addition to general civil protection orders or TROs, which have been specifically adopted for domestic violence cases in all states and the District of Columbia, most states have enacted protection orders ancillary to a divorce or other marital proceedings. Although specific statutes vary, divorce-related orders require evidence of the likelihood of improper conduct before issuing an order, typically for past physical abuse to the plaintiff-divorcee or their children. The broad scope of marital orders parallels that of the generalized protective order statutes. In addition, because these are coupled with interim custody and support orders, their immediate impact can be considerable.
The Explosive Growth of Restraining Orders

Beginning with Pennsylvania in 1976, all 50 states and the District of Columbia had enacted laws providing victims of domestic violence direct access to courts via protective orders by the early 1990s (Keilitz, 1994).

Passage of VAWA in 1994 emphasized the need for courts to grant such orders and for the criminal justice system to enforce them. Pursuant to VAWA, the FBI now operates a national registry for restraining orders as part of its National Crime Information Center (NCIC). FBI official data show that between 600,000 and 700,000 permanent orders are entered annually. This number substantially understates the actual number of restraining orders since some states do not participate in the NCIC registry, and many others have incomplete coverage. Furthermore, temporary orders of protection are not counted. Although some might be superseded by a permanent order, some of them are simply not counted (Miller, 2005). Sorenson and Shen (2005) estimate that there are more than 1 million such orders granted nationally.

Because of several key limitations, the initial somewhat narrow statutes that allowed domestic violence restraining orders have been amended continually, leaving a patchwork of statutes with very inconsistent provisions and limitations. Protective orders in any particular case might therefore be easy to obtain or, alternatively, their availability may be greatly limited by statute or by arcane and often unpublished court administrative rules. Such restrictions are constantly in flux as statutes and administrative policies are revised. As a result, Neal Miller reported in December 2005 that an incredible complexity of differing statutory schemes remained for protective orders. In any given year, many states amend these statutes, typically to remove procedural roadblocks. For example, after VAWA was reauthorized in 2000, 36 states added dating violence (removing restrictions requiring a marriage). Still, widespread inconsistencies remain among states as well as notable coverage gaps.

A list of some representative restrictions is useful, however:

- Lifestyle factors of the victim and offender often curtail the ability of
granting an order. Several states do not allow orders to be issued to former spouses; some do not allow orders to be issued to people who have never been formally married, even if they are intimates; and some limit applicability in same-sex relationships unless that state recognizes gay marriage.

- Administrative limitations have been placed on the type of past conduct that might justify a restraining order. Some require proof of actual physical abuse and refuse to grant protective orders in cases of “mere threats” or intimidation.
- Limitations have been administratively placed on ex parte TROs—arguably the most important form of protective order given the strong potential for immediate violence. These continue to reflect the judiciary’s ambivalence toward using what they consider an extraordinary remedy.
- Numerous procedural limitations exist in many states, including filing fees (which might be waived) or an inability of a victim to obtain an emergency order at nighttime or on weekends—precisely the time when she is most at risk.

Recent studies suggest that the use of restraining orders also varies considerably among different jurisdictions. One study published in 2006 reviewed statutes allowing restraining orders in all jurisdictions within the United States (DeJong & Burgess-Proctor, 2006). The purpose of the study was to determine what statutory rights were provided for victims, and then the authors rated the progressiveness of the statutory provisions. Factors included whether

- orders from other jurisdictions given full faith and credit were actually required by VAWA;
- weapon restrictions explicitly stated as part of the initial restraining order prohibited the purchase and possession of a firearm by persons under a domestic violence restraining order;
- the statute prohibited mutual restraining orders without seeking to determine whether both parties posed potential risks to the other;
- the statute was broad enough to allow for same-sex and dating relationships (now a substantial majority) as opposed to simply orders between married parties;
• there were provisions for waiving filing fees as well as a provision for filing assistance if needed;
• a victim could file for a restraining order independent of filing criminal charges;
• the address of the complainant would be kept confidential;
• violation of a restraining order would be considered to be a felony or merely another misdemeanor; and
• there were provisions for treatment or mandatory counseling as part of the order.

DeJong and Burgess-Proctor (2006) reported that although most states were compliant with VAWA, there was tremendous variation in their orders. Specifically, some states were “victim friendly.” In these states, statutes contained most of the provisions listed. Overall, they found that Midwestern and northeast states were the most compliant. Not surprisingly, the southeastern states had the lowest level compliance, which the researchers attributed to more conservative attitudes.

In another example, despite VAWA, fewer than half of the states enacted legislation prohibiting firearms purchase and possession while under a restraining order (Vigdor & Mercy, 2003, 2006), whereas 13 states did not automate their restraining order database to provide access for background checks for purchases of firearms and ammunition (Sorenson & Shen, 2005).

One key area did show dramatic change. As of late 2006, at least 35 states and territories made enforcement of restraining orders mandatory on the part of law enforcement as compared with only 13 that made enforcement discretionary. This trend toward mandatory enforcement has increased sharply in recent years as restraining order statutes are amended to enact tougher penalties.
The Early Use of Restraining Orders: The Massachusetts Experience

One study confirmed that restraining orders were not widely enforced in the state of Massachusetts at least through the late 1990s. Kane (1999) reported the effects of breaking the terms of restraining orders in two Boston police precincts. His report was unequivocal: The violation of a restraining order by itself did not automatically lead to an arrest despite its requirements under Massachusetts’s law (Kane, 1999).

Since the late 1990s, the number of restraining orders has basically remained the same despite reports of a growing problem of domestic violence in the community: 45,000 in 1996 (Commonwealth of Massachusetts, Executive Department, 1997) and 35,000 in 2000 (Massachusetts Office of the Department of Probation, 2001). Despite numerous revisions to the domestic violence statute and practices statewide that were expected to increase the ability for victims to obtain restraining orders, there has been no real increase in the number that were issued over a 12-year period: 46,931 in 2011; 46,141 in 2012; and 44,153 in 2013.

Why? Several reasons are possible. Judicial decisions do not tend to be as structured as we might wish (Ballou et al., 2007). Ballou and colleagues examined the 70% of the initial TROs that ultimately resulted in a continuance hearing, which is a hearing where both parties are represented as part of the process for seeking to obtain a permanent restraining order. They found that judicial decision making was abbreviated, with the judge’s short behavioral observations of the petitioners and the respondents weighing heavily. Unfortunately, the researchers were led to conclude that such observations might be relatively weak indicators of actual credibility as many victims of domestic violence were highly traumatized before the hearing. They might seem to the judge to be overwrought and, perhaps, even irrational. The perpetrator, in contrast, might seem to be calm and controlled during the court proceeding (Ballou et al., 2007).

Not surprisingly, the judges’ reliance on behaviors and attitudes of the
involved parties can introduce substantial room for error and the ultimate possibility of inaccurate decision making. Several judges who have extensive experience in family and probate courts noted that their caseload necessitated quick decisions regarding restraining orders, often within 5 to 15 minutes. They were concerned that their lack of information and “a misleading surface presentation of victim and/or abuser, or by one party’s lack of legal representation” might lead to wrong decisions (Ballou et al., 2007, p. 274).

Some courts, even quite recently, do not understand that violation of restraining orders should be treated seriously as required by statutes.

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A Michigan woman who complained that her husband violated a protective order against her was ordered to be handcuffed to him by the judge who is handling the couple’s divorce.

When Sabrena and Kirk Smith’s stories contradicted each other during a Jan. 25 hearing, Muskegon County Judge Gregory Pittman ordered them to be shackled to a holding cell bench “until somebody decides that they’re going to not lie to the court,” The Associated Press reported.

The two weren’t released until Sabrena Smith dropped her complaint. Sabrena Smith said she had been telling the truth and only withdrew to be released from jail.

Her attorney, Jenny McNeill, said she “didn’t see any other way to get her out of there.”

The judge said he was sure neither spouse posed a threat to the other or he wouldn’t have issued the order.

“In hindsight, I probably wouldn’t do it again,” Pittman said, “but in no way would I ever put a person who has been assaulted in that situation.”

Sabrena Smith plans to file a grievance against Pittman and seek a new judge. She said she didn’t feel endangered while she was cuffed to her husband, “just angry.”

Kirk Smith’s lawyer, Harold Closz, said the judge’s handcuffing order was “unusual,” but not necessarily inappropriate.

Potential Advantages of Protective Orders

Civil protective orders have the clear potential to assume a central role in society’s response to domestic violence as these give courts have far wider discretion to fashion injunctive relief, unlike sentencing guidelines that are typically imposed upon judges in criminal proceedings. Most states expressly provide judges the authority to grant any relief deemed appropriate. After all, protective orders give the judicial system an opportunity for prospective intervention to prevent likely abuse. This avoids the necessity of requiring proof of past criminal conduct beyond a reasonable doubt. This is particularly useful for cases in which threats, intimidation, or prior misdemeanor activity may suggest that the potential for serious abuse is high, yet the serious violence is only threatened. Hence, protective orders might be the best and, at times, the only timely remedy to prevent abuse from escalating by intervention before an actual assault. This, plus the existence of flexible terms, has the potential for far better intervention strategies than the blunt instrument of criminal law.

Courts now typically issue protective orders with provisions that include the following:

- Vacating a home, even if owned only in the name of the restrained party
- Prohibiting continued contact with the victim either in person, by telephone, or through the mail
- Mandating the offender enter counseling
- Limiting visitation rights to minor children
- Allowing the victim the exclusive use of certain personal property, such as a car, regardless of title
- Preventing stalking at or near work, school, or frequent shopping areas

This list should not be viewed as exhaustive in that the court’s equity power to fashion suitable relief is very broad. To accomplish this, a court might restrain any type of improper conduct and is not limited to granting any particular remedy. Instead, the provisions of an order are meant to be tailor-made for the specific situation.
Because violation of an order is now a criminal offense in all states, the existence of the order itself provides a potent mechanism for police to stop abuse—that is, the right to arrest and subsequently convict for violation of its terms. When made aware of a no-contact order, a well-trained officer can easily prove a prima facie case of its violation (usually just making contact) compared with the more difficult task of determining probable cause of commission of a crime. As discussed, federal and state initiatives now mandate that police departments keep records of such orders so that an officer can retrieve the information from a dispatcher or by computer at the same time the suspect is checked for warrants. Nevertheless, for many years our own research found that many officers simply had no idea whether such an order existed.

At least until the *Gonzales v. City of Castle Rock* (2005) decision that we will discuss later, when the police respond to a protective order, they might have been inclined to take action if only to limit potential liability. Otherwise, the victim’s counsel might later present such an order to establish that an officer failed to “carry out required duties in protecting the victim or her children.” Although as we will see this doctrine has been cut back by recent court cases, in the eyes of the officer, breach of the duty owed to victims might make the officer and the police department potentially liable if an injury occurs if a legitimate order is not enforced. Even if legal liability does not occur, as under *Gonzales*, the officer’s actions might be second guessed and judged a failure by his or her police superiors as well as at times by the press or politicians, thereby embarrassing the department.

There is substantial evidence that the existence of restraining orders does affect the interaction between the police and the citizenry. In one study over a 4-year period, victims who obtained restraining orders were matched with a similar group that did not. Having a restraining order in place was clearly associated with more victim calls to the police for non-assaultive incidents and more police charging requests that were made for multiple counts and felony-level arrests. As such, it is clear that the police intervention was at an earlier stage prior to physical harm to the victim and that the police took appropriate enforcement actions as opposed to simply passively ordering an abuser to leave the premises (Kothari et al, 2012).
Furthermore, the victims with restraining orders appeared to have more serious domestic violence problems as their prior history of victimization was more than double that of the matched group without restraining orders, but dropped to the level of the matched group after the orders. As such, the authors concluded that “the study confirmed the protective effect of PO which are associated with reduced police incidents and emergency department visits both during and after the order.”

Fifth, obtaining a protective order from a court might have the effect of empowering the victim. Specifically, an order will usually give the victim unfettered control over the home and other essential assets. Knowledge that the local police can enforce such an order should make the victim more secure and most offenders less likely to reoffend. Such empowerment might be dramatic in that the victim, if assisted by a knowledgeable advocate, has the potential for far more control of the proceedings than in a prosecution. After obtaining a protective order, she can overcome indifference or even active hostility among prosecution and court personnel. She also can retain more control by using or withholding the injunction or, paradoxically, choosing whether to alert police of a violation. Although it might seem to be illogical to obtain and then not actually use an injunction in a state that has adopted mandatory arrest and prosecution policies, this might be the only method for the victim to prevent the system from inexorably gaining unwanted control.

Figure 9.1 Event Rates by Protective Order Status and Time Period
Sixth, in many dimensions, civil protective orders incur far fewer victim costs than criminal prosecution. Specifically, the mere issuance of a protective order does not jeopardize the job of an offender as might arrest, conviction, or even possible incarceration. Although this might not seem important to an outsider, incarceration often interferes with alimony or child-care payments. Hearings themselves are far less likely to require a significant time commitment from the victim than a full-blown trial.

For example, VAWA now requires there be restrictions on access to a firearm as part of the terms of a protective order. Fear of offender retaliation also should significantly lessen in that harm from violating a protective order is prospective in nature. The victim might constantly remind the offender of what could happen if he violates the order rather than angrily remembering a punishment that has already been inflicted.

Seventh, divorce-related injunctive orders play a unique role. Counselors familiar with obtaining injunctive orders typically represent divorcing women. Family court or domestic relations judges and court personnel also are frequently knowledgeable about the scope of, and protection against,
domestic violence. Even in no-fault divorce states, family court judges make property allocations in the absence of the parties’ agreement and decide contested custody cases. Under such circumstances, obtaining a protective order might deter future contact, thereby modifying the offender’s previously uncontrollable behavior.

Eighth, civil relief can be far timelier than in criminal cases. Because civil protective orders are meant to deter future abuse rather than to sanction past criminal activities, there are far fewer delays from the time relief is sought until granted. In a civil court, a preliminary hearing can usually be scheduled within 1 to 2 days after the complaint is filed. In contrast, criminal hearings often are delayed excessively because of failure to serve the defendant, an overwhelmingly crowded court docket, or continuances—often at the behest of the defendant whose attorney uses delaying tactics. Even in some progressive courts committed to handling domestic violence cases aggressively, the average period of delay between case intakes to disposition can stretch from 6 to 8 months.

Ninth, protective orders can be useful if criminal case prosecution would be problematic. Examples include situations where the evidence of actual assault is unclear, if the victim would be a poor or reluctant witness, or when, because of alcoholism or drug abuse, she might be unable to get a conviction (Finn & Colson, 1990). Frankly, although we believe the needs of the criminal justice system should take a distant second place to those of the victim, the reality is that overloaded dockets might cause less serious or more problematic cases to be dropped unless aggressively pushed by a victim or her advocate. In these cases, protective orders might be the most realistic protection for victims, however imperfect.
Why Protective Orders Are Not Always Granted

Despite statutory provisions to use protective orders in domestic violence cases, several factors have limited their widespread use. At first, the primary obstacle was that the actual issuance of an order relied on judicial discretion, and use of this discretionary power was problematic at best. For reasons discussed earlier, many judges were reluctant to issue decrees. Although the legislative intent might be to grant such orders freely when needed, courts never issued orders as a matter of course, and judges often required past commission of serious domestic violence before issuing an order even when not expressly required by statute. Such reticence is naturally increased when an ex parte order is considered and a respondent’s constitutionally protected liberty and property rights are being curtailed without effective due process.

In fact, the primary legal critique has been that they deprived defendants of constitutional rights. For example, although the reference is dated, judicial concerns were clear in the following passage where, in 1985, the administrative judge of the New York City Family Court circulated this memorandum to all family court judges in New York City (Golden, 1987):

The propriety of issuing such an order without... notice to petitioners raises I believe due process questions because this practice denies petitioners timely notice of respondent’s allegations and an opportunity to prepare an adequate defense.... Although this issue is certainly within the discretion of each judge, I urge that you discuss the above... [to] be aware of the consequences of their issuing... orders of protection. (p. 324)

Constitutional arguments were at first aired in a series of US Supreme Court cases wherein ex parte prejudgment orders were contested as unfairly restricting a person’s due process rights. Without exploring the constitutional issue in depth, the US Supreme Court has long mandated that ex parte actions must balance private rights being abridged with the governmental reasons for action, the intrinsic fairness of the existing proceedings, and the probable
value of providing additional safeguards (Mathews v. Eldridge, 1976, citing Fuentes v. Shevin, 1972; Mitchell v. W. T. Grant, 1974). Despite being allowed, constitutional difficulties have persisted or requests for relief were significantly curtailed (Solender, 1998). Such judicial restrictions often are the result of overly zealous interpretations of procedural requirements made especially difficult for inexperienced advocates (Zorza & Klemperer, 1999).

The importance of this is that when the courts significantly cut back requested relief, effective protection for victims often is dramatically curtailed. For example, a no-contact order is nearly universally requested, because its violation is far easier to prove, and contact typically precedes active harassment or violence. Early reports found that almost 50% of victims requesting such actions were refused. Similarly, depending on location, requested financial support was denied for 40% to 88% of the requesters. This might be crucial for many economically dependent women (Gondolf, McWilliams, Hart, & Stuehling, 1994).

In short, although the application of these laws might be upheld when taken to an appellate or supreme court, this has little practical relevance for most victims. They might confront a hostile judge who knows that a denial of a preliminary injunction or a TRO is unlikely to ever be appealed. Under such circumstances, some judges have ignored the availability of TROs—at least in the past.

Another difficulty is that, at least in the United States, the process of obtaining an injunctive order must be both initiated and pursued by the victim unlike England and Wales. Despite often being handicapped by a posttraumatic stress reaction and the necessity to take legal action against a spouse, she also might face seemingly arcane procedural requirements and indifference—or sometimes even hostility—of court personnel or the judiciary. Victims also often hesitate to file restraining orders because of fear of retaliation by the defendant, fear of disbelief, and even fear of unfamiliar and unfriendly courtroom rituals (Ptacek, 1999).

As we noted earlier, to be truly effective and enforced, police departments must obtain copies or at least have a readily available reliable source of the terms of the order. Although the victim might receive a copy, it might not be readily available and the police might legitimately worry that they are
exceeding terms of the order or that it might have expired, thereby exposing them to charges of false arrest. For this reason, best practices should require court clerks to notify relevant police departments and include the information in appropriate databases. In fact, such computerized databases typically exist, but they might not be available or kept current because many police departments suffer from budgetary pressures. Further, many jurisdictions are in states that do not maintain or connect to a regional or statewide data base and are limited to their local community. Significant information gaps still exist as a result of these systemic failures. Although the VAWA Reauthorization Act of 2000 began to assess and improve such systems, truly effective databases are still not universal 15 years later.

In addition, some jurisdictions have adopted practices that informally limit issuing protective orders, in favor of older, less effective intervention techniques. For example one author recently noted that in the many Texas counties, protective orders weren’t routinely issued even though they were fully provided for in statutes. Instead, the courts relied on adding special conditions to the granting of a bond (or bail) in a criminal proceeding involving domestic abuse. Such bond conditions are very discretionary with the issuing judge, and hence provide little guidance to police officers. More importantly, to enforce these against an abuser that is reoffending, a subsequent hearing has to be conducted—as opposed to simply enforcing the protective order. Therefore the responding officer is unable to make an immediate arrest for violating the bond. Finally, one of the key effects of issuing long-term protective orders is that the hearing, by bringing the judge’s power to bear, often can reset power relationships, deterring future abuse. Establishing a bond condition, in what typically is a pro forma court appearance without even the necessity of the victim appearing, cannot accomplish this result. (Pierce & Quillen, 2013).
Are Restraining Orders Denied to Many Groups of Domestic Violence Victims?

There is significant evidence that the use of restraining orders is not evenly applied to all victims.

Men

*The Journal of Family Violence* published the results of one small-scale study of the issuance of restraining orders in a rural court in Massachusetts (Basile, 2005). The study found that injury rates for men applying for restraining orders were approximately equal to the injury rates for women (58% and 67%, respectively). Nevertheless, male victims were granted a far lower percentage of restraining orders. Basile believed the numbers of men seeking such orders were themselves suppressed because of expectations of not being adequately served by the court system. The most significant difference was in the awards of custody. As cited by many fathers’ advocates, female plaintiffs were far more likely to be granted custody of children regardless of allegations of female abuse. Male plaintiffs only received a custody award 8% of the time compared with 31% of women. They also were approximately one third less likely to have the judge order the surrender of firearms. The author posited that his study demonstrated that courts were not immune to social norms and that, despite the gender-neutral language of the statute, they would exhibit different tendencies when responding to male compared with female requests for protection:

The present study finds that in this one court setting, male victims of domestic violence were not afforded the same protections as their female counterparts. This inequality in court response occurred even though male and female plaintiffs were similarly victimized by their opposite-gender defendants....

Of particular concern is an inequity in custody awards of minor children. None of the males in the study population were able to
secure custody of their minor children for more than a few days.
(Basile, 2005, p. 178)

The findings in Basile’s study in Gardner, Massachusetts, were reinforced by a more comprehensive study in Sacramento, California. Although there were no systematic differences in level of violence as a function of plaintiff sex, judges were almost 13 times more likely to grant a TRO requested by a female plaintiff against her male intimate partner, than a TRO requested by a male plaintiff against his female partner. Further analyses revealed that this sex differentiation was limited to cases involving allegations of low-level and moderate violence (Muller, Desmarais, & Hamel, 2009). However, these acts are the majority of cases suggesting that men do not realistically have the same opportunity to obtain a protective order as women.

The reason for the discrepancy may be ideological and domestic violence is seen as a problem for women confronting violent men. It may also be due to the fact that in both jurisdictions, issuance of a temporary restraining order almost automatically includes temporary custody of dependent children. For a variety of reasons, both valid and invalid, judges are unwilling to grant child custody to men based upon claims asserted in a temporary restraining order.

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England and Wales are known to have major problems with domestic violence. Latest estimates indicate that 29% of women and 16% of men have been victimized (official data form the Home Office, London, 2010). While in the United States a victim typically has a choice of going to a civil court where they can select an attorney but at their own cost and have easy access to restraining orders, criminal courts in many jurisdictions will not issue such orders and prosecutors represent the state’s interest, not that of the victim. Thus while the representation may be at no cost to the victim, he or she is merely a witness, not a party. In Britain, they have reacted to this by developing Specialized Domestic Violence Courts (SDVC), with approximately 143 active as of the end of 2010 (Bettison, 2012). These courts have a fast track and give the victim specialized access to both criminal prosecutions and civil protective orders called non-molestation orders. Breach of these orders is an arrestable offense with a 5-year maximum sentence. While the prosecutor does work for the crown, victims typically receive assistance from Independent Domestic Violence Advocates (IDVA). These advocates appear to be extremely effective. When used, the conviction rates are approximately 73% according to a 2010–2011 survey (Bettinson, 2012).

In addition, the relevant statute—the Domestic Violence Crime and Victims Act of 2004—was changed so that in 2009 prosecutors and judges had unprecedented ability to apply for
restraining orders even absent action or concurrence of the victim. The prosecutor is allowed to apply for a restraining order upon conviction of any offense. The courts are given even more power. Judges are allowed to impose non-molestation orders even if the target is acquitted of all offenses if the court considers it necessary to protect any person. The protected person could be the victim or could be anyone else—notably including minor children. The only requirement is that the court must identify the factual basis and legal reasoning for the order to allow the offender the constitutional right to appeal such an order. Such action takes pressure away from the victim to start an independent motion for a protective order and in fact encourages prosecutors and courts to take the initiative in seeking such orders. Since noncompliance with the order can be punishable by up to 5 years of imprisonment, this is a significant change.

Divorce-Related Orders

Similarly, divorce-specific protective orders have not been effectively used to prevent violence. By their inherent nature, marital orders are limited to cases involving formal marriage, not alternative lifestyles, where domestic violence statistically is more apt to occur. Even in marriages, some courts continue to require an aggrieved spouse to initiate divorce proceedings to retain jurisdiction. In addition, the entire no-fault divorce movement and the pressure of high caseloads encourage court personnel and the judiciary to try to limit clearly adversarial actions. Finally, despite lack of any empirical evidence, some of the judiciary (along with many divorce attorneys representing men in divorce cases) has expressed concern that women in a divorce might be motivated to allege domestic violence falsely in an attempt to influence custody or property allocation. Because of such fears, divorce-related restraining orders often are not immediately granted or are granted ex parte for only a very short period. Although these limits might be legally and even practically justifiable, this does set significant roadblocks to their use.

Rural Victims

It has been noted that overall rates of domestic violence both in rural and urban areas, with actual rates of homicide greater in rate and increasing in rural areas while remaining the same in rural locations. One study noted that, while they believed restraining orders were effective and were a low cost deterrent to future violence, rural victims actually had a greater need for
restraining orders as they had fewer community resources or alternative support such as shelters to help them. For them, obtaining restraining orders might be the only potentially effective intervention available. Despite this dependence, the study noted that rural victims encountered more days of distress and fear even after they obtaining a protective order than women in an urban area in the same state (Kentucky; Logan & Walker, 2011).

The key factor appeared to be that a far higher percentage of urban offenders under restraining orders were arrested as compared to those in rural areas. They noted that in the urban area, 56% of the offenders who violated their protective order received a specific domestic violence charge noted on their court records compared to only 6% of rural offenders during a 6-month follow-up period. At least in this state at that time, it appeared that the protective order system was basically not being coordinated with rural police rendering it nearly meaningless to a desperately underserved population of victims.

**Immigrants**

It has been noted recently that US Immigration Customs and Enforcement (ICE) officers have found court hearings to be located where they can easily find undocumented immigrants subject to deportation orders. The New York Times on May 27, 2014 reported that immigration agents regularly attend hearings and enforce deportation orders upon participants. The ACLU noted dozens of cases in 2013 including cases where the detained person was a victim seeking a restraining order. Most recently, ICE agreed to modify its practices to only act against those that pose serious risks to the community. However, it is unlikely that many immigrants will be aware of this shift in policy (New York Times, May 27, 2014, p. A16).

The following news report from Channel 4, KNBC TV, Los Angeles, which aired on July 22, 2006, suggests why immigrants may not always seek restraining orders:

A judge who threatened deportation to Mexico for an illegal immigrant seeking a restraining order against her husband has been dropped from the roster of part-time judges used by the Los Angeles County Superior Court.

Judge Pro Tem Bruce R. Fink, a family law attorney from Orange, was removed from the
list of about 1,200 attorneys who are used as substitute judges for the county court
spokesman Allan Parachini said Friday.

“A lot of people run from controversy,” Fink said. “It doesn’t bother me. Remember, I was
doing this as a volunteer.”

During the July 14 hearing in Pomona, Fink asked Aurora Gonzalez if she was an illegal
immigrant.

Gonzalez, who accused her husband of verbal abuse and threatening to report her to
immigration authorities, acknowledged being in the country illegally.

“I hate the immigration laws that we have, but I think the bailiff could take you to the
immigration services and send you to Mexico,” the judge responded, according to a court
transcript. “Is that what you guys want?”

Fink later warned Gonzalez that he was going to count to 20 and expected her to disappear
by the time he was finished.

“One, two, three, four, five, six. When I get to 20, she gets arrested and goes to Mexico,”
Fink said, according to the transcript.

Gonzalez left the courtroom and Fink dismissed the case.

She moved into a domestic violence shelter last month, and could not be reached for
comment.

Gonzalez has since resubmitted her request for a restraining order and had it granted,
Parachini said.

Experts said that Fink as a state judge had no authority to order an arrest for violation of a
federal immigration law.

“I did not want this woman deported,” Fink said. “Now I understand that the court does not
get involved in immigration status as long as it is not thrust upon it.”

Source: Reprinted with permission of the Los Angeles Times,
http://articles.latimes.com/2006/jul/22/ local/me-judge22
The Limitations of Protective Orders
Should Violations of Restraining Orders Be Judged by Criminal Courts?

Criminalizing the violation of a civil protective order, if enforced, would act to protect the victim by providing a relatively easy method to arrest an offender that is unable to control conduct demanded by a court. Since this is a criminal matter, the victim would not need to hire a lawyer or have that lawyer fight a crowded civil court docket to obtain enforcement. However, her individual needs might be overlooked because of an increasing trend toward retribution inherent in the criminal process. In many cases, although the victim has a restraining order, she might not want the order enforced because the violation might be technical, or she might have reason to believe that she or her children are not at risk. She might even be in the process of seeking its termination. These factors could worsen in certain populations such as illegal immigrants or those seeking citizenship where a conviction might threaten automatic deportation. Mandatory arrest during breach of a restraining order might thereby limit her autonomy, much the same way that mandatory arrest has been believed to limit the victim’s ability to determine the outcome (Hitchings, 2005). Conversely, prosecutorial discretion and the existence of ever-increasing criminal caseloads might simply mean that the victim really has no advocate in the system that will ensure priority for the enforcement of a breached order.

Since most courts of limited jurisdiction within a state are created by statutory authority (such as domestic violence courts), perhaps the best outcome would be to allow enforcement of a restraining order to be judged by either criminal courts or a civil judge in the jurisdiction where the court order was actually initiated. This would allow states to continue criminalizing the violation of a protective order, but add the possibility that an advocate for a battered woman has the additional recourse of seeking redress through a battered woman’s advocate or her own personal counsel. In stating this, we recognize that statutes would have to be changed, probably in the context of granting enhanced powers to civil judges to allow for arrest and remand for contempt of court. This power could, of course, be limited in duration if the state reasonably thought that it wanted heavier sanctions imposed by criminal
court judges.
The California Case

Because of VAWA, most states now have started to compile comprehensive records of restraining orders issued. One detailed survey of the use of such restraining orders was conducted in the state of California. Researchers at the UCLA School of Public Health worked with the California Department of Justice and the California Wellness Foundation to develop and publish a comprehensive data set. This data set is a statewide restraining order system that became operational in 1991. Known as the Domestic Violence Restraining Order System (DVROS), it now includes additional types of restraints including prohibition from possession of a firearm. It is a central repository for restraining order information that allows rapid retrieval by law enforcement agencies and prevents easy access to the Department of Justice to prevent legal purchases. It can be accessed by law enforcement officers through a 24/7 telecommunications system to assist them in determining whether a person of inquiry might be the subject of a restraining order. The system is supposed to be updated by law enforcement and criminal justice agencies in real time. Since December 1999, DVROS has been linked to the NCIC for national files when the background check is conducted for the purchase of a firearm.

The primary weakness in the system is that in most counties, the protected person must deliver the information to a law enforcement agency that will enter the information into DVROS, whereas the preferred practice, used in some counties, is for the courts to take a more proactive approach, and remit the information in real time to the police. In three other counties, the courts enter the data in DVORS themselves. As a snapshot in time, they found that there were 227,941 active restraining orders against adults in California as of June 6, 2003. This figure is actually greater than the number of marriages recorded in the state in a 1-year period and the 80,000–87,000 new orders annually represent approximately 8% of the roughly 1 million total restraining orders issued in the United States. As expected, most of these were for domestic violence (Sorenson & Shen, 2005).

Figures 9.2 and 9.3 show that rates for restraining orders were highest for African Americans and for 24- to 35-year-olds.
As Figure 9.2 illustrates, there is an extraordinarily high use of restraining orders against Black men between 18 and 54 years of age, which far dwarfs their actual percentage of the general population. This figure, of course, is partially a reflection of the higher rate of domestic violence among African Americans, as cited in Chapter 3. However, it might be that the disparity is partially a reflection of the higher willingness of African American victims to seek court assistance, or for African American offenders to have orders entered against them. Furthermore, it is certainly possible that the relatively lower rates of reporting among Hispanic Americans might be a result of concern over immigration status.

Figure 9.3 demonstrates that far fewer restraining orders are entered against women, typically in a proportion of approximately a quarter the rate of their demographic male equivalents.

The DVROS file contains information about the restraining order, the person protected, and of course, the person restrained. Although there are no data as to the reason for the restraining order (which might be a best practice if such information categorized properly), it does include identifying characteristics of the restrained person, including sex, date of birth, race, ethnicity, fingerprints, hair color, and body marks. Thus, it is precisely tailored for law enforcement, if not for subsequent research. As noted by Sorenson and Shen (2005), possible enhancements would include nature and length of the relationship, number of times and time period of violence, injuries sustained, and whether children were harmed or witnessed the violence. Most restraining orders had a fairly rapid expiration period. Almost half (48%) of the orders expired within 18 months, and approximately 3% of the orders were permanent for the lifetime of the party.

Figure 9.2 Restraining Orders per 100,000 Men in California, by Age Group and Ethnicity
Figure 9.3 Restraining Orders per 100,000 Women in California, by Age Group and Ethnicity

Source: Sorenson and Shen, 2005.

Source: Sorenson and Shen, 2005.
Restrained persons were, on average, 35 years old, and most (63%) were ethnic minorities. Eighty-four percent of those restrained were men and 16% were women. That figure is broken down even more as follows: Seventy-two percent of the restraining orders involved a restrained man and protected woman, 19% were same sex (11% male on male, and 8% female on female), and 8.5% were for a restrained woman and a protected man (Sorenson & Shen, 2005).

It was somewhat unusual that half of all restraining orders were issued in criminal courts as an ancillary order to a criminal proceeding, with Blacks and Hispanics far more likely to be involved in criminal proceedings (57% and 55%, respectively), compared with 45% for Asians, 42% for American Indians, and 40% for Whites. Data in other states do not suggest such a high preponderance of restraining orders issued in active criminal cases.
North Carolina

North Carolina’s Homicide Prevention Act suggested the role of restraining orders was not highly significant. The Act was designed to prevent people with protective orders from owning or possessing firearms or ammunition and required them to surrender all firearms, ammunition, and firearms purchase permits to their local sheriff within 24 hours of receipt of the order. The study found that fewer than half of the plaintiffs seeking a restraining order were asked by the judge about the defendant having access to a firearm. This proportion did not change after enactment of the Homicide Prevention Act even though this legislation required “that the court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant” (cited in Moracco, Clark, Espersen, & Bowling, 2006, pp. 51–52). The only impact was that the courts far more frequently checked firearms restrictions as part of the restraining order.

It is certainly possible that the lack of enforcement of restraining order prohibitions on firearms is an artifact of the court’s collective unwillingness to confiscate firearms. Even in California, which has a far more aggressive use of restraining orders, Sorenson and Shen (2005) reported that fewer than half of the restrained parties were provided with information on their possession of firearms and ammunition. In fact, one tenth did not receive firearm restrictions at all (Sorenson & Shen, 2005).

Within states, there is also tremendous variation among jurisdictions. For example, Logan, Shannon, and Walker (2005) reported that even in the same state, Kentucky, there was considerable variation, both in eligibility criteria and in procedural difficulty, in obtaining restraining orders. They reviewed three rural counties and compared them with an urban county, including data from state police, court dockets, key informants, and qualitative data from abused women. Although the statute demanded that law enforcement and the courts have a “fair, consistent, and accessible” process to victims needing restraining orders, the actual process of obtaining these orders depended greatly on the community. They reported that actual practice in different locales varied by officials applying different eligibility criteria, and whether
institutions had de facto different levels of difficulties in obtaining such orders based on their affordability, availability, accessibility, and acceptability among court and law enforcement personnel (Logan, Shannon, Walker, & Faragher, 2006). They found considerable variation in victim experiences obtaining protective orders, stipulations in such protective orders, and the willingness of local agencies to enforce such orders. They concluded, not surprisingly, that there apparently were more obstacles in rural jurisdictions than in the urban county studied (Logan et al., 2005).
When Will Women Use Restraining Orders?

There has been research on the conditions under which battered women will be able to use the court system effectively to obtain restraining orders. Several troubling observations have been reported. Women who are economically dependent on their abusers obviously are at greater financial risk than those who are financially independent. Not surprisingly, economic dependence has been found to adversely affect the victim’s ability to persevere in obtaining a permanent restraining order (Muscat & Iwamoto, 1993; Tolman & Rosen, 2001). Although there is less empirical research on this point, based on our research regarding seeking police assistance, we believe that many severely threatened victims are too afraid to seek such assistance. The extent and frequency of abuse could so terrify women that the most severely impacted victims might paradoxically be the most likely to fail to obtain a permanent order.

There also is a predictable interaction between the demands of court procedures and the crisis attendant to being a victim of battering. It has long been known that to use the courts effectively, as with most criminal justice agencies, it is best to present an appearance of a calm demeanor, remembering exactly what has occurred and the expectations that the person has of the agency. Unfortunately, this profile may not typify many victims. Battered women as a corollary of abuse often develop symptoms of PTSD. They might act forgetful, confused, and indecisive—conditions that directly contribute to being marginalized by many court personnel (Jones, Hughes, & Unterstaller, 2001). Similarly, the unwillingness of many victims to discuss the details of abuse in front of strangers might account for attrition by many victims (cf. Ptacek, 1995, who reported that embarrassment for many victims was combined with overall fear of appearing in front of unknown and intimidating judges and other court personnel).
Are Restraining Orders Effective?

There have been considerable anecdotal accounts published where some women and their attorneys and advocates state in effect, “The order was not worth the paper it was printed on” (for an example, see Goodmark, 2004, footnote 21). Still others are convinced that the issuance—and subsequent enforcement of the order, if necessary—literally saved their lives. Both outcomes are possible. Considerable research has proven to be, by and large, inconclusive. We now know that differences among abusers strongly suggest that many offenders, perhaps most family only offenders, would not risk jail or their career by violating such an order. For their victims, the order can be invaluable. Other offenders, including those with a persistent pattern of criminality, might focus on strategies to avoid the conditions of an order while continuing to stalk or harass their victims. Finally, violence by some offenders might escalate when a victim seeks such orders and challenges their control.

Several studies have tried to report empirically on the actual efficacy of protective orders in preventing abuse. In an early study conducted before the enhanced enforcement typical of modern statutes, Grau, Fagan, and Wexler (1985) suggested that TROs, when used in isolation and without the full commitment by the prosecutors, courts, and police, were generally ineffective. The researchers interviewed 270 recipients of TROs and found that the orders were generally ineffective in reducing either the rate or the severity of abuse by serious abusers. Indeed, 60% of the victims studied were abused again regardless of the presence or absence of restraining orders.

A second, more comprehensive study by the Urban Institute demonstrated that restraining orders did deter some battering but not completely. Harrell, Smith, and Newmark (1993) examined the impact of 779 protective orders issued in 1991 in Denver and Boulder, Colorado. Researchers interviewed both victims and batterers. Not surprisingly, the interviews disclosed that TROs were sought by 56% of those that had previously been injured, not those merely worried about future attacks.

Their injuries typically were not trivial, with approximately 40% of those
injured needing medical care. The order did seem to deter most offenders. Although many offenders tried to “work things out” or “talk their way out of the order,” only 4% actually contested its terms. More important, according to both victims and batterers, 85% of the offenders subsequently did obey all conditions of the protective order (Harrell et al., 1993). The impact was not uniform for all provisions of the order. Instead, compliance was best at its core—the cessation of violence. In contrast, offenders as a group largely ignored provisions requiring economic support. In short, although abuse might have largely ceased, it is clear that the mere issuance of a protective order demanding support does little to ensure such obligations are met. In common with most divorce or separation statistics, 88% of victims with permanent orders and 81% of those with TROs stated that they had not received any money for support despite protective orders to the contrary. In addition, a clear majority of men refused to honor child-support provisions (Harrell et al., 1993).

Furthermore, respondents contacted 75% of the victims despite permanent no-contact orders. This noncompliance was not significantly different from the 80% of victims who were contacted when they had no such orders. Finally, collateral effects were observed. Although physical abuse might stop, other behaviors that we might generically call “stalking” began: 52% of victims reported unwanted phone calls, 21% said they were actually tracked or stalked, and 21% stated that the respondent entered the residence in violation of the order (Harrell et al., 1993). Since the time of these studies, all states have implemented antistalking statutes that allow restraining orders for stalking behavior against intimates or former intimates. Their impact seems similarly discouraging, however. When women obtained restraining orders for the specific purpose of stopping an offender from stalking, the vast majority reported that the orders were violated (Tjaden & Thoennes, 1998). Such behavior occurred across the board with few readily apparent victim-relationship characteristics predictive of success or failure. Although women with children were more likely to be assaulted, the severity of past incidents and the relative duration of abuse were not closely related. Fully 93% of the batterers believed that the police or the courts would intervene if they did not comply—a clear requirement for deterrence. The real correlation seemed to be the offender’s behavior during the issuance of the court order. When permanent orders were resisted by the abuser in court or when he attempted
in court to obtain child custody, recurrent abuse was far more likely (Harrell et al., 1993).

Although the Urban Institute study lends some credence to the potential for TROs, it was less sanguine about the actual prospects for obtaining a permanent injunction. Only 60% of those who had obtained a TRO actually sought a permanent order (Harrell et al., 1993). It is unclear why the remainder did not. Some presumably achieved all that they required through the TRO. Other victims, however, might have been discouraged by difficulties in court (restrictive court hours, limited court locations, high fees, and other judicial impediments to action) or feared retaliation.

The latter is a real concern because, despite actual cessation of abuse, the study reported that most female victims (68%) would be hesitant to return to court if their partners violated the restraining order. This was largely in response to their fear of revenge by the offender. In addition, 58% said it “wouldn’t help,” and 57% said it “would worsen the problem.” Also, the TRO might not be served to the respondent, which is a necessary precondition to issuance of a permanent order (Harrell et al., 1993).

Mears, Carlson, Holden, and Harris (2001) also have reported that the positive effects of restraining orders were not apparent despite the fact that seeking and obtaining a protective order represented active victim efforts to seek outside support in preventing revictimization. The researchers reported that there was virtually no additional protection by an order against revictimization based on the number of days from original to second victimization. Instead, they found that there was no statistically significant difference between those receiving a protective order, those simply arrested, and those who had a protective order coupled with arrest for violation of a protective order. If anything, they found that women from low-income communities who obtained protective orders were at increased risk for revictimization (Mears et al., 2001).

In contrast, a study sponsored by the National Center for State Courts portrayed protective orders in a more favorable light. It found that victims who were interviewed 1 and 6 months after obtaining a protective order generally perceived a positive impact on their well-being. Furthermore, this impact increased over time. Incidents of reabuse were low, and 95% said they
would obtain a protective order again (Keilitz, Hannaford, & Efekman, 1997). Another study published in 2003 reported that victims who sought and received protective orders were safer than those that did not for at least a 9-month period (Holt et al., 2003). However, this study was not experimental in nature and therefore did not have a control group for comparison.

Similarly, several studies of victim attitudes toward restraining orders said they felt more “empowered” by the restraining order process, but only if they were able to have an effective restraining order issued (Fischer & Rose, 1995; Ptacek, 1999). The role of victim empowerment as a defined positive outcome might be important. We can understand that empirical studies might focus on easily measured rates of reabuse or official reports of restraining order violations, but in some cases, a broader measurement of “success” is needed.

If we solely based “effectiveness” on the prevention of further acts of violence, there is a lack of consistent positive impact. Studies now clearly show that women feel “empowered” or “protected” by such orders and that the lifting of fear is itself extremely valuable. Moreover, victim empowerment itself is very important as it is the reaction of other agencies to the existence of a protective order that might affect future abuse. In fact, for many, it is precisely the potential police response to the issuance of the protective order that might affect future abuse.
Can Restraining Orders Be Misused?

Some men’s rights groups have argued that restraining orders are often sought as a tactic in the context of contested divorce cases to influence judges in marital disputes and in childhood custody fights. Other than anecdotal reports, often from parties involved in such a suit, we are not aware of any studies that have demonstrated that this is a widespread realistic concern. Most studies have continued to demonstrate that people seeking such orders do so only as a result of existing severe abuse or as a credible threat of the same occurring. Nonetheless the concern has been expressed, and it is of course theoretically possible.

In fact the greater problem might be that some courts inadvertently allow offenders to abuse the process. The reality is that in many cases of domestic violence, an abused person will strike back in self-defense. There might be little violence involved and no injury claimed. However, the system, unless monitored carefully, allows perpetrators to misuse it by rapidly filing a complaint against the original party. Some judges might be tempted to dismiss both requests rather than to spend the time needed to determine the primary aggressor and thereby ruling as to which request is valid. This becomes even more of a risk in jurisdictions where the existence of other protective orders in other locales is not centralized and there can be dueling petitions in different courts (Sack, 2004).

The original VAWA in 1994 specifically addressed this issue. The law, in general, provides that each state should give full faith and credit to the restraining orders of another state. However, there is a special “carve out” of mutual restraining orders that is not enforceable in other jurisdictions unless the judge makes specific findings of fact. However, most divorce proceedings and criminal actions never cross state lines so the applicability of VAWA’s finding is somewhat limited in actual practice, if not in guidance.

A more difficult problem can develop when manipulative batterers with paid legal resources misuse the protective order system. Batterers often have considerable knowledge regarding statutory provisions for protective orders. Therefore, the phenomenon of a “race to the courthouse” by the batterer and
his victim has become increasingly prevalent (Goodmark, 2004, footnote 95). It often is difficult for a court to determine which petition is real as the batterer's petition might merely mirror that of the victim. When there is little physical evidence, the victim might find herself having sought legal protection but becoming instead subject to a civil protection order (Goodmark, 2004).

Judges also might misuse protective orders to find the victims to be in contempt of court. In Kentucky, one judge fines victims who initiate contacts with batterers, even though this may be necessary for her to obtain child support and coordinate child activities, and for other similar reasons (Goodmark, 2004). Finally, there is a very problematic interaction between the theoretically voluntary process of a victim obtaining protective orders and the interests of the state in protecting children from observing acts of domestic violence. An increasing number of jurisdictions are holding that simply observing one parent abusing the other constitutes child abuse or child neglect unless the abused parent takes actions to prevent future abuse, including filing for a restraining order. Furthermore, child protective services might order victims to seek a restraining order. If a victim fails to do so, she might risk having a family court judge, at the instigation of a social worker, make a finding that she herself has committed child abuse or child neglect by continuing to allow her children to witness abuse. Conversely, a judge might be the party that reports children who witness violence to Family Services. In one case in Pennsylvania, the judge denied a mother’s request for protection from an abuse order on behalf of her children and instead removed her children and immediately placed them in foster care (Gall v. Gall, [2002], cited in Goodmark, 2004, footnote 113).

Coercing a victim to obtain a theoretically voluntary order on her behalf is, at the least, highly problematic. Some protective orders might require full-blown evidentiary hearings that might threaten a woman’s livelihood. Similarly, the woman may be aware that obtaining a restraining order increases her risk for future violence (Goodmark, 2004).
The Complex Problem of Restraining Order Violation

While victim empowerment and police reaction to restraining orders are quite important, there is the phenomenon of recurrent abuse even when protective orders are granted. As a result there are real intrinsic limits to their efficacy. After all, research has amply demonstrated that hard-core recidivists, especially lifetime violent offenders, are not deterred by prospects of the social stigma associated with an arrest or even incarceration (Buzawa, Hotaling, Klein, and Byrne., 1999). Such offenders are unlikely to stop merely because of another piece of paper. The only effective method of stopping these chronic abusers is for a district attorney to determine that a felony prosecution is warranted, followed by conviction and incarceration, often for an extended period. Although protective orders stop many potential offenders, the use of protective orders for hard-core offenders might prove an illusory remedy, misleading many victims to think they have solved their problem. In this context there is a real danger of the availability of restraining orders being inappropriately cited by unsympathetic bystanders to undermine domestic violence enforcement by claiming that society has “done all we can do” to help victims and, therefore, that no other actions need be taken.

In addition, as described earlier, actual decision making hearings on the continuance of restraining orders tends to be rapid and often subject to an erroneous result. In many cases, because of psychological or physical trauma, the victim simply is incapable of articulating her needs. In contrast, many batterers, especially those whose psychological profile fits a borderline or sociopathic personality disorder, might be highly articulate and fully capable of minimizing or justifying aberrant behavior. As a result, judicial orders might fail to reflect adequately the potential danger to a victim and her children (Ballou et al., 2007). Unless a jurisdiction commits to the resources necessary for a model system to thoroughly review restraining order requests, as we will discuss in the subsequent section, the prospect of incomplete protection is a very real and persisting danger.

The violation of a protective order in all states is punishable either as a
separate criminal offense or as criminal contempt of court or both (Miller, 2005, p. 77). Some states specify a minimum automatic jail term—even if of a relatively short duration. Several studies have documented the extent of the problem of reabuse even in the face of protective orders. This warrants continued study as to when and why such reabuse occurs. One study found that more than 15% of all restraining-order defendants were arrested for violating the orders within 6 months of their issuance (Isaac & Sanchez, 1994). Still other offenders presumably violate protective orders, but are not reported.

Grau et al.’s (1985) initial research suggested that aggregating offenders might mask two markedly different offender subpopulations. Although it is reasonably clear that the hard-core offenders (“cobras” in Jacobson and Gottman’s [1998] terms) would never be deterred, a different result occurs when analyzing the behavioral impact on the family-only, situationally violent offenders. For those with less serious histories of family violence or in which the abuser was less violent, future acts of domestic violence did decline significantly.

A second study conducted in a model court tends to reinforce Grau et al.’s (1985) analysis. A comprehensive study of the QDC reported that in 1990, almost 50% of 663 male restraining-order defendants reabused the same victim within 2 years, 34% were arrested for violations of restraining orders, and 95% became subjects of new orders reflecting new incidents. Such substantial reoffending behavior seemed heavily correlated to age and criminal history with younger men and those with a criminal history most likely to reoffend (Klein, 1996).

In all of Massachusetts in 1992, more than 6,000 individuals were arrested for violating restraining orders. Of these offenders, almost 1,000 were placed on probation. In short, these studies graphically demonstrate that although our operating assumption is that court restraining orders should dramatically affect the cycle of abuse, unfortunately, to date, there is little empirical evidence that such an impact occurs for all types of batterers. Several other studies have found that revictimization is a serious problem, ranging from 23% to 50% of women who have sought protective orders (Carlson et al., 1999; Chaudhuri & Daly, 1992; Harrell & Smith, 1996; Klein, 1996). In
addition, the 1997 Keilitz et al. study, although generally finding that protective orders were effective (72% were not battered within 1 month and 65% were not battered at the follow-up), also reported that the criminal history of the offender in a protective order was strongly correlated with both future violence in general and the severity of the subsequent violence in particular (Keilitz et al., 1997).

Our discussion of the deterrent effect of restraining orders assumes that prosecutors and courts will actively enforce protective orders once issued; however, published accounts of excessive rates of dismissals of such cases suggest that such an assumption must undergo more testing. If it is found that the prosecutorial and judicial organizations fail to enforce such orders within a relatively short period, batterers, victims, and the community at large will know this is reality. Under such circumstances, deterrence will inevitably become less effective, and protective orders might begin to atrophy into a useless, even cynical, vehicle to quell public demands for effective, but resource-intensive, actions.

There is not yet a consensus as to which factors predict when restraining orders will be violated and reabuse will occur; however, several tentative hypotheses have been advanced. For example, Harrell and Smith (1996) observed that victimization despite protective orders was higher among those having dependant, minor children. This to us is logical because the presence of minor children typically means that the offender is motivated to retain close contact with the family—and it is in such potentially highly stressful contacts that abuse is far more likely. Even if a no-contact order is in place, a batterer might take extraordinary legal risks to ensure continued visitation if there are children involved. Carlson et al. (1999) also unsurprisingly observed that revictimization occurred more frequently in lower socioeconomic and minority groups. Financial issues, especially court-ordered support, often exacerbate the offender’s feelings of being wronged (especially if he is being forced to pay support without any visitation rights).

In addition, a consistent body of research relates violation of protective orders to criminal history. Harrell and Smith (1996) found that prior offenders were likely to reoffend. Similarly, in his review of the QDC, Klein (1996) reported this relationship. Buzawa et al.’s 1999 research, also on the
QDC, reinforced the findings of the earlier Klein research. They found that offenders who had restraining orders had the most violent and abusive criminal histories and the highest rates of substance abuse, as well as the highest rate of reoffending. Although that study was, by definition, one that examined cases of reabuse, it clearly reinforced the perception that restraining orders might be effective for the overall population, but for the subpopulation of offenders with an extensive criminal history (the “cobras”), it had little or no positive impact (Buzawa et al., 1999).

However, we need to understand that research that seemingly suggests that protective orders are ineffective should not be taken out of context. Women tend to take out restraining orders disproportionately when offenders already have criminal histories of violent behavior (Waul, 2000). Keilitz et al. (1997) reported that 80% of those seeking protective orders had an offender who had a criminal history; Klein (1996) found that 65% had criminal arrest histories. Waul reported that women whose partners had a criminal record with at least one domestic violence offense were significantly more likely to obtain a protective order than women whose partners did not have prior domestic violence charges.

Similarly, Buzawa et al. (1999) reported that victims seeking restraining orders sought them against offenders who averaged twice the criminal history of the offenders whose victims did not seek restraining orders. A simple comparison of reoffending rates for those who did and did not seek restraining orders would therefore not provide a valid comparison, at least at an aggregate level. Instead, this could simply represent an artifact of the differential population seeking restraining orders compared with those victims who did not. We hope that future research will clarify the role of criminal history by isolating this crucial variable to measure its seemingly overwhelming significance. In any event, at this stage, it seems premature to conclude that restraining orders do not work.

The fact is that it is extraordinarily difficult to determine generally the efficacy of restraining orders. We know that a substantial number of domestic violence victims who seek restraining orders will be subject to reabuse. We also know that there are some factors, such as the presence of minor children, lower levels of income, and, perhaps most important, criminal history, that
seem to predict the likelihood of reabuse and, hence, in the broadest sense, make a restraining order ineffective. We believe it premature to marginalize the role of restraining orders, especially because, as noted, most victims believe that protective orders have merit. We also are aware that most research, at least until the QDC study, did not control for criminal history in determining whether restraining orders were effective at preventing reabuse. Hence, any conclusion of the failure or intrinsic limits of protective orders may be premature.
Judicial Enforcement of Restraining Orders

Actual enforcement of restraining orders is extremely important. If they are not enforced, it is obvious that their value is limited. Furthermore, batterers might interpret enforcement failure as a continued lack of societal concern for their abusive behavior. There is a fundamental principle of law that “deprivations of law require remedies.” Professor Tracy Thomas noted that the right to a remedy is a basic right protected by the Due Process Clause of the Fourteenth Amendment. As she put it, “without remedies, rights are mere ideals, promises, or pronouncements that might or might not be followed” (Thomas, 2004, p. 1639). Commentators have for decades realized the implicit power of lawsuits to force police actions where they do not want to perform their statutory duties. As we have discussed in previous chapters, not-so-benign neglect was the norm. That behavior has receded under the impact of public scrutiny, statutes mandating action, and the widespread adoption of more activist department policies. However, in many jurisdictions and certainly among many officers around the country, there remains a deep reluctance to intervene, bordering on active antipathy. In that case, the only remedy, albeit not for the unfortunate victim who has typically been killed, is a heavily publicized lawsuit demonstrating that when police are derelict in their duties, there will be severe consequences.

Judicial Enforcement of Restraining Orders in the Face of Police Misconduct

As graphically illustrated in several cases we will cite extensively, some police officers and sometimes entire police departments fail to enforce restraining orders effectively. In those cases, victims or their representatives may have several methods to get legal recourse. Clearly, if state law permits, they could file a civil lawsuit in a state court for the tort of negligence or some other charge permitted against state official’s derelict in their duties.

Federal courts were, until 2005, the preferred venue for such cases as state courts did not have results as predictable as in federal court. Also, for the simple reason that victory in a case often required considerable resources and
actual monetary damages awarded could be small, federal forums were preferred because the United States Attorney’s Fees Act of 1976 gives prevailing victims, proving official malfeasance, the ability to recover attorneys’ fees (del Carmen & Walker, 2003).

Such liability is primarily based on Title 42 of US Code Section 1983. Most victims who file such lawsuits use either the Due Process or the Equal Protection clauses of the Fourteenth Amendment of the US Constitution—extending protection to citizens for the violation of rights by the actions or inactions of state and local officials. With respect to due process, victims of domestic abuse might allege both substantive and procedural due process violations, although each type of violation is subject to different legal analytical standards. The US Supreme Court has held that procedural due process rights can originate from state statutes that purportedly create benefits for private parties. The court also has held that the Constitution does not grant individuals an absolute entitlement to such rights; rather, they should be created by state law. Therefore, to have a legitimate claim of entitlement, a victim must have “more than a unilateral expectation of it” (Board of Regents of State Colleges v. Roth, 1972).

In the few domestic violence cases alleging police misconduct that have actually gone to court, victims generally allege that they were entitled to police protection from abuse, especially where a state court had granted them a protective order or a restraining order.

In most cases where this has been asserted, the relevant state law provided for mandatory police enforcement of restraining orders. To prevail, the plaintiff was required to prove that the law was clearly established, meaning that reasonable officers would agree that the law on that issue applied to the facts in the case. Effectively, this means that to have a good chance to prevail, plaintiffs’ attorneys will only go to a federal court if they believe police misconduct in not enforcing a restraining order was egregious.

A 2005 Supreme Court case, Gonzales v. City of Castle Rock, cast significant doubt on the federal judiciary’s willingness to mandate enforcement of restraining orders. The facts clearly suggest that the Castle Rock, Colorado, Police Department did a poor job of enforcing an existing restraining order. In 1999, three girls, ages 7, 8, and 10, were shot to death by their father.
Their mother, Ms. Gonzales, was getting a divorce from the father, Simon Gonzales, and had obtained a restraining order after he had frightened the family by acting erratically, including putting a noose around his neck and attempting to hang himself in front of his young daughters. There were repeated calls to the police, even after separation, with numerous accusations of stalking as well as breaking and entering. As a result, Ms. Gonzales obtained a no-contact restraining order. The restraining order stipulated that he could only be with his daughters on alternate weekends. One month after the restraining order was issued, when he was not supposed to have contact, he took them in his pickup truck and drove off. Before 6 p.m., Ms. Gonzales called the police department and advised them of the violation of the restraining order. Colorado law mandates arrest for the violation of a restraining order. During an interview on the news program 60 Minutes in March 2005, she stated that the police’s first reaction was, “Well he’s their father; it’s OK for them to be with them.” To which she replied, “No, it’s not OK. There was no arranged visit for him to have them” (Leung, 2005, para. 14).

By 10 p.m., she had learned that he had taken them out of the city of Castle Rock to an amusement park in nearby Denver, another separate violation of the restraining order. She asked the Castle Rock Police Department to inform the Denver Police Department of the restraining order violation. Apparently, the police could have easily intercepted them as there was only one way in and out of the amusement park. The Castle Rock Police Department refused, stating that she should call them back in several more hours. Ms. Gonzales stated that “she read them the part of the restraining order that instructs police, ‘to use every reasonable effort to protect the... children to prevent... violence’” (Leung, 2005, para. 23). Furthermore, as she told 60 Minutes, she had begged and pleaded with the police to get her children.

When her husband did not return after 10 p.m., she called the police a third time and was told to wait until after midnight before calling again. At midnight, she went to his apartment and, when he was not there, made her fourth call to the police and drove to the station where she told yet another officer about the restraining order. Around 3:20 a.m., Simon Gonzales drove to the station where he emerged from his truck, shooting at the building with a semiautomatic gun he had purchased that evening. The police returned fire,
killing him (a fairly common “suicide-by-police” scenario). When they looked in his truck, they found the bodies of the three girls. An autopsy concluded that he had shot each of them in the head after leaving the amusement park.

Ms. Gonzales sued the police department for $30 million. Her express purpose was to force police departments throughout the country to improve training regarding the enforcement of restraining orders. She claimed that she was deprived of her right for procedural due process by the police department’s implicit dismissal of the protective order, in clear violation of the Colorado state statute that required them to use “every reasonable means to enforce” the order.

The US District Court granted Castle Rock’s motion to dismiss findings that Ms. Gonzales had failed to state a claim for which relief could be granted (Gonzales v. City of Castle Rock, 2001). The District Court found that even though the Colorado law was on its face mandatory and required the police to use all reasonable effort, it conferred no property right on behalf of the plaintiff. Therefore, she had no right to sue, even though it was undisputed that the Castle Rock Police Department did not even place a phone call to another police department when they had a known location of the offender and three minors who had been taken out of the jurisdiction in violation of the restraining order.

On appeal, the 10th Circuit Court of Appeals, reversed the decision of the District Court and found that based on the explicit mandatory language of the Colorado statute and its legislative history, the statute clearly created a protected property interest falling under the Due Process Clause. The Court of Appeals stated that “Colorado courts have stated unambiguously that in Colorado statutes, ‘shall’ does in fact mean ‘shall’” (ID. At 1265; see People v. Guenther, 1994; Gonzales v. City of Castle Rock, 2005).

We believe the decision of the Court of Appeals overturning the District Court decision was consistent with prevailing US constitutional doctrines of Procedural Due Process relying on the principle that when the state chooses to establish a benefit or right for citizens (such as free education, public housing, providing a test for drivers licenses, etc.), it may not deny such benefits in an arbitrary or unfair way. In this case, Colorado statutorily
established a benefit to potential victims of recurring violence to grant statutory authority for domestic violence restraining orders but also to mandate police enforcement of such orders. By doing so they specifically eliminated traditional police discretion, limiting discretion solely to a determination as to whether the violation of an order had occurred. In this particular case, it is obvious that the Castle Rock Police Department faced a known violation, and not an excessive reach to understand that this particular violation might put three minor children at risk. Nevertheless, they took no action until the offender literally attacked them.

After the Court of Appeals decision, many municipalities became extremely worried about the potential for liability for nonenforcement. The Castle Rock Police Department in its appeal to the US Supreme Court was joined by the National League of Cities, the National Sheriffs Association, and the US Department of Justice in amicus or “friend of the court” briefs, stating that the police could not have predicted the terrible outcome of what was, at the time, a mere “domestic dispute.” Interestingly enough, four police associations signed a brief opposing the actions of the Castle Rock Police Department and the International Association of Chiefs of Police (IACP), normally highly supportive of police discretion, refused to support the town’s position (Meier, 2005).

The US Supreme Court in Gonzales v. City of Castle Rock (2005) reversed the Court of Appeals decision and dismissed the lawsuit. While typically the Supreme Court defers issues of the state law to state courts, the Court chose to interpret the Colorado statute, without ever obtaining an advisory opinion of the Colorado Supreme Court. In a 7–2 decision written by Justice Scalia, they found that a person protected by a restraining order has no property right in the enforcement of that order. Therefore, they have no right to sue when a police department refuses to enforce it. In doing so, it is our opinion that the Supreme Court ignored the clear intent of the state legislature in favor of limiting municipal liability.
Enforcement of Restraining Orders After Gonzales

The US Supreme Court is, of course, the final arbiter in interpreting due process under the US Constitution. Clearly such due process claims cannot be heard in federal courts, unless and until the Supreme Court reverses or limits Gonzales and police officials know that there is no federal court recourse if they ignore victim requests for restraining order enforcement. Victim advocates should therefore advise victims in some locales that they might be at the mercy of their local police department’s priorities and should now work with elected representatives to make these priorities consistent with state statutes and more enlightened practices.

Conversely, potential abusers might be advised by their attorneys that local police departments might or might not choose to enforce restraining orders; hopefully most will be told that their police departments rigorously enforce such orders. However, some undoubtedly will be told that their particular departments assign little weight to enforcement.

Despite the Gonzales decision, we suspect that few police departments act as cavalierly as the Castle Rock Police Department. The fact that the IACP chose not to support their actions is a good sign that other departments have higher standards.

In addition, as mentioned, the Fourteenth Amendment also includes protections granted under the Equal Protection Clause. The Equal Protection Clause has been used by victims of domestic violence who allege disparate police response and treatment. For example, in the Thurman case, Thurman v. City of Torrington (1984), one of the first cases involving an equal protection violation, the victim alleged that police “provided less protection to women abused by their male partners than to persons abused by someone with whom the victim has no domestic relationship” (Blackwell & Vaughn, 2003, p. 132). The police were held liable because they could not justify their different response to victims in intimate relationships as opposed to those who were not in such relationships. This potential equal protection liability for police inaction still exists if the facts demonstrate a consistent pattern of failure to enforce protective orders that are primarily sought by women.
Also, there is no requirement that state courts follow the US Supreme Court interpretation of their state constitution. A state supreme court can interpret state laws and constitutions far differently than a federal court. Hence, although the current US Supreme Court has made it abundantly clear that it will not demand enforcement of such orders in federal court, this decision need not be followed by the various state supreme courts.

In interpreting their own constitution and laws, a state Supreme Court might find that police conduct takes away a victim’s property or otherwise allows a suit to continue. If given the opportunity, juries might well conclude that a police department that chose not to enforce mandatory restraining orders constitutes a sufficient cause of action for a victim or her estate to recover. Specifically, when state courts are asked to consider enforcing a state law that mandates arrest upon a violation of a restraining order, they probably now will be confronted with claims of violations of due process of their state constitution as well as with claims of violation of the particular state law.

One such early state case was decided only months after Gonzales. In Moore v. Green (2006), the Illinois Supreme Court followed a long line of cases and continued to interpret a 1986 Illinois statute (the Illinois Domestic Violence Act) demanding mandatory enforcement of restraining orders. The court found that two Chicago police officers could be held civilly liable for the death of a woman who had a protective order against her husband. The facts of the case clearly demonstrated cavalier conduct. Ms. Ronyale White had recently obtained an emergency protective order against her estranged husband, Louis Drexel. He defied the order and entered her home unlawfully. She called 911 four times to report that he had illegally entered her home and pleaded for immediate police assistance. During the course of the 911 calls, the police department became aware of the severity of the incident as the recorded dispatch tapes revealed a threatening male voice in the background (Litchman, 2007, footnote 3). These facts also were recorded on a cassette tape that she had placed in her pocket as he threatened her with a loaded gun. The two officers that eventually were dispatched to her home took 15 minutes to respond. Police supervisors testified that the response should have taken 3 minutes (Ciokajlo, 2006). After their arrival at the residence, officers never entered the home. Instead, they apparently inspected their patrol vehicle and made personal calls while Drexel attacked and killed White.
After the Illinois Supreme Court decision, the city of Chicago agreed to settle the case for $4.25 million and the officers were suspended without pay. One can imagine that as a result of this settlement, the Chicago Police Department will more closely adhere to the Illinois statutory requirements for mandatory enforcement of restraining orders. It is, however, disturbing that such police conduct, and the need for monetary penalties, persists decades after the problem of police inaction was addressed by statute, department policies, and even the threat of personal lawsuits that the Illinois courts have allowed on numerous occasions.

Similarly, a few states have, by statute, expressly addressed the issue of police liability for failure to enforce protective orders. These states might allow such suits but only under more narrow circumstances, making recourse to the courts far more problematic. Litchman (2007) analyzed statutes in Washington (where a lack of good faith on the part of the police must be shown), California (where the police to be held liable must be found to have increased the risk of the plaintiff, by example, creating false reliance on their promise to assist), and New York (where an existing protective order can help establish that a special duty is owed by the police to the victim of violence, but reliance on such a duty has to be shown).

Finally, given the wide spectrum of negligence theories that are available under state tort law, it is likely that plaintiffs might now be more likely to prevail against sloppy police procedure in state courts, although compensation might be limited and, as noted, there is no reasonable likelihood of recovering attorneys’ fees. State cases based on negligence will likely be based on a judge’s initial ruling that there is at least a reasonable basis for a jury to conclude that the police had opportunity to prevent the future crime by failing to enforce the protective order. For example, if an order required the removal of a firearm which is later used to kill a victim there would be a clear violation of their responsibilities.
Is There a Best Practice for Obtaining and Enforcing Restraining Orders?
More Potential Enhancements to Restraining Orders

The process of obtaining and enforcing restraining orders can be vastly improved from the widely variant practices currently in place. The following suggested enhancements seem to be worth consideration. First, during the course of issuing a permanent restraining order, judges can be required to consult with trained consultants who are capable of developing a psychological profile of the party to be restrained. Ballou et al. (2007) referred to this as the development of a psychological model for judicial decision making. The psychological model would include history and indicators of violence, the attitude of the alleged perpetrator, the relationship dynamic between the parties, as well as other psychological, social, and behavioral factors (Ballou et al., 2007). The use of risk assessment instruments may be better integrated into the judicial process especially when determining whether or not to issue a permanent restraining order. This will be discussed in greater detail in Chapter 15.

In addition to the adoption of a risk assessment instrument for judges and their staff, we believe that other reforms should be considered. There certainly is no lack of innovative approaches that are being tried—even if they have not yet been empirically verified as being effective. For example, several states allow the issuance and later enforcement of a protection order without any finding of abuse as long as both parties consent. Since such findings can later be used as evidence in custody decisions and have other long-term implications, this provision might increase the ability of orders to be issued as well as the willingness of parties to seek such orders (Miller, 2005).

Second, the continued violation of a restraining order should subject an offender to increasingly severe penalties. For example, in Minnesota, a single violation of a restraining order is subject to a minimum term of incarceration of 3 days. However, if there is a prior domestic violence conviction, the minimum becomes 10 days. If there are two priors within 5 years, a felony
charge is added and a minimum stay of 30 days is mandated (Miller, 2005). It is indeed possible that the prospect of a certain minimum jail sentence might deter some offenders.

Third, several states, including Florida and Massachusetts, provide assistance for victims who claim that restraining orders have been violated. In Florida, once a violation of an order is claimed, the state takes over its enforcement—the matter then truly loses its “civil” nature and becomes far more like a criminal case. Courts might require the state prosecutor to file a contempt of court motion, or they might notify the prosecutor that they will proceed on their own initiative to punish contempt of court (Miller, 2005).

Fourth, new technology can be incorporated into the provisions of restraining orders. For example, GPS monitoring with electronic tracking devices has been adopted by many courts to control the movements of offenders for a variety of offenses. The advantage of this technology to enhancing protective orders can readily be seen. Victims often correctly fear that they or their family members will be stalked once a restraining order goes in effect. Nationwide, as of 2015, at least 14 states now permissively allow judges to enforce protective orders by electronic tracking devices as a condition of bail or based on risk assessments made of offender dangerousness (Gilbert, 2014). This can be extremely helpful as some research suggests that up to 80% of such orders are violated (Logan et al., 2007). Provided that these are used judiciously, this can greatly enhance victim safety. The difficulty is that courts typically lack the resources to fund this technology and are used to assessing costs to offenders as in cases of house arrest. For many offenders, no such funds are available, yet it would be seemingly unjust to allow bail only for higher income offenders.
Summary

This chapter provided an overview on the role and use of restraining orders, as well as on the strengths and limitations of their use. What has been more difficult to determine is their effectiveness. To some extent, this depends on the criteria used to measure victim success. Although some report increased victim satisfaction, the question is whether this might put victims at even greater risk if, in fact, they do not increase their safety. Does the presence of a restraining order mean that victims are less vigilant in taking steps to ensure their own safety? Alternatively, can restraining orders be better implemented in ways that can be coupled with strategies to better protect victims?
Discussion Questions

1. How can we improve the effectiveness of restraining orders?
2. Can restraining orders better ensure victim safety by the conditions imposed?
3. Should temporary restraining orders be part of an offender’s criminal history?
4. What should be the process by which a victim can obtain a restraining order?
5. Is “victim satisfaction” an adequate reason for the use of restraining orders?

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10 The Judicial Response
Chapter Overview

Previously, we discussed how the adoption of statutory directives, increased police enforcement, and more aggressive prosecutorial policies (including widespread use of no-drop policies) have resulted in a marked increase in domestic violence court caseloads. How are these cases processed? Historically, courts as an institution resist change. After all, given the inherent separation of powers among the legislative, executive, and judicial branches in the United States, legislative directives need not necessarily transfer quickly, if ever, into observable changed behavior.

However, a little more than 20 years ago, the US judiciary began to recognize the need to increase the attention paid to domestic violence and violent families. In 1994, the National Council of Juvenile and Family Court Judges first published the Model State Code on Domestic and Family Violence, placing enhanced attention on the role of the judiciary in responding to domestic violence, spurring a reanalysis and suggesting many innovations. This effort also produced a suggested model code for processing domestic violence with early intervention, enhanced police arrests, and mandatory arrest for violation of protective orders. Furthermore, it established standards for prosecution and victim assistance by prosecutors. Perhaps because of the background of its membership, primarily family court judges, it also focused on the problems of child protection and custody in domestic violence cases, an area that had largely been ignored in other courts up to that point.

Perhaps the most important role the judiciary can play in the control of domestic violence is to ensure the provision of services to victims and children. This has two dimensions. For the victim, granting and enforcing protective orders are almost exclusively the responsibility of the judiciary. In addition, once a case is brought against an offender, the judge can set conditions of pretrial release, determine the degree of supervision, control the court resources to monitor pretrial release, preside over any trial, and impose considerable flexibility in the use of conditional sentences that may include conditional release upon completing BIPs and noncontact with the victim and the victim’s family and relatives.
Since then, many other judicial conferences and training sessions have addressed improving court response to domestic violence. Organizations such as the Center for Court Innovation, the Institute for Law and Justice, and the American Prosecutorial Research Institute have greatly contributed to these efforts, both through direct work with prosecutors and the judiciary as well as sponsored evaluative research.

This chapter will continue this discussion by providing a review of how thoroughly change has transpired. We will then address the continued growth and evaluation of specialized domestic violence courts during the last two decades, as well as other new structural innovations.

Proactive judges, especially in a domestic violence court, go beyond the immediate issue of violence cessation and punishment for criminal behavior. Many will have their court ensure critical liaison services for victims seeking shelter space or more long-term housing. They may mandate that offenders are monitored to ensure compliance with conditions of court orders, which may include participation in a BIP. For example, in one federally funded demonstration project in a suburban county outside Atlanta, Georgia, the Chief Magistrate, Berryl Anderson of Dekalb County, Georgia, paid critical attention to monitoring offender compliance (Schweig, 2013). She barred two compliance officers who worked with respondents who had been served with a 1-year protective order. Immediately upon leaving the courtroom, they were escorted to another office where the compliance office inquired about weapon possession and made certain the sheriff’s department seized these weapons for the duration of the order. This officer also was assigned to monitor both attendance and participation in the batterer intervention program.

The judge also arranges to have advocates from the local Women’s Resource Center assist victims in completing forms for protection orders. Despite all of these tangible accomplishments, Judge Anderson believed in the development of relationships with other judges who might hear other parts of the case, prosecutors, defense counsel, and community stakeholders such as victim advocates and the local sheriff’s office (Schweig, 2013).
The Process of Measuring Judicial Change

Measuring the breadth of any judicial change is difficult. To a large extent, we must rely on aggregate data that often mask major variation between and within jurisdictions. As a result, a particular victim or offender’s experience in one courtroom might bear little resemblance to what would occur in another court—even one within the same jurisdiction. Even so, aggregate data help define national trends. Furthermore, since the Department of Justice prides itself on the use of comprehensive aggregate data sets, this information tends to be published and disseminated widely, thereby exerting considerable influence on policymakers who, in turn, might perceive that an issue has been resolved even when implementation is idiosyncratic, depending on the initiatives of individual judges rather than a systemic change.

Before discussing aggregate data, it should be noted that many research projects are funded by the federal government to evaluate case processing and sentencing in specialized domestic violence courts, a distinct minority of courts, although growing in number. General aggregate data by definition may not distinguish between these specialized courts and traditional court settings.
The Judicial Role in Sentencing

What happens to cases before a trial is conducted? As discussed previously, the conviction rates for domestic violence crimes have extraordinary variability—exceeding, for example, variance in convictions for other violent crimes that typically are prosecuted to a guilty plea or trial. In most jurisdictions, the judiciary, being part of a different branch of government, grants prosecutors considerable discretion to drop domestic abuse cases without a finding or admission of criminality—the traditional model of court behavior. In fact, because of this division, there may be no method or role for the judiciary to oversee a critical decision in the process—diversion short of conviction. Hence, informal bargaining with the prosecution might, in effect, become the de facto sentence in many jurisdictions for domestic violence. One judge noted that this increased the difficulty of her job because deals were often agreed on before she heard the case. She found that the agreements often distorted or minimized the reality of what happened thereby impeding her ability to impose an ideal disposition. Such informal case dispositions were discussed earlier; however, it is important to note that in the context of formal criminal cases, much of the discretionary activity still occurs behind the scene, subject to minimal judicial control.

After determining which cases are screened out before reaching judicial attention, the key questions become what characterizes case disposition for domestic violence offenders reaching a final adjudicated plea and what are the resultant sentences? The following additional questions emerge: What happens during the course of a judicial proceeding? Is there consistency of sentencing for convicted offenders?

In measuring the efficacy of the judicial process, one unique factor posed in domestic violence cases is the speed of the process itself. Unlike many other criminal cases, in which the risk of an offender reoffending against the same victim is low, during the period that a court retains jurisdiction of a domestic case there is a greatly enhanced risk of continued victimization. As research has demonstrated, offenders are most likely to reoffend during the first month after the initial incident (Klein & Tobin, 2008).
In addition to actual reinjury, intimate partner violence offenders are the offenders who are most likely to violate restraining orders imposed in the initial court appearance or to intimidate victims to prevent them from assisting prosecution. There are multiple reasons domestic offenders pose such risks. Abusers typically are charged with misdemeanor offenses (Klein, 2009). This means that offenders are rarely kept in custody before trial. The initial arrest is most likely to be either overnight or, if committed during the weekend, only for several days while awaiting arraignment.

Because misdemeanors are not viewed as serious crimes, few jurisdictions provide meaningful supervision of such defendants prior to trial. Although many jurisdictions prohibit offenders from having contact with victims while cases are pending, no-contact bond conditions often are violated. Even violation of no-contact orders often will go unpunished because of extended periods between court appearances (Visher, Harrell, & Newmark, 2007).

As a result, this period is a critical time for judicial oversight. Unfortunately, this is precisely when cases in most criminal dockets are in the preliminary stages. While most judges also did not take primary responsibility for offender conduct prior to sentencing, many courts have recognized the necessity of pretrial intervention for this type of offender.
The Impact of Judicial Activism: Analysis of a Case Study

Perhaps the best demonstration of these techniques is the procedures developed for, and the lessons learned from the Judicial Oversight Demonstration (JOD) Project. The JOD was started in 1999 to determine whether quickly coordinated responses by the community and the judiciary would keep victims safe. Three courts were selected: Dorchester County, Massachusetts; Milwaukee, Wisconsin; and Washtenaw County, Michigan. The results were studied for 10 years by researchers at the Urban Institute (Visher, Harrell, Newmark, & Yahner, 2009).

The courts in this field test were committed to taking a more active role in managing domestic violence cases before trial. The key to this change was that the entire criminal justice system was involved. Although the prior state of each court was different, the following strategies were adopted in all three courts:

- A full-time project director was appointed.
- Procedures for obtaining a protection order were expedited.
- Judges regularly reviewed batterers’ compliance with their probation orders.
- Planning sessions efficiently helped to modify the court system and to coordinate community responses to domestic violence.
- Courts maintained a wide network of partnerships with community organizations and treatment facilities.
- Judges, attorneys, and law enforcement officers attended special training sessions with experts in domestic violence.
- Staff worked exclusively on domestic violence cases and became specialists in handling these kinds of cases.

These actions committed jurisdictions to reinforce pro-arrest policies procedurally and to provide coordinated victim advocacy and services. The courts took the lead responsibility away from the prosecutor’s office to supervise defendants. Judges oversaw all aspects of the case from the hearings to sanctions for pretrial misbehavior. They oversaw enhanced victim services, created specialized courtroom procedures to assist victims, and ensured that key personnel were well trained. Many clerks and other personnel were trained in both case processing and in recognizing and enforcing protective orders. Judges in turn were asked to expedite and prioritize protective order hearings.

The key reform focused on centralizing, to the extent possible, cases of domestic violence. In the urban areas of Dorchester and Milwaukee, a dedicated judge or judges were assigned. In the case of Dorchester, six separate general jurisdiction judges who previously handled a few domestic violence cases each were consolidated into a single courtroom. This court used a vertical adjudication model in which one prosecutor took the case all the way through the system and one domestic violence court handled all criminal court proceedings, including restraining orders, preindictment hearings, trials, and sentencing. In Milwaukee, a larger jurisdiction than Dorchester, four such specialized courts were created for domestic violence cases.
In Washtenaw County, Michigan, which was more spread out as jurisdiction less densely populated than the others, a domestic violence court was used at each of the four district courts; however, each court established a “domestic violence docket day” each week to get judges and their staff to focus primarily on such crimes.

The courts developed procedures either to supervise defendants directly prior to trial or to monitor their behavior. Victims were assisted by enhanced services from nongovernmental service agencies funded by the JOD project. These services were provided at the courthouse in Dorchester and Milwaukee.

The judicial involvement and willingness to coordinate cases was deemed to eliminate inconsistency, better coordinate resources, and provide swift court responses to the violation of restraining orders, and connect services with known victims.

Victims reported greatly increased satisfaction with the police, prosecutors, and the courts; believed efforts helped stop future violence; and reported stronger feelings of safety and well-being. Furthermore, offenders had more conditions of probation placed on them than comparison offenders, complied with these conditions at a higher rate with court orders to attend BIPs, and were given harsher penalties for failure to comply with court-ordered compliance programs.

Not surprisingly, the impact of such interventions varied among different groups of offenders. Younger offenders (ages 18–29 years) were more likely to be positively influenced as were those where the victim and offender were not as engaged in a long-term abusive relationship (i.e., did not have children together or had been in a relationship for less than 3 years). Somewhat surprisingly, it also was found to be more effective when there had been a higher number of prior arrests (seven or more), possibly because judges were more willing to react strongly to abuse.
Case Disposition at Trial: Variability in Judicial Sentencing Patterns

Once a case is set for trial, there is no evidence suggesting that domestic violence defendants are inappropriately acquitted. Not surprisingly, most actual trials result in conviction, and not-guilty findings are rare. After all, police in such cases have victim and offender statements, and often photographs of injury. A comparison of studies reported that total not-guilty findings at trial ranged from a high of 5% to a low of 1.6% (Klein, 2009). That rate seems to be appropriate and acceptable as, in a few cases, guilt simply cannot be proven beyond a reasonable doubt, perhaps because of conflicting accounts of witnesses as to a claim of self-defense or the refusal of a key witness (such as the injured party) to testify.

For this reason, our focus is on those who actually are convicted and thereby sentenced. These crimes are primarily misdemeanors—most jurisdictions treat domestic violence as a misdemeanor, absent aggravating factors. Given the far greater discretion granted to judges in sentencing miscreants rather than felons, the key factor is what percent of convicted offenders actually are incarcerated or subject to mandatory attendance at a BIP. Also, because of the potential impact on recidivism, we want to know how often a court would impose requirements to complete the assigned batterer intervention program or have intensive supervision, also called “judicial monitoring,” as part of the sentence imposed.

There is no uniformity in sentencing offenders to serve time in jail. Jurisdictions report markedly different ranges of incarceration. For example, in one Ohio jurisdiction, 70% of those found guilty of misdemeanors were incarcerated, and almost 20% were sentenced for more than 150 days (Belknap, Fleury, Melton, Sullivan, & Leisenring, 2001).

In New York City, a study of Brooklyn courts reported that, in 35% of the misdemeanor cases, guilt was established and resulted in incarceration. In other states, results varied widely independent of whether dedicated domestic violence prosecutorial units existed that were presumably supportive of
efforts to achieve meaningful sentences for proven violations (Cissner & Puffet, 2006). A similar pattern was found in a study of Cook County’s (Chicago) practices where a misdemeanor court sentenced only 23% of convicted offenders to jail (Hartley & Frohmann, 2003; Maxwell, Robinson, & Klein, 2009).

Disparity toward ordering prison sentences occurs independent of whether a court is reputed to be proactive in handling domestic violence cases. For example, in one study of a progressive court in Quincy, Massachusetts, three quarters of the domestic violence suspects (74%) were charged with some form of assault or battery, a quarter of the defendants were diverted after a plea to sufficient facts, a quarter were placed on probation, and only 14% were imprisoned (Buzawa, Hotaling, Klein, & Byrne, 1999). This finding was only incrementally different from the Massachusetts average of 12.6% (Klein, 2009) even though, from the authors’ experiences, many other jurisdictions in the state of Massachusetts do not have nearly the reputation for aggressive treatment of domestic violence as does the Quincy court.

Similar rates of variability in case outcome have occurred in other court systems generally seen as committed to ensuring domestic violence victim safety. One study of four jurisdictions with dedicated units reported sentences for incarceration that ranged from 20% to 76% (Smith, Davis, Nickles, & Davies, 2001). Although one would expect some differences based on different statutory frameworks, this extreme variation suggested that there was no consistency in sentencing. For example, in Ohio, the number of domestic violence offenders sent to prison increased ninefold between 1991 and 2005 (Klein, 2009; Wooldredge, 2007).
Why Does Such Variation Exist?

Many courts review an offender’s criminal history before a sentence is determined. It is typical and appropriate for judges to consider whether there is a pattern of previous criminality to determine incarceration. In fact, in many states, commission of multiple misdemeanors (typically three) automatically results in reclassification of subsequent offenses as felonies. Consideration of criminal history is used to discriminate between habitual offenders and a one-time miscreant. Similarly, courts in Massachusetts have been instructed to enhance sentencing for any prior offenses in a manner somewhat similar to California’s “three strikes” sentencing for felons.

In contrast, many other courts in practice do not consider criminal history in sentencing domestic violence offenders. For example, in Ohio, researchers found no relationship between offender’s criminal history and sentence severity (Maxwell, Robinson, & Klein, 2009; Wooldredge, 2007).

One could easily argue from a policy point of view that prior convictions, especially for nonviolent offenses, should not impact sentencing in domestic violence cases. After all, commission of a burglary or fraudulent act hardly seems to justify different sentences in domestic violence cases. However, a totally different dynamic emerges when confronting a serial violent offender. This aspect of sentencing variability is important to address. In the case of domestic abuse, a criminal record for violence is critical in predicting reoffending.

This is even more critical for domestic violence–related offenses as typically decisions on whether to charge a domestic offender with the commission of a misdemeanor or a felony are both arbitrary and typically downgraded in the charge compared with other types of offenses. While the assembly line, no-incarceration disposition of misdemeanor offenders might normally be justified by the relatively less-severe charges compared with felons, it is important for judges to understand that case disposition often has little to do with the severity of the crime itself or the propensity of the offender to reoffend. Only a careful examination of the offender’s criminal history will allow imposition of the correct sentence, whether that involves jail for a
repeat offender, deferred prosecution for a first-time offender, or attendance at targeted BIPs for offenders.

In addition to disparity in sentencing convicted offenders to jail, extreme variability exists in the judicial use of BIPs or enhanced court-ordered supervision as a condition of probation. As might be expected, a three-state study of domestic violence courts with specialized prosecutors found that they imposed more explicit and enforceable conditions of probation compared to those jurisdictions without domestic violence specialization. Such conditions typically included testing for drugs and alcohol, lengthier BIPs, increased numbers of no-contact orders, increased mental health evaluations, mandatory employment, and weapon restrictions (Harrell, Newmark, & Visher, 2007; Maxwell et al., 2009).
Sentencing Patterns for Domestic Compared With Non–Domestic Violence Offenders

One critical question is whether courts treat domestic violence cases as seriously as they would those of an equivalent nondomestic assault. As discussed previously, courts historically treated domestic violence assaults far more leniently than nondomestic assaults. The question is the extent to which prior practices have changed.

In a federal report published by the BJS, *State court processing of domestic violence cases* (Durose, Langan, & Smith, 2008), indicated dramatic changes. This research consisted of aggregate data from 15 large urban counties responding to a request made to 40 of the 75 largest urban counties in the country. The researchers provided a comprehensive review of 2,629 violent felony cases of which approximately one third were categorized as being “domestic violence” and the remainder “nondomestic violence.” Subsequent data were divided between sexual assaults and aggravated assaults. Their reported findings show dramatic improvement.

In 7 of the 11 measures of conviction and sentencing outcomes, no differences were found between domestic violence and non–domestic violence sexual assault cases. In the other four case processing measures, domestic violence and sexual assault offenders had a higher prosecution rate (89% vs. 73%), higher overall conviction rate (98% vs. 87%), higher felony sexual assault conviction rate (80% vs. 63%), and a longer average incarceration sentence (6 years vs. 3.25 years) compared with nondomestic cases.

Similar to sexual assaults, 7 of the 11 outcome measures for aggravated assaults found no difference between domestic and nondomestic defendants. Again, the domestic violence defendants had higher conviction rates (87% vs. 78%), higher violent felony conviction rates (61% vs. 52%), higher aggravated assault conviction rates (54% vs. 45%), and higher misdemeanor conviction rates (22% vs. 16%; Durose et al., 2008).

The overall conclusion of the researchers was that “case processing outcomes
for domestic violence cases were the same as, or more serious than, the outcomes for non–domestic violence cases” (Durose et al., 2008, p. 1). On the surface, this extensive data set and sophisticated data analysis would seem to end any concern that the judiciary currently fails to provide equal attention to domestic violence cases. Unfortunately, the data set has serious limitations, and it is difficult to make any definitive conclusions.

Although the report is titled *State court processing of domestic violence cases* and implies that their conclusions apply to all state courts, in fact the data set only deals with felony cases in 15 large urban counties. It is already known that most domestic violence cases are initially categorized by police, and subsequently by prosecutors, as misdemeanors. It is this disproportionate nature of the charging system that renders an easy comparison between domestic and nondomestic assaults problematic. If, for example, a higher rate of the domestic violence cases were being misclassified as misdemeanors, whereas few nondomestic ones were, any implied similarity in case disposition would have little external validity.

In addition, being aggregate data, the study does not differentiate among jurisdictions. A cursory review of the 15 jurisdictions presented suggest that many of them already have adopted a reformed judicial model for the specific purpose of addressing serious domestic violence cases (Pima County, Alameda County, Riverside County, San Diego County, and Dade County). It is certainly possible that, consistent with the data presented subsequently in this chapter, these jurisdictions have a considerably different profile than other counties. Without separating them, the use of aggregate data to advance a conclusion is troubling.

In fact, only 16 counties (of which 15 were selected) responded to this voluntary request for data. It is possible, perhaps even likely, that the counties that responded knew that they had a better record for handling domestic violence cases or maintained appropriate data. Certainly the fact that many of these counties already had specialized domestic violence dockets would suggest they had developed a more aggressive approach to domestic violence than many other jurisdictions. For this reason, this study might not be generalizable to the overall experience of domestic violence offenders in state courts.
The data set also contains a fundamental limitation in its significance for intimate partner violence as the researchers adopt a definition of domestic violence that includes all violence among family members, intimate partners, and household cohabitants (such as roommates). It was noted previously that approximately one third of domestic violence cases involve relationships other than intimate partner. It is easy to understand that such a data set can dramatically change findings. Similarly, the study in essence treated the crime of incest as a family matter included with the disposition of domestic violence offenses. For example, it can be logically expected that within the sexual offense category, the crime of incest might be punished far more seriously than any other sexual assault—either in a nondomestic context or in the context of a marital rape.

There is evidence that a conflation of such data occurred in this report. Specifically, for sexual assaults, no physical force was used in 26% of the cases. Although these were labeled as a “domestic” sexual assault, it is highly unlikely that any case, with the exception of incest on a minor, would ever be prosecuted in the absence of physical violence. As expected, incest cases were prosecuted rigorously and convicted defendants were sentenced to long terms—including these data in a comparative outcomes measure might easily have skewed overall findings.

Third, it is interesting that, although the study’s conclusion is that there is little differentiation between domestic violence and non–domestic violence cases, two key variables were not considered. First, the researchers noted that of the domestic sexual and aggravated assault cases not prosecuted, 78% were dismissed or declined for prosecution because the victims would not cooperate. No comparable data were available for non–domestic violence cases. Based on past domestic violence data, especially in courts where mandatory prosecution has been adopted as a de facto standard for domestic violence, victim preferences understandably increased total case attrition in domestic violence cases.

Fourth, although the authors noted that incarceration rates were not lower in felony domestic violence cases and sentence durations were similar, they did not correlate this finding with the fact that a greater percentage (26%) of domestic assault offenders had a criminal history at the time of arrest.
compared with only 18% of nondomestic cases. As discussed, in many jurisdictions, prior criminal history is expressly used as a reason for enhanced sentencing. One would naturally expect a heavier sentence in the case of those who have been previously sentenced, making the lack of any difference surprising.

Finally, the researchers did not address variations among statutory sentencing schemes between domestic violence and non–domestic violence cases. As discussed previously, the statute’s use of restraining orders has come about in the context of domestic violence. How many of the convicted defendants in the domestic violence cases have violated existing restraining orders? Many state statutes now provide for multiple charges for both the underlying assault and the statutory offense of domestic violence. One would expect that multiple charges would be levied and possibly an additional sentence imposed for violating restraining orders. No evidence of this was reported.

For all of these reasons, the issue as to whether courts act uniformly toward domestic violence cases and non–domestic violence cases has not yet been definitely answered. A more comprehensive study might in the future answer this unresolved public policy question. It would need to include analysis of the police department’s initial description of incidents (cross-correlated if possible with victim reports), track initial charges through the prosecutor’s offices, and report the final case disposition. This examination could ascertain whether many domestic violence offenders were being diverted out of the criminal justice system into batterer treatment programs. This systematic diversion is in contrast unlikely to occur in the same numbers for stranger assaults as there are no mechanisms to do so (e.g., there is no state-certified program for diverting offenders committing nondomestic assaults).

When some of these factors are considered, past studies have found major differences in judicial handling of domestic violence cases compared to nondomestic cases. In one in-depth study comparing the processing of domestic and non–domestic assault cases in the state of Arizona, the researchers concluded that there were major disparities in handling cases. Domestic violence conviction rates were lower than for non–domestic violence offenders, and both misdemeanor and felony domestic violence offenders were less likely to be incarcerated than men arrested for similar
non–domestic violence offenses (Maxwell et al., 2009). This result is consistent in a number of state courts in Massachusetts.
Domestic Violence Courts: The Focus on Victim Needs and Offender Accountability

Clearly, a primary reason for the creation of domestic violence courts was recognition that traditional models of handling cases lacked the provision of ensuring victim safety and other victim services, failed to punish or rehabilitate offenders, and did not educate the public of the problems of domestic violence nor deter the commission of similar crimes in the future. In essence, the same factors that led to pressures on the police in the 1980s and 1990s, and more recently on the offices of the prosecutors, became the motivator for change in the judicial response. Although overt political pressure was perhaps less important to a largely independent judiciary, the willingness of politicians at the local, state, and federal levels to fund enhanced responses certainly facilitated the initiation of these new courts.

Educating and providing experience to court personnel in handling domestic violence is clearly essential for proper case disposition. In reality, however, personnel in a general jurisdiction court rarely can be trained or even familiar with every type of offense they handle. Specialized domestic violence courts effectively limit such problems by concentrating educational and training resources on a small cadre of more committed personnel. This greater knowledge and empathy of domestic court judges toward victims and children has been cited as one key advantage of domestic violence courts.

Similarly, general purpose courts rarely had the staff or inclination to develop new mechanisms for enforcing batterer compliance and drawing upon long-term treatment protocols to work on concurrent issues such as substance abuse. The greater focus of a dedicated special purpose court presents an opportunity for such courts to make a commitment to provide long-term intervention and supervision, a factor recognized as a key discriminator for successful outcomes.

Finally, by decreasing the scope of the court’s jurisdiction, there will be a greater ability for the courts and, if necessary, advocacy groups and researchers to gather empirical data to evaluate the success of specific
components of their service model. As such, these can facilitate efforts to promulgate best practices within the judiciary.

In addition to abuse-specific factors, we also need to place the growth of domestic violence courts in the context of other major judicial reforms adopted recently. Since the first edition of this edition in 1990, a variety of problem-solving or collaborative justice courts has emerged. One estimate is that there have been more than 3,000 special purpose courts established nationwide, including courts dealing with drugs, mental health issues, community courts, and of course, domestic violence (Huddleston, Marlowe, & Casebolt, 2008). Although each court tackles a different set of issues, all try to improve outcomes for defendants, victims, and communities by addressing the underlying offender problems specific to that offense (Berman & Feinblatt, 2005; Casey & Rottman, 2005). Many of these make referrals to community-based programs and adopt innovations with community partners and compliance monitoring (Wolf, 2007).

Specialized courts are not a new innovation. It has long been recognized that problem-solving courts needed to be created in response to specialized needs of drug offenders, crimes committed by juveniles, and poor decisions made by those legally incompetent to handle their own affairs. Typically, these courts focus on the rehabilitation or reintegration of an offender into society rather than on punishment for prior behavior. Therefore, problem-solving courts such as drug courts focus primarily on the needs of the offender. In these types of courts, the treatment team usually is part of the judicial system and thus works closely with judges in determining the appropriate disposition and ensuring changes in the offender’s future behavior. The treatment team also provides intense supervision coupled with treatment to address the underlying issues (Peterson, 2014).

Domestic violence courts, while specialized and emerging from the same effort to separate out intractable crimes from the general court systems, differ from other problem-solving courts whose emphasis is primarily on rehabilitation. Drug and mental health courts, after all, deal primarily with victimless crimes and, therefore, should focus primarily on the defendant. Domestic violence courts however must place a primary focus on ensuring victim safety as well as on addressing the offender’s behavior. Therefore,
although they certainly could and should address an offender’s need for behavioral changes and might not be as focused on punishment per se, offender needs are considered secondary to those of the victim and to society’s interests. These courts, therefore, seek to ensure accountability for any offenses committed in addition to the deterrence of future misbehavior.

Perhaps the most articulate explanation of the difference between the average problem-solving court and the domestic violence court was stated by Labriola, Bradley, O’Sullivan, Rempel, and Moore (2009):

> Perhaps more critically, most problem-solving court models operate under the assumption that the defendant’s criminal behavior stems from underlying problems that treatment or services can resolve. While many domestic violence courts subscribe to this analysis as well, the premise is more controversial. Many agencies that work with victims of domestic violence argue that the underlying problem is not an aberration of individual offenders but of social norms. Furthermore . . . there is considerable doubt over whether court mandated programs can attain success at rehabilitation in this area. (p. 3)

As will be discussed in a subsequent chapter, the initial efforts to provide a nonjudgmental approach included mediation and offender treatment focused on rehabilitation. Their primary focus now, however, is to ensure offender accountability (Shelton, 2007). Most courts state that increased offender accountability and the provision of coordinated victim services is part of their primary mission (Berman, Rempel, & Wolf, 2007; Gavin & Puffett, 2005).

In the broader context of problem-solving courts and specialized domestic violence courts, the first domestic violence court was established in 1991 in Philadelphia. In what might have been the first of its type in a large diverse urban jurisdiction, a specific Philadelphia courtroom was dedicated to serving the 5,000 people each year who sought emergency restraining orders after normal business hours (e.g., from 5:00 p.m. to 8:30 a.m.). Victim advocates were quoted as saying that this single innovation reduced the time spent getting an order from 3 hours to 30 minutes (“Special Court,” 1991).
Of even greater importance, for the first time, these cases were heard by specially trained masters, not by police commissioners, who concurrently heard all bail hearings and preliminary criminal arraignments, as well as issued general bench warrants. Victim support was provided by volunteers from Women Against Abuse (a local advocacy and shelter group), who staffed the courtroom from 5:00 p.m. to 2:00 a.m. on a regular basis, helped victims fill out lengthy forms, and secured legal assistance for indigents (‘Special Court,’’ 1991).

After the Philadelphia court success, and even more importantly the passage of VAWA in 1994, innovations followed in many disparate jurisdictions with elements of what would later be termed a “domestic violence court.” The initial steps were, of course, limited, often with general-purpose courts providing some personnel to assist domestic violence victims during off hours and authorizing senior clerks and clerk magistrates working night hours to issue restraining orders without the necessity of a judicial signature.

In late 1994, Milwaukee became another early adapter, featuring an innovative approach. A specialized court was set up to maintain a highly structured, 90-day schedule decreasing case disposition time. The express rationale was to make victims less likely to change their minds, be pressured by offenders, or fail to cooperate. In addition, victims were considered to be in less danger from batterers if case processing time was reduced, especially when the court imposed severe sanctions for reabuse during sentencing of a case (Davis, Smith, & Nickles, 1997).

Thereafter, Dade County’s (Miami) Domestic Violence Court Experiment focused on implementing dual treatment for both battering and substance abuse (Goldkamp, 1996). Unlike other domestic violence courts, the focus of this court was primarily on targeting treatment of violent behavior attributed to substance abuse rather than on the integration of civil and criminal cases or on providing additional social services.

Although each such innovation has different origins and features, there has been a rapid growth in the number of these specialized courts or specialized processes within general courts that focus on domestic violence. From the initial start in Philadelphia in 1991 to 2000, more than 300 domestic violence courts were established nationwide (Keilitz, 2000). By 2007, at least an
additional 51 courts were added to that list (Shelton, 2007). By 2009, the five states with the highest number of domestic violence courts had a well-established infrastructure with many separate domestic violence courts. New York State had more than 60 domestic violence courts, California more than 20, and Michigan and Florida more than 15 each (Labriola et al., 2009). The growth rate of such courts has been phenomenal. One recent study of one single type of domestic violence court (those that only handle criminal domestic violence issues) found that of the 129 such courts now in existence, only 2 were founded in the 1980s, almost a third in the 1990s, and almost two thirds in the last 10 years (Labriola et al., 2009).

This phenomenon is not just true in the United States. More than 50 domestic violence courts are in operation in Canada (Quann, 2007) and 138 in England and Wales as of December, 2013 (Bowen, Qasim, & Tetenbaum, 2014).
A View from the Bench
Libby Hines

Judge Elizabeth “Libby” Pollard Hines presides over a specialized docket dedicated to domestic violence (DV) cases in the 15th District Court in Ann Arbor, Michigan (Washtenaw County). The district courts in Washtenaw County were one of three sites selected by the US Department of Justice, Office on Violence Against Women (OVW) for the Judicial Oversight Demonstration Initiative (JODI) from 1999 to 2004 to determine what works best in cases of domestic violence.
As a district court judge in Ann Arbor, Michigan, I am privileged to preside over a dedicated docket of misdemeanor DV cases. I know that if I do my job well, it is homicide prevention. How many times have you turned on the TV or picked up a newspaper to read of a woman murdered by her husband, former husband, or boyfriend? Too often, without intervention, domestic violence escalates and victims are seriously injured or killed. In my community, we decided to intervene early, before the misdemeanor assault became a murder, before the case made headlines. Using a problem-solving approach and always respecting our different roles and ethical constraints, we judges work with prosecutors, the defense bar, police, victim advocates, BIPs, probation, and others to hold people convicted of DV accountable and maximize victim safety. Cities in which this coordinated community
response has been used report dramatic drops in domestic homicides.

Victim advocates from our local DV shelter are called by the police to the scene of a DV arrest to offer information and support. DV cases are given priority in court. An attorney is appointed for the accused unless he or she has retained counsel. That way, the defendant’s rights are protected, a delay is avoided, and another layer of protection is offered for the alleged victim as there is now another person to reexplain any no-contact or other conditions of release. Advocates can staff our courtrooms because of our coordinated dockets. Specially trained probation officers monitor convicted defendants on a more intensive basis and offer safety planning, information, and other services to victims. The victim can make a more informed decision as to how best to keep safe. Probation officers work closely with the BIP and victim advocates. There is ongoing risk assessment. We judges do our best to make sure our orders are appropriate and enforced. Defendants are required to appear at frequent judicial review hearings to prove they are complying. There is zero tolerance for reassault. In an accountable but respectful way, we offer offenders an opportunity to change by completing a long-term BIP.

When I sign the order of discharge from probation, defendants are given the opportunity to say anything they want. The same defendants who complained about going to a BIP at the time of sentencing now say the program has changed their lives for the better. They wish it were offered in the schools. If it had been, offenders tell me, they would never have been in court.

While we do not pretend to have all the answers in Washtenaw County, I know we have improved lives. I believe we have saved some, too.
The Variety of Domestic Violence Courts
Types of Domestic Violence Courts

Unlike general civil and criminal courts that have been in operation for hundreds of years, the organizational structure for domestic violence courts is not consistent. For example, they might be established as a special division of a civil court, a criminal court, or a family or even a probate court that usually handles matters related to trusts and estates. The key differentiation is the degree and nature of their specialization in handling abuse cases and their interaction between agencies including prosecutors, probation, and parole, as well as social service agencies, mental health agencies, victim advocacy groups, domestic violence shelters, and batterer intervention programs. Such courts typically must establish protocols and procedures to ensure coordination of services and interventions.
The Structure and Content of Domestic Violence Courts

Because of the variety of settings where they are located, domestic violence courts display considerable variation in the powers that they have, the issues they deal with, and their standard operating procedure when confronted with other types of domestic abuse. Although such differences may not have been mandated by statute, they were established with their existing legislative frameworks in response to their unique communities. As a result, they incorporate many different procedural and substantive variations.

There is no one particular organizational model can be labeled as the archetypical domestic violence court. Instead, they include most of the following elements: specialized calendars, intake units, case screenings, specialized judicial assignments, and clear ties to court-ordered and court-monitored BIPs. Few courts include all these resources, but instead have varied combinations and configurations of these processes and structures that vary considerably.

Survey results have shown the marked diversity of these courts. In a telephone survey published in 2004, Keilitz reported findings. Of the 106 courts studied, 67 reported having a special calendar, some for protective orders, some for domestic violence misdemeanor offenses, and of less frequency, some for domestic violence felonies. Intake management and services were provided by 66, fewer than two thirds, of these courts. Typically, they assisted with protective order petitions and screening for other cases. However, Keilitz reported that few courts assisted victims with legal or other easily anticipated economic matters, including divorce, child support, paternity, and so on. This could be viewed as an appropriate limitation on their mission and role or, conversely, as an inability of the court to deal with the full range of a victim’s needs (Keilitz, 2004, p. III–9–7).

The key is that formal arrangements are made to integrate the court with counseling, treatment, and substance abuse programs and to marshal available resources for victims and, at times, their children. Specialized court
personnel are trained in coordinating case management, linking the current case to any related pending cases or to those that are subsequently filed (Winick, 2000).

In New York State, an “integrated domestic violence court” is considered to include at least two different types of cases—for example, a domestic violence criminal charge coupled with either a child custody or matrimonial issue. Each jurisdiction within the state handles such cases assigned according to the judge’s preferences. Some judges, such as those in Brooklyn, separate out their domestic violence criminal dockets from related civil issues by hearing each type of case on different days. This is to ensure that both victims and offenders recognize that these cases are treated differently, as the standard of proof is different, as well as the interests of society.

Alternatively, in the Bronx, the approach is, “one family, one day,” whereby a single judge hears all relevant issues involving the same family unit or couple at the same time (e.g., past criminal acts, requests for restraining orders or child protection orders). This approach seeks to minimize hardship on the victim by avoiding multiple trips to the court for different hearings. Interestingly enough, often multiple attorneys and parties are still involved in each case—an attorney representing any child’s interests, separate attorneys representing both the victim and the offender for the civil matters, a victim advocate, and, of course, an attorney for the offender for the criminal charges.

The designation of a judge exclusively to handle domestic violence cases might not be feasible in smaller jurisdictions, or in larger municipalities that resist all “single-purpose” courts. Less than one quarter of the 106 courts studied by Keilitz assigned judges exclusively to domestic violence, whereas almost half the courts had a mixed docket that included a dedicated domestic violence calendar as well as many other cases. It is somewhat disturbing that she reported that relatively few of the courts required extensive domestic violence training. Judges received such training as a result of their own initiative; however, only six courts required their formal participation in domestic violence training prior to their appointment (Keilitz, 2004).

The need for additional training also would seem warranted given the need for judges to be cross-trained in handling civil and criminal cases. Criminal
courts are focused on the rights and obligations of offenders, whereas civil cases are equally focused on both parties.

One recent study of one type of domestic violence court—specialized criminal domestic violence courts—illustrates the variety in procedures used. The variety is especially pronounced when examining services provided to victims. Seventy-nine percent of domestic violence criminal courts did provide victim advocates. The survey reported certain defined services provided by these victim advocates to victims, including 80% who accompanied victims to court, 79% who assisted with safety planning, 79% who explained the criminal justice process, 73% who provided housing referrals, 64% who facilitated prosecution, and 56% who counseled the victim. However, data did show that those victim advocates who were affiliated with prosecutors’ offices were far more likely to place higher priorities on having the victim facilitate prosecution compared with those employed by private agencies. Not surprisingly, the latter groups emphasized prosecution less often and were more concerned about the victim achieving her own goals, which might or might not include prosecution (Labriola et al., 2009).

However, despite best intentions, court structures often miss major opportunities to assist victims. Case screening and coordination were provided by 68 of the courts. Although most of these seemed to coordinate case management, far fewer seemed to use case screening techniques for the express purpose of protecting the victim; for example, if there were many prior domestic violence incidents involving a particular defendant, then a judge should consider this when making bail and sentencing decisions or when developing civil protection (or restraining) orders and safety plans. Keilitz (2004) reported that only 19 of the 106 courts actually used such case screening for those purposes.

For example, most surveyed considered that the physical safety of the victim attending court was a major concern. Nevertheless, only 40% provided separate seating areas in the court, 50% provided escorts in the court house, 40% lacked separate waiting areas (where victims might be particularly vulnerable), and 76% did not provide child care. From a victim’s perspective, addressing these primary concerns would seem far preferable to more
coercive strategies such as the issuance of subpoenas for prosecution or the implementation or enforcement of mandatory prosecution policies.

To date, no national professional association or source for sharing information regarding best practices exists, although the Center for Court Innovation in New York City has been active in its efforts to provide technical assistance and information to judges throughout the country. It also has established a judicial Web site for judges to share information regarding their experience. Hopefully, research conducted with these courts will begin providing empirical results of relative levels of victim safety and victim satisfaction, as well as more conventional outcome measures, before further assessing the various models.

To simplify the typology of domestic violence courts now being established, these can be characterized as having three different overall organizational structures. The first is a dedicated civil protection order docket. Initially, the dedicated civil protection order docket was the most common model wherein petitions and hearings claiming a violation of a protection order comprised much of the court docket (Sack, 2002). These judges primarily handled orders of protection, even if the judge also might retain a more general caseload in smaller some jurisdictions. The second model is the criminal model that allows specific criminal courts to focus on domestic violence cases. This has been made possible because legislation in many states has defined domestic violence as a separate criminal offense. The judges in these courts are specifically trained in both components of that state’s law as well as (hopefully) strategies for case processing and sentencing. As noted previously, a survey published in December 2009 found 129 such criminal domestic violence courts within the United States.

Finally, there is the strict domestic violence court with related caseload or integrated domestic violence court, wherein one judge will handle a case in which there are criminal elements and also any accompanying civil matters. These civil matters might include issuance of restraining orders, child custody, and matrimonial matters. The key to this type of court is that repeated civil proceedings such as divorce or issuance of protective orders are handled by specialists, along with jurisdiction over criminal matters such as a trial for a prior domestic assault.
Of the three models, the integrated domestic violence court is the most inclusive in that one judge ultimately hears all aspects of the particular case, regardless of whether it falls under the rubric of commission of a crime or addresses ancillary but still highly important matters involving the future relationship of the parties and their dependents.

There obviously are considerable variations in practice, depending on jurisdictions and legislative mandates. In any event, such integrated courts at a minimum provide an integrated system that can handle restraining and civil protective orders (and their violations) and criminal domestic violence cases, thereby providing for integrated adjudication of all aspects of the victim–offender relationship, regardless of which aspect of the case first reached juridical attention.

No consensus has developed as to which model is the best in practice. Given the variety of domestic violence court models, it is not surprising that judges have expressed a wide range of opinions on the preferred model. For example, at a meeting at the Center for Court Innovation in 2009, one judge noted that he preferred the separation of criminal from civil cases as he observed that victims often act differently in civil compared with criminal hearings. In the criminal context, a victim might be protective of the offender’s behavior and might state intentions to remain with the offender since, for a variety of personal and financial reasons, the victim may not want an actual criminal conviction. However, in child protection and custody hearings, that same victim might fear loss of child custody to the offender, and thus sometimes takes a far a different position regarding the offender’s conduct. This particular judge thought it helpful to view the victim’s demeanor in both contexts when attempting to make an overall decision on a past conduct and future outcomes (personal communication, Center for Court Innovation meeting, March 2009).

To our knowledge, no research comparing the impact of structure on the efficiency or outcome measurements as a function of organizational structure has been completed. These innovations have developed only recently, and as of yet no one model has been identified as ideal. Since these courts have been characterized by decentralization and adapting to their specific community (Berman et al., 2007), such diversity in implementation might be the option
adopted.

By definition, regardless of where it is organizationally housed, a domestic violence court is a special-purpose judicial unit designed primarily to handle violence against intimates. Its physical location or organizational structure should not limit the inclusion of such a court. However, as we will observe on occasion, the structure apparently affects the orientation of the court and its capabilities or at least its willingness to provide services to victims.
The Goals of Domestic Violence Courts

We would assume that the goals of these types of courts would be fairly reasonable and consistent: Punish past acts of physical abuse, protect victims from further abuse, and rehabilitate offenders. Such clarity of goals has not been reported, however. For example, in one comprehensive national survey of domestic violence courts conducted by the Center for Court Innovation study, there was extensive variety in what goals were considered extremely important (Labriola et al., 2009).

As expected, increasing victims’ safety was reported as an extremely important goal by 83% of respondents (Labriola et al., 2009). Surprisingly, rehabilitation of offenders was relatively low on a priority list (39% of respondents) while two other likely measures of increasing victim satisfaction were far less important; facilitating victims’ access to services was cited by 50% as an extremely important goal, and improving the victims’ perceptions of court fairness was cited by only 29% as extremely important.

It might be the case that judges in criminal courts, regardless of their commitment to stopping domestic violence, may eventually revert to the stated goals of a general criminal court—it is important to determine whether personnel in other types of courts, such as family courts, are as focused on traditional criminal court concerns or whether they have a wider set of goals that might better accommodate the needs of victims for services and the rehabilitation of offenders—as opposed primarily to securing their punishment for past acts.

Moreover, there were vast differences in different jurisdictions. In this national sample, there was a heavy over weighting of New York court respondents. Only 19% of the New York respondents thought rehabilitating offenders was extremely important compared with 53% of personnel outside of New York State (Labriola et al., 2009). Perhaps the New York judges changed their opinion based on their caseload or experiences.

We note that other courts, especially family courts, take a more holistic approach to their goals. Typical stated goals in a family court might include
the following:

- Enabling close coordination with, or even leadership of, the coordinated efforts of prosecutors, BIPs, victim services, and other social service agencies for the family in crisis.
- Providing risk assessments for future violence within a family. When that assessment is completed, it is then incorporated into judicial decision making. The key distinction is that such evidence of future violence is decided in a civil context allowing far less of a burden of proof than in a criminal court.
- Issuing orders to respond to victim needs for offenders released on bail, typically by maintaining court oversight of either the family through frequent appearances or systematic use of probation or victim services through the police or prosecutor’s office.
- Leading strategies to ensure public awareness of domestic violence and the consequences to batterers that are brought to justice.
What Factors Contribute to a Successful Domestic Violence Court?

Perceptions of Judicial Empathy and Fairness

To the extent that domestic abuse judges are not political appointees but are selected instead because of their knowledge of applicable laws and their judicial temperament, most agree to handle such difficult and emotionally draining cases because of personal commitment to end the cycle of domestic violence. The paradox is that, while being engaged and committed to ending abuse, these judges also must not be perceived as unduly biased toward victims. If not, their legitimacy will be questioned. Some defense attorneys, always in the context of nonattribution, have indeed commented to us that they believe domestic violence judges are too “pro-victim” and impose standards of proof less rigorous than other courts.

However, although anecdotal tales are common in the defense bar, this might not prove to be a widespread problem. Research has consistently reported that these courts do not overly focus on retribution nor give excessive sentences (Crowell & Burgess, 1996; Peterson, 2001). It is possible that judges seek to protect victims from a defense attorney’s natural instinct to protect his client—including using any procedural delays or failure of an overworked judge to understand the likely effects of domestic violence on a family.

In addition to necessary perceptions of fairness, an effective judge in a domestic violence court must be trained to understand the dynamics of domestic violence far beyond that of simply knowing the law. Success or failure is not dependent on conviction of the offender given that the parties and the violent behaviors typically are easy to document. As described previously, almost all cases that reach trial result in conviction. Success instead depends on the development of therapeutic jurisprudence in which the judge not only dispenses justice but also develops and supervises implementing a sentence that effectively rehabilitates. Some problems are easy to anticipate. A judicial decision not to incarcerate might severely
compromise a victim’s safety and that of her children. There also is a high risk of judicial burnout from being forced to decide cases rapidly that are nominally misdemeanors but in which the emotional content is high, injuries can be severe, and the price of a judicial mistake literally can be deadly.

This often is complicated by the fact that many offenders and victims have an ongoing relationship, may still be intimates, share finances, and have common children. These often impact a victim’s commitment to criminal prosecution. Furthermore, a victim might act in ways that an outsider might dispassionately perceive are clearly adverse to her long-term interests. For this reason, the full range of judicial options that might ideally be available is in fact quite constrained. Although a judge typically would dispense justice through sentencing, therapeutic justice entails the additional task of addressing the long-term needs of the victim and her family as well as a humane but just approach to the offender.
A Judge’s Decision By Liane E. Kerr, Esq.

Roberta grew up with her four siblings in Albuquerque, NM. Roberta and her siblings were raised by their father, as their mother was in prison for shoplifting and heroin use. When their mother was released on parole, she “sold” 13 yr. old Roberta to xxx, who immediately raped her, resulting in Roberta’s first child. Roberta dropped out of school and xxx moved in. xxx continued his physical and sexual abuse and she had a second child. After her first child, Child Protective Services (CPS) provided counseling and parenting classes and also helped Roberta obtain a restraining order against xxx. They also filed numerous referrals against Roberta’s parents on behalf of their five children—to no apparent avail.

Roberta began working full time at several fast food restaurants where she was placed on a management track. It was at one of those restaurants where Roberta met yyy, an undocumented worker from Mexico and member of a drug cartel. Roberta’s income allowed her to move out of her parent’s house and get her own apartment.

Roberta then became pregnant by yyy with her third child. yyy was fired from his job leaving him “in charge” of the girls while Roberta worked. However, yyy was jealous if Roberta “looked at anyone.” He became verbally, physically, and sexually abusive. His controlling behavior included breaking her cell phone and purchasing a phone in his name in order to monitor her calls. Roberta rebelled secretly purchasing a second phone. When Roberta came home from work, yyy would be drinking, using drugs, and, unbeknownst to Roberta, also selling.

Roberta noticed her two older girls seemed thin. She spoke with her only “yyy-approved friend.” Her friend told her to give the girls Pedialyte, as children went through growth spurts. Roberta said that the Pedialyte didn’t seem to help. The girls always seemed hungry and so she brought food home from work. yyy caught her and “punished” her, which Roberta believed was due to the fact that the two older girls weren’t his children.

At one point Roberta texted her friend, “I need help” and when her friend immediately called her, Roberta answered the phone. yyy held a knife to her throat and threatened to kill her and her family if she told anyone, a believable threat given that yyy had both guns and knives, and was known as an “enforcer.” When Roberta told yyy that he should leave, he tied her hands with a rope, suffocated her with a plastic bag, and sat on her legs.

Finally, Roberta had her friend come over and took her to the bathroom where her children were taking a bath. The girls were sitting naked in the tub, with distended stomachs, black eyes and bruises and visible injuries. Her friend urged Roberta to call the cops, but Roberta was afraid of yyy, who said he would kill her and her family if she told anyone. Her friend asked the kids what was wrong and they said they didn’t want to stay with yyy.

Her friend anonymously called the cops and reported the abuse; however, the friend, a Spanish-only speaker, claimed the children “lived” in the bathtub. In spite of constant proof to the contrary, the media never corrected this wrong impression. Eventually, Roberta was able to get away and brought the three girls to meet with an officer in a parking lot. The two older girls were taken to the hospital with bruises and suffering from malnutrition.
From the outset, the two children identified yyy as the sole perpetrator. Neither child indicated that Roberta ever starved, hit, bruised or injured them, however, Roberta’s court-appointed attorney urged her to relinquish custody. Roberta agreed and has not seen her children since.

yyy fled to Mexico but sent Roberta’s friend a text showing him with various assault weapons and threatening her for calling police. The defense discovered where in Mexico yyy resided and provided the State with the information, but the State took no action to attempt extradition.

On December 23, 2011, Roberta, then 18, was charged with two counts of causing or permitting a child to be tortured, cruelly confined, or punished—both third-degree felonies in New Mexico, exposing her to potentially 6 years in prison.

The media developed considerable interest in the case and a misinformed version of event—that the girls were forced to live in the bathtub—was broadcast to the community. The media printed or reported a story every day from December 23, 2011, through January 3, 2012, and again January 12 through 14, 2014.

After the extensive news coverage, on January 12, 2012, the State removed the case to a higher court and indicted Roberta on a total of 15 counts, 13 of which had 5 alternative charges attached to each count: all told, she was charged with 7 counts of first-degree felony child abuse, 6 counts of child abuse, and two counts of kidnaping. The total potential prison time as a result of the new indictment was 180 years, 162 of which were “mandatory.” The defense was never allowed to interview the two children, as the prosecutor maintained that they were “traumatized.”

The prosecutor recognized that yyy was the primary perpetrator of events; however, they only had Roberta. As a result, she went on the trial docket to face charges for which she was not directly responsible. Because there was a possibility that Roberta would be convicted of just one of the 13 counts that required a mandatory sentence of 18 years, the defense counseled Roberta to change her plea from “not guilty” to “no contest.” On October 3, 2014, at the age of 21, Roberta entered a plea to 2 counts of child abandonment and 2 counts of failure to report abuse. None of the counts carried mandatory time and both the prosecutor and the defense informed the court they believed this to be an appropriate case for probation only.

Roberta’s defense attorney presented the court with overwhelming evidence of Roberta’s trauma and the consequences of such trauma on her behavior. Expert reports were provided and, in addition, the CPS counselor documented Roberta’s horrific childhood. A forensic psychologist assessed Roberta and reported that her low IQ, together with lack of education and any knowledge of where to get help, contributed. The psychologist reported that the fact that Roberta was able to work and was “still standing” was a testament to her overall strength. A nationally known domestic violence expert provided a report explaining the impact of chronic abuse and why otherwise expected actions such as leaving or reporting abuse were not followed.

The court’s pretrial services officer reported that Roberta fully complied with the pretrial directives that included counseling and that she was again on a management track at the fast food restaurant where she was employed. She also had no prior felony or misdemeanor offenses. Therefore, both the prosecutor and the defense urged the court to place Roberta on
probation and require services that she never received as a child: parenting classes and instruction on family relations. Despite this, in 2015, Roberta was sentenced to 18 years with all but 5 years suspended. Her attorney, as well as the experts and even the district attorney, were stunned—but the media who were present at sentencing seemed delighted.

The defense attorney filed numerous motions to set aside the plea, including a motion accusing the court of being influenced by the media and alleging that the court had sentenced other felons charged with greater offenses to less time. The defense pointed out that, in every case, if defendants had no prior felony offenses, they almost always received a conditional discharge. In most cases, the habitual offender enhancement was reduced and the defendant was allowed to serve that time on the ankle bracelet or at the Metropolitan Detention Center.

As her defense attorney pointed out, Roberta lost her childhood innocence at the age of 12 years old when she was raped and then carried two children to term. She was 18 years old when the charges were made and 20 years old when she entered into a change of plea. Roberta was abused as a child, had children when she was a child, and was abused by an extremely aggressive offender who threatened to kill her family if she called the police. She believed her children had a chance if she didn’t call the police—and that if she did, everyone died.

As of this date, the real offender, yyy, is still unindicted and rumored to be in Mexico.
Questions for Discussion

1. What influence would earlier child abuse likely have upon Roberta’s subsequent behavior?
2. What is your assessment of the CPS response when called in after the juvenile rape?
3. Does this fact pattern indicate coercive control by yyy? If so, in what way?
4. Do the facts as shown explain or justify why Roberta behaved as she did?
5. Does the state bear some responsibility, if not culpability, for not recognizing or changing the conditions when Roberta was a child, and for the lack of protection of her own children?
6. When confronted with this type of problem what should police, CPS, or the judge best do to protect the children . . . and Roberta?
7. What role should the media play in terms of charging and sentencing in this highly publicized case?
8. Does the sentence imposed on Roberta increase or decrease the likelihood that serious child abuse will be reported in the community? If so, why? If not, why not?
9. How does this case reflect the dilemma of protecting children while recognizing the impact of a lengthy history of victimization?

Resource Availability

To be effective in this area, it is essential that domestic violence courts maintain some form of extended hours or, in smaller communities where this is impractical, close coordination with police departments who act in coordination with the court, to hold offenders who pose a significant risk of future violence until the next court session. Not surprisingly, a primary barrier to establishing specialized courts is that additional resources are required to ensure their success. This was demonstrated by the experiences of the Milwaukee Domestic Violence Court. Despite early successes with one of the nation’s first domestic violence courts, after a time, sufficient ongoing resources were neither allocated nor maintained, and such courts began to develop procedures that informally limited demand by setting barriers to entry that made sense administratively but effectively eliminated many of the cases in which the court should have retained jurisdiction for the safety of the victim, her children, and society in general (Davis, Smith, & Nickles, 1998).

The key cost driver usually is not an increased number of judges needed since caseloads simply would be reassigned from general purpose courts to the
specialized domestic violence court. Instead, the higher costs per case are
directly attributable to the high level of support resources that must be
allocated to assist in case prosecution, victim assistance, and offender
monitoring. These resources are necessary to coordinate the complicated
legal, financial, and treatment aspects of such cases.

Such additional costs occur both in the initial judicial hearing and post
sentencing. In the initial hearing, the reality is that most traditional courts
typically handle the bulk of misdemeanor cases on an assembly line basis
with large numbers of cases either dismissed or continued without a finding.
However, to handle a misdemeanor domestic violence case effectively, prior
history and current offense must be presented to the judge before he or she
hears the case. This evidence is essential, as offenders with a generally
violent or criminal background are far more likely to continue battering. In
addition, they pose significant flight risk as this status often makes them
subject to enhanced penalties, including being transferred to felony courts. In
stating this, we recognize that, without such resources in coping with an
assembly line of similar-sounding offenses, many judges even if they
appreciate the problems of domestic violence will find it difficult to respond
appropriately.

A similar cost discriminator occurs after sentencing. As demonstrated in our
chapter on extended probation, perhaps the single factor associated most
closely with subsequent success in preventing future battering is continued
court supervision and monitoring of offenders’ attendance, completion of
BIPs, and attendant conditions of their orders. As might be expected, this
requires resources far beyond that given to most minor criminal cases.

So must a properly run domestic violence court be prohibitively expensive?
No. Certainly, if traditional measures of cost per case or cases handled per
judge are used alone, then special-purpose courts will never be as efficient as
general-purpose courts. After all, the latter needs the flexibility with their
workload to balance their caseload between sporadic, crisis-driven work and
the more prosaic and predictable motion-and-trial practice that constitutes the
bulk of the normal workload. However, such mechanical metrics for
domestic violence courts far too easily distort the fundamental purposes of
this court. Unfortunately, the question is usually presented from the
viewpoint of those who argue that, given the inherent budgetary pressures in
courts today, these cases warrant additional resources to expedite case
disposition. In fact, they typically consolidate multiple civil and criminal
cases in the system. Most importantly, by being more effective, the ability of
well-funded specialized courts to process cases rapidly also becomes a major
cost benefit to the system.

To understand these systematic cost advantages more fully, it is important to
understand the burdens placed on general-purpose courts handling a typical
domestic violence case. One of the primary cost drivers they confront is the
result of cases that have overlapping jurisdiction. These court systems may
ultimately cost the entire system far more in terms of resource expenditure
and prove to be far less effective of uncoordinated, overlapping, and even
contradictory case law. For example, just two acts of violence might cause
concurrent actions in a civil court for issuance of a restraining order, a second
civil court for violation of an existing restraining order, a criminal court
(either misdemeanor or felony level) for prosecution of each separate offense
(as the original assault and each additional action are, after all, separate
offenses), a court to hear issues of custody for minors, and, finally, a court for
property and other marital disputes in connection with divorce proceedings.

Each separate court is likely to have its own structure and often arcane intake
procedures and operating rules. If there is no consolidated court hearing, all
of a couple’s issues would be heard in different courts, sometimes in different
buildings, and they often result in differing, sometimes even conflicting,
decisions. Differences in procedural requirements, case knowledge, and even
the temperaments of individual judges might confuse even the most
motivated and knowledgeable advocate—and be wholly confusing to clients.
Similarly, the lack of interaction both within and among courts as well as
relevant agencies is truly staggering. It can test the persistence of a victim and
her family, and even the batterer and the courts. Therefore, the greater
consistency and coordination of approach to the problems of the victim and
her family and the necessity to bring to bear multiple interventions toward the
offender are a key advantage of domestic violence courts. Technology and
communication issues often are problematic as databases might not be
compatible or personnel might be unwilling or unmotivated to share needed
information (Picard-Fritsche, Cissner, & Puffett, 2011).
This problem can be compounded by the fact that multiple civil and criminal cases might be present in different jurisdictions within a state or even in different states. Judicial databases typically lack the integration needed to obtain and link all relevant information, especially when some cases are criminal, some civil, and some are tried in family court. As a result, victims and their advocates often do not have ready proof of prior restraining or other court orders, and batterers often escape attention as a serial offender. Creating a specialized court, the mandate of which is to coordinate all civil and criminal actions related to a particular couple, inherently reduces the likelihood of overlapping, inconsistent, and inadequate judicial reactions to chronic battering, thereby reducing the total resources needed.

Finally, the answer to the legitimate question, “Are domestic violence courts efficient?” requires knowledge of the ongoing dynamics of many assault cases. An extensive body of research has documented strong tendencies for such assaults to escalate over time. Research has shown that offenders with a history of repeated violence occur quickly, usually within a month of the previous incident (Buzawa et al., 1999). Even if court personnel did not particularly value the victim’s safety but simply wanted to escape a number of disjointed cases involving problem offenders and their victims, rapid case processing clearly prevents multiple offenses, often later including felonies, from clogging their system needlessly.

A similar indirect benefit to the courts is that training court personnel and judges to support victims helps prevent the phenomena of massive numbers of cases being dropped voluntarily by victims without resolution of any underlying issues. While paradoxical, this actually ultimately increases costs to the system because it forestalls earlier intervention that might prevent the offender from engaging (and being held liable) in additional criminal offenses and helps prevent concurrent child abuse and other related problems that typically come back to increase judicial dockets.

For all these reasons, the initial higher investment in specialized courts or dockets will not only better serve victims, offenders, and their families, but it probably is a very cost-effective expenditure as well.

**Monitoring Batterer Compliance**
Judicial supervision seems to be a key mechanism for the current control and future behavioral moderation of batterers. Unfortunately, this is not always done. We consider a good risk assessment of past batterer behavior very important in assessing the risk of future violence in a so-called lethality assessment. This is true because unlike economically driven offenses, future actions often are best predicted by the occurrence of other lifestyle risk factors, such as substance abuse or violent criminal history.

Unfortunately, in one study, of 82 surveyed courts, only 70 monitored batterer compliance and only 43% of those reported any type of hearing to review offender compliance. Instead, compliance was merely reviewed during regular status hearings (Keilitz, 2004). We note that even in the context of criminal domestic violence courts, only a minority of courts actively assess the offender’s prospects for future violence or their past conduct when making decisions on continued pretrial release or in case dispositions (Labriola et al., 2009).

Both the 2004 and 2009 studies report that, although many domestic violence courts initiated significant organizational, procedural, and staffing changes, relatively few had done so comprehensively. Furthermore, there was little consistency in their efforts. The extensive diversity among domestic violence courts limited the ability of the research to generalize factors influencing success or failure, as the authors could not assume that the models examined had similar goals, structure, level of funding, or available outside resources to draw on.

As discussed, there is considerable controversy over whether any particular BIP works across the full spectrum of domestic violence abusers. A number of randomized trials have cast doubt on whether these are effective at preventing reabuse (Maxwell, Robinson, & Klein, 2009).

As will be covered in Chapter 12, it is clear that some hard-core offenders commit domestic violence as only one part of an extensive criminal career. For others, a relevant BIP that addresses the causative factors for that particular abuser—for example, substance abuse—may not be available in favor of a more generic theme such as used in the very widespread Duluth Model. For whatever reason, the BIP has not been found to be particularly effective at preventing recidivism (Miller, Drake, & Nafziger, 2013). Despite
this, interaction of the batterer with courts is associated, at least in an aggregate level, with reducing repeat violence.

It has therefore been proposed that the key factor impacting the likelihood of future abuse is in many cases not the offender’s attendance at any particular treatment program but, instead, the existence of intensive monitoring by the court during the period following the act of abuse. In such monitoring, regularly scheduled sessions are held with the offender and a probation officer or someone else to verify statements. If the offender has not complied with court mandates, whether it is to attend a BIP, substance abuse intervention, or violation of the terms of a restraining order, then immediate sanctions are imposed. The intent is to focus on the offender being forced to fulfill his responsibility with judicial conditions, and having a mechanism to closely monitor compliance.

For this reason, a proposed alternative to a sentence requiring attendance at batterer treatment programs is for courts to impose sentences that require intensive probation or judicial monitoring of offenders. This would ensure frequent court appearances of the abuser.

This approach acknowledges that some offenders may not necessarily change their attitudes toward domestic violence, but instead develop recognition that if they again abuse, they will be rapidly caught and immediate criminal sanctions imposed.

Such judicial monitoring techniques are increasingly used in response to a variety of crimes and have proven very effective for certain types of offenders, especially drug abusers (Rossman et al., 2011; Gottfredson, Kearley, Najaka, & Rocha, 2007). Several studies have attempted to determine whether the same impact could be achieved with domestic violence offenders. Nonexperimental studies did provide suggestive evidence that continued scheduling of court appearances seemed to impact batterer conduct. A quasi-experimental study conducted in the Bronx compared the outcomes of offenders who received mandated judicial monitoring with the outcomes of a second group that did not. This study did not find any significant difference (Labriola, Rempel, & Davis, 2005; Rempel, Labriola, & Davis, 2008). However, due to limitations in the implementation in the Bronx, it was not at all clear whether a well-established court procedure
explaining sanctions to the offenders (and then rigorously following through) might not actually have an effect. For example, in another quasi-experimental impact evaluation conducted in Dorchester, MA, Vischer and colleagues (2008) reported at least some potential deterrence.

In stating this as a possibility we must, however, admit that, to date, the only experimental study of this approach relying primarily upon aggressive judicial monitoring was conducted in Rochester, NY, by Labriola, Cissner, Davis, and Rempel (2012). This study was much more rigorous. It failed to find that judicial monitoring led to lower rearrest rates. In addition, this study did not seem to indicate that intensive judicial monitoring improved BIP attendance or, most important, recidivism. However, the researchers concluded that this may be an artifact of how the increased monitoring was conducted. Specifically, two of the three judges that participated in the study used incentives in exchange for good behavior. These incentives actually relaxed the close supervision that should have been the hallmark of a regime of strict supervision in lieu of batterer treatment programs. For example, good behavior was used by several of the judges to reduce the number of future court appearances or to relax the close supervision. Not surprisingly, over time the offenders as a group no longer were as afraid of seeing the judge and explaining any possible lapse in conduct. In contrast, the participants supervised by the only judge that persevered and maintained continued close supervision did show a reduction in reoffending. Obviously, this study would need to be repeated in a more rigorous manner whereby the judges were not able to suspend the close supervision.

Sadly, as of this date it is still an open question as to whether judges should shift some resources to intensive supervision, rather than attendance at some of the more ideologically driven BIPs like the Duluth model. Debate continues as to the relative importance of program content compared to offender fear of future sanctions in deterring reoffending.

Duplicative court systems not only increase the system costs, but also threaten additional emotional trauma for the victim, the family, and even the offender. The certainty of outcome in multiple court cases is less likely to result in the best-coordinated outcome for the parties involved. A particularly egregious case involved a Kentucky couple that occurred during 1995–1996. The physical violence inflicted by Robert Graves against his wife, Karen, resulted in 16 hearings involving 10 different judges in civil and criminal
courts. In addition, three family law cases, including one for divorce, were heard by three judges and involved eight hearings. Robert, as the batterer, was enrolled in three separate court-ordered anger control and substance abuse programs, and advocates from at least four agencies tried to help Karen and her children. The author noted there was no evidence that any of the agencies or courts communicated with each other, despite Karen’s recorded pleas that they do so. Ultimately, after 2 years of this, Robert killed Karen with a shotgun and then committed suicide. The courts subsequently issued a justified self-critical report. (Epstein, 1999)
Domestic Violence Courts: A Long-Term Solution?

Although we will admit there is little published rigorous outcome research on domestic violence courts, some facts have become evident.

We know that we need to look at the context of the court in order to appreciate its likely long-term impact. An explosion of criminal cases has been confronting our courts. Nationwide, street crime increased in the 1980s and 1990s, and only recently have the rates begun to stabilize. Similarly, there began an exploding volume of drug-related arrests and arrests for gang violence. During the first decade of this century, concern about prospects of terrorism also has consumed scarce law enforcement resources. Therefore, misdemeanor domestic violence offenses have been frequently relegated to a low priority and have resulted in pressure for efficiency of outcomes, case dismissal, and inordinate delays.

Despite efforts to limit the impact of domestic violence cases on the judiciary, domestic violence cases have rapidly increased their proportion of judicial caseloads. Mandates for arrest and prosecution have resulted in growing numbers of additional domestic violence cases. Ostrom and Kauder (1999) noted that whereas official BJS reports showed a decline of 21% in the rate of reported domestic violence between 1993 and 1998, claims of domestic violence filed with the courts increased by 178% between 1989 and 1998. Although there is not a perfect correlation of dates, and official statistics are themselves suspect, it seems irrefutable that there is a growing volume of domestic violence cases, which is a trend not likely to end soon. Therefore, issues of court processing time are of increased concern in virtually all courts (Epstein, 1999).

Even in the Quincy District Court in Massachusetts, previously described as a model for processing domestic violence cases, the average processing time for domestic violence cases is 6 months from intake to disposition. This time lapse is highly significant as findings from this court demonstrated that most victims who were revictimized were found to be at greatest risk during the first month after the first incident (Buzawa et al., 1999). Faster-paced domestic violence courts, hence, present a realistic prospect of delivering
comprehensive relief for victims at an earlier stage of the judicial proceeding (Keilitz, 2004).
Can a Family Court Be Effective as a Domestic Violence Court?

Research on the efficacy of specialized domestic violence courts has reported mixed results. One study of 1,279 defendants in Cleveland analyzed the impact of an integrated domestic violence system that included specially trained police, prosecutors, and victim advocates along with a specialized docket that was handled by trained municipal court judges. The impact of this approach, which was adopted in 3 districts, was compared with 2 districts that made no changes over a 6-month period (Regoeczi & Hubbard, 2011).

No significant differences were found between the two key measures of guilty and no-contest pleas, although those cases which were part of the domestic violence project had higher rates of case dismissals (23.6%) than in the other courts (8.8%)—but this difference disappeared after controlling for offender and incident characteristic. This was likely due to the fact that the police in the vast majority of cases (75.3%) did nothing other than file the incident report, although victims in an additional 16.6% did follow up directly with the prosecutor’s office. Most important, in their analysis of recidivism, 31.1% of offenders reoffended and no significant difference was found in the rate of recidivism based on involvement with the domestic violence project. This suggests that looking at reoffending as the sole measure for success may not be adequate. However, cases were processed more quickly and, as a result, victims in the domestic violence project were far more likely to cooperate and experienced far greater satisfaction with the process (Regoeczi & Hubbard, 2011).

We noted previously that there were three models of domestic violence courts. One method—giving such cases to a smaller group of family courts—might be the strategy used in certain jurisdictions. A decade ago, it was estimated that approximately three quarters of the domestic violence courts surveyed had no assigned full-time judge. This might be in response to the size of the jurisdiction, which might be too small or subject to fiscal constraints. However, alternative frameworks within their current structure might allow such a jurisdiction to provide many of the functions of a
dedicated domestic violence court. For example, many jurisdictions now have family courts or surrogate courts. These courts are specialized to a greater or lesser degree in family problems or at least do not have a competing lengthy docket of civil and criminal cases. A typical family court would have comprehensive jurisdiction over all aspects of a family (e.g., divorce; child abuse, welfare, and custody; support orders; and sometimes jurisdiction over crimes committed against or by juveniles). By their nature, family court judges might be far better trained in the complexity of domestic issues and might, therefore, be logical guardians of family rights. Many courts already address domestic violence issues as they pertain to ongoing divorce or child custody. It would seem to be a logical extension to give judges official jurisdiction to handle civil and criminal aspects of domestic violence.

In an early report titled *Unified family courts: A progress report*, the American Bar Association addressed this limitation by recommending that family court jurisdiction be broadened to include intrafamily criminal offenses—including all forms of domestic violence—rather than limiting these courts to their traditional mandate of civil matters (American Bar Association, 1998).

Many states have since implemented such unified family courts tailored to fit the orientation, needs, resources, and capabilities of the particular jurisdiction and state. The state of Oregon, for example, allows courts to bundle cases and specified three types of coordinated services. The first, level 1, groups together related cases that concern one family, and the court administrator assigns the judge who has been most involved in all open cases. The second, level 2, provides for a permanent assignment to one judge. The third, nonmandatory level 3, provides for a comprehensive plan and an integration of services (Schwarz, 2004).

The state of Hawaii also administers the State of Hawaii Family Court, which has jurisdiction over abusive family and household members, restraining orders among family members, and traditional aspects of divorce, paternity, mental health, juvenile delinquency, and child abuse, and neglect (Schwarz, 2004).

In many ways, the advantages of this type of court parallel those of other domestic violence courts—but might be absolutely essential in smaller
jurisdictions without the capability to field a court wholly dedicated to domestic violence. A family court with sufficient jurisdiction would allow one judge to hear all aspects of the problems of a troubled family. The key advantage to the victim would be to eliminate the need to work with the many different courts that might otherwise prosecute an assault case, grant a restraining order, or settle child custody and other related issues. The likelihood of inconsistent results and excessive costs for both the victim and the judicial system in general would be greatly reduced. In addition, because the judge understands the complexity of the family’s issues, he or she might be far more comfortable with issuing comprehensive rulings or mandating more appropriate case dispositions. Alternatives to contentious proceedings, similar to the somewhat dated model of family mediation, also might be requested more frequently (and done more effectively) if both parties understood that the family court with extensive knowledge of prior issues was ready to reassume jurisdiction if there were continued violence.

Despite these advantages, there are some limitations and potential difficulties with relying on a family court to become a jurisdiction’s de facto domestic violence court. The model clearly relies on the assumption that family court judges have jurisdiction, have been trained, and are willing to handle criminal issues, at least with respect to the breach of restraining orders. Some research suggests that victims in such courts may be different than in a general jurisdiction court. For example, in Hawaii, where an explicit effort to reinforce a unified family court was undertaken, an unexpected result has been that family court judges given the mandate and trained to examine persistent and repetitive patterns of abuse were found to impose harsher sanctions than general criminal courts (Schwarz, 2004).

It can be argued that neither the prosecutor nor the defense attorney should have an advantage as the result of a case being brought before a family court judge compared with a general criminal court. Otherwise, unless prosecutors were jurisdictionally restricted, they would almost inevitably seek the courts with tougher sentencing policies. Such forum shopping is fundamentally unfair to both the accused abuser and to many victims. We are concerned that if left uncontrolled, this could destroy much of the benefit from having such courts and might lead to representatives of abused victims believing they are getting second-class or diluted justice. Conversely, this practice might foster
the belief among defendants and their counsel that the courts are biased against them.

Overlapping jurisdictions of family and general-purpose courts also mean that someone in the system needs to provide extensive training for advocates, as well as for the judiciary. In New York State, one author observed that, despite concurrent jurisdiction of family courts and criminal courts in the issuance of protective orders, attorneys for domestic violence victims often had difficulty advising victims as to which would be the preferred venue. To add to the confusion, New York State police are now required to inform domestic violence victims that they have the right to proceed concurrently in both family court and criminal court (Schwarz, 2004). Although it is hard to argue that more knowledge is worse than less, a typical victim simply lacks the understanding to determine which court best serves her needs. When this occurs, there is an obvious potential for victims to be swayed toward a particular court depending on the officer’s orientation.

It also is recognized that family court personnel and attorneys typically have focused on civil case dispositions. By their historical use and even their definition, family courts have traditionally been oriented toward achieving a mutually beneficial win-win outcome. If a family court has been focused on preserving a family for the benefit of the children, then it must change its orientation dramatically in the face of prior domestic violence or it risks rewarding such behavior by victim blaming. Preserving societal and victim-specific goals of preventing abuse obviously trumps the desire to keep a family intact unless the victim strongly articulates a contrary desire.

Although additional training might address this shortcoming, there could be a natural predisposition of court personnel and attorneys to focus on the more familiar civil aspects of a case, especially divorce proceedings, and less on the concurrent goal of punishing past criminal conduct. This could be compounded because a family court judge would need to be well versed in the different evidentiary standards for civil and criminal cases, and a prosecutor who was prosecuting a crime in such a court might be exposed to unfamiliar civil law standards and procedural requirements. As a result, in giving family courts jurisdiction over criminal cases, implementation issues might be more complicated than initially apparent.
Assignment to a family court also might perpetuate a batterer’s perception that there is some degree of mutual responsibility (e.g., “blame shifting”—a psychologically comforting thought to someone who has committed a crime). In some ways, simply handling a case in a family court may not convey the same societal message that happens when a specific batterer is being tried for a specific criminal offense in either a general criminal or a domestic violence–specific criminal court. Hence, to the extent that structural change is intended to convey a societal message, the assignment of domestic violence cases to a noncriminal family court might be less effective in promoting deterrence.

Finally, by their name and nature, family courts are more appropriate for traditional families. It is far more difficult to obtain jurisdiction in nontraditional relationships in which the involved parties are unmarried. As we know from the political debates raging throughout the United States, in many states, nontraditional couples, including same-sex couples and many short-term cohabitating relationships, are not recognized legally. These victims would not be helped by a family court unless there is such a legally recognized relationship. Although there is nothing intrinsically preventing family courts from handling civil unions or other long-term relationships, in many states, their jurisdiction might not be allowed to expand. Also, this venue simply would not be the best in the many cases where the victim desires to sever an abusive relationship and no children are involved to complicate a decision.

This suggests that, despite a desire to have one forum, a family court is unlikely to have by itself the ability to handle violence for all the relationships included under current domestic violence statutes. Therefore, even a jurisdiction with a well-developed and fully empowered family court needs a formal strategy needs in place to ensure consistency between criminal and family courts for these nontraditional relationships.
Innovations in New York State

We believe it would be illustrative to provide an in-depth examination of the many innovations taking place in New York State, especially in Brooklyn, Kings County, New York. There is good reason for New York State to devote considerable resources to the problem of family violence. In 2013, 22.4% of their total state homicides involved a victim and perpetrator in a domestic relationship. Furthermore, the problem of serious intimate partner violence, unlike other crimes, is still on the rise with an increase of 16% between 2012 and 2013 in such homicides compared to 5% for other family homicides.

New York State has a number of general purpose and specific courts that are authorized to deal with particular controversies and criminal offenses. As a result, in the past, victims of violence had to face a variety of courts and often would have aspects of their case heard in family court, criminal court, and the state supreme court, the trial court of general jurisdiction in each county. These courts each had their own judges, civil litigating attorneys, prosecutors, defense attorneys, and referral agencies.

New York State during the early 2000s committed itself to developing a network of integrated domestic violence courts. These courts focused on cases where there would otherwise be multiple overlapping cases in different courts—for instance, a criminal court for an assault, a surrogate court for matrimonial and child welfare issues, and the New York Supreme Court for civil actions. Using the model established in Brooklyn, the state created 32 separate domestic violence courts and many integrated domestic violence courts with 42 locations throughout the state. These courts now encompass the majority of the state’s population, with additional jurisdictions continuing to introduce these courts (Peterson, 2014). In response to the success of this court, as well as of similar courts throughout the country, special-purpose domestic violence courts were added using trial judges from the existing state supreme court (New York State’s trial-level judges). Families referred to such courts were assigned to these judges and were offered social services, such as victim counseling, in addition to traditional case processing.

A factor influencing this successful initiative was that the court
administrators knew that the New York courts previously had highly successful experiences with special-purpose drug courts for nonviolent drug offenders. These courts were considered highly successful in diverting many offenders from developing a long record for drug-related felonies. Chief Administrative Judge Lippman also realized that, because of factors unique to New York’s fractured court systems, domestic violence cases were, at the time, organized into a multiplicity of courts, including the state supreme courts, surrogate or family courts, and many other tribunals (Mansnerus, 2001).

Judge Lippman expected that the number of total domestic violence cases would decline dramatically when the system moved from its pilot phase to include all state courts. When the pilot effort was initiated, there were 80,000 domestic violence cases, 20,000 contested divorces, and approximately 200,000 family court cases involving custody that had elements of family offenses, including assaults, sexual abuse, abuse or neglect of children, and stalking. Judge Lippman estimated that combining cases could reduce the total number of separate court cases by approximately 50,000 per year. In addition, although unstated, was the expectation that, over the long term, the effectiveness of these courts would reduce caseloads by limiting instances of reoffending (Mansnerus, 2001).

Central to establishing these specialized courts was developing a cadre of knowledgeable court personnel empowered to provide a comprehensive, coordinated response starting at a court-unified intake center. Knowledgeable clerks at that center acted as gatekeepers for various agencies and private advocates. Case assignment was made to one judge, who became responsible for all subsequent progress. This was considered necessary to decrease time spent on understanding the family and to minimize the offenses involved; to prevent inconsistent rulings, limiting case-processing time was to be achieved by preventing the courts from being subject to other, higher profile non–domestic violence cases.

In addition, New York State has allowed its counties to develop both misdemeanor and felony domestic violence courts that focus on the most serious offenders. Authorities in Kings County, New York (Brooklyn), first implemented a specialized felony domestic violence court (FDVC) in June
1996. This court has since been a model for other jurisdictions (Newmark, Rempel, Diffily, & Malik-Kane, 2004). It was specifically designed to handle the worst 5% of domestic violence cases that were considered as potential felony offenses rather than the far more numerous misdemeanors. Officials mandated a coordinated response to domestic violence felonies among criminal justice and social service agencies through a model felony court responsible for all aspects of domestic violence.

The key components included: (a) identifying lead criminal justice and social service agencies, (b) setting caseloads that only included domestic violence felonies, (c) staffing with specially trained and dedicated personnel from each criminal justice agency, (d) providing a network of social service agencies, (e) working with the local district attorney to assure vertical prosecution (e.g., assignment of a single prosecutor), (f) assigning victim advocates and an assigned judge, (g) standardizing interventions including regular use of protection or other court orders to protect victims and court-mandated interventions such as batterer treatment for offenders, (h) ensuring offender compliance by monitoring and controlling defendants both preadjudication and postsentencing including requiring frequent court appearances and tracking offenders during probation and parole, and (i) providing services and protection for victims by partnering with advocates from Safe Horizon and the District Attorney’s Counseling Services Unit (Newmark et al., 2004).

After its implementation, as expected, the caseload of the FDVC expanded rapidly as unmet service demands were finally being addressed. This increase resulted from a variety of factors including the increased willingness of the District Attorney’s Office to indict and prosecute domestic violence offenders, as well as an increase in statutory criteria mandating arrest as well as upgrading violation of most protection orders from misdemeanor offenses to felonies (Newmark et al., 2004). Therefore, the total proportion as well as the number of cases falling under the jurisdiction of a felony domestic violence court rose considerably.

Newmark et al. (2004) noted that the FDVC caseload began to decrease after 1999. The NIJ-funded evaluation could not determine the reason for the decline in the FDVC caseload. The researchers suggested that it might be the result of a decrease in arrests that occurred because of decreased reporting or
alternatively (and, frankly, less likely) an actual decrease in felony-level
domestic violence offenses (Newmark et al., 2004; Peterson, 2014).
Implications of the New York State Innovations

Unlike most court reforms, studies now have evaluated their impact and potentially show key areas that might be adapted by other jurisdictions.

Kings County Felony Court

One study evaluated the Kings County Domestic Violence (Felony) Court in Brooklyn, New York, described previously. As stated, this court’s mission was to handle the most serious cases. Evaluations reported that this court made a major positive substantive difference in case processing (Newmark, Rempel, Diffily, & Kane, 2001). Specifically, the District Attorney’s Office was more likely to indict cases of domestic violence to increase the ability to monitor these defendants, thereby giving victims access to services reserved for the more serious cases of felony victims. Furthermore, case dismissal rates were relatively low, ranging from 5% to 10% of indicted cases at least during the 1998–2000 time frame. Thus, the researchers concluded that many cases that in the past would have been improperly disposed of as misdemeanors were now categorized properly as felonies. Victim services were expanded in this specialized court, which was primarily attributable to the assignment of a victim-services advocate who helped obtain a protective order. During the study period, conviction rates did not change, although conviction by guilty pleas increased and the number of trials decreased, representing a savings to the judicial system. Case processing time, a negative given the costs involved, did increase, however—perhaps an unavoidable feature of a court treating its cases as serious incidents rather than as opportunities for swift but routinized justice.

This study was on balance quite positive, but we have some reservations about its certainty for long-term change. The researchers noted that it was extremely important that there was cooperation and agreement as to the goals and objectives among all the participating agencies.

The reason we temper our confidence in the ability of these reforms to last is that the Newmark et al. (2004) study was based on data from the first 6
months of 1997, although the report was republished by NIJ in 2004. Newmark et al. (2004) noted that, although their largely positive findings were based on 136 cases in the first half of 1997, the caseload of the felony court had diminished since early 1999, hopefully because of the long-term rehabilitation of many offenders.

This conclusion is questionable, however, since the transience of many offenders and the continuing lifecycle of new offenders entering the system should have provided a relatively steady stream of new cases. The alternative rival hypothesis is more troublesome: that perhaps the system degraded over time and initial judicial focus waned because of growing caseloads, budgetary pressures, agency burnout, or even offenders and their counsel learning how to manipulate a particular court. Hence, subsequent information from police, prosecutors, the judiciary, and court personnel is needed before any conclusion is possible.

**New York Misdemeanor Court Reforms**

Although case processing of felonies is obviously important as these offenses probably are the most egregious, the reality is that these cases are only a small percent of the total caseload and, hence, an almost insignificant part of the court time devoted to domestic violence.

A recent study compared processing of the 95% of the cases that are misdemeanors in Brooklyn (Kings County) versus the Bronx (Queens County). Both New York City counties, like the Borough of Manhattan, use an integrated domestic violence court to handle multiple aspects of the same case, a major innovation. However, the courts differed substantially on the role of the victims and discretion on the prosecutors to make decisions as to whether to file a case for criminal prosecution. This one procedural decision—mandatory case filing versus nonmandatory filing—had a major impact on the judicial system, victims, and batterers.

Peterson and Dixon (2005) used 2001 data to compare prosecution outcomes in Brooklyn where domestic violence prosecution policy is mandated, even for misdemeanors, with that of Queens County (the Bronx), which does not mandate case processing for miscreants. This study is highly significant.
While there are some demographic differences between the Bronx and Brooklyn, these differences are not that extreme as both are boroughs of New York City. Both are also subject to the same state domestic violence statutes. The key difference is that the Bronx courts decided whether to prosecute misdemeanor cases largely on the basis of victim preference, primarily pursuing cases where the victim signed the complaint, indicating her commitment to case prosecution. As a result, fewer cases were prosecuted in the Bronx. In contrast, in Brooklyn, the District Attorney’s Office adopted a mandatory domestic violence policy, filing charges for almost all misdemeanor cases regardless of victim wishes. In both jurisdictions, although victims were encouraged to proceed with case processing, in the Bronx, when victims refused to sign complaints or meet with the district attorney, the complaints ultimately were dismissed.

Several key differences in outcomes were noted. Not surprisingly, in Brooklyn, almost all cases (99%) were filed for additional processing, proving that the mandatory policy was actually implemented. In the Bronx, despite the nonmandatory nature, 83% were still filed. One negative impact of the Brooklyn policy was immediately observable. In Brooklyn, cases took an average of 12.7 weeks to reach disposition compared with 9.6 weeks in the Bronx, representing an approximate 30% increase in time.

Whereas Peterson and Dixon (2005) advanced the argument that the added court processing time in Brooklyn was good in that it provided an increased period of court oversight over arrestees, lengthy oversight absent conviction is not typically an acknowledged goal of the criminal justice system. Instead, we consider it more properly as an indicator of inefficiency. In addition, the authors’ optimistic conclusion of extended court oversight prior to disposition has been contradicted by other researchers who report that most reoffending occurs during the period prior to case disposition (Klein, 2009), suggesting that this period of increased processing time is not on balance a positive feature.

In addition, and perhaps of even greater significance, there is a lower conviction rate in Brooklyn. Even though only 17% of the cases were not filed in the Bronx (compared with 1% of cases in Brooklyn), 50% of the filed cases in the Bronx resulted in conviction compared with only 21% in
Brooklyn, the mandatory filing jurisdiction. The researchers noted that this distinction was highly statistically significant. It meant that even with a drop of 16% of cases not filed, there was still a smaller percentage of the total cases (whether or not prosecuted to conviction) that were successfully filed in the nonmandatory jurisdiction of the Bronx.

In the Bronx, 83% of cases filed times a 50% conviction rate equaled 41.5% (convictions divided by case filings). In Kings County, 99% of cases were filed times a 21% conviction rate, which resulted in only a 20% conviction rate of total cases reaching the attention of the district attorney (e.g., including those not filed along with processed cases). Hence, from a common measure of determining case efficiency, the conviction rate within the Bronx system was actually more than twice as efficient as that of Brooklyn.

Therefore, unless the outcome of prosecutorial oversight resulted in lower reoffending, current data suggest that the Brooklyn mandatory case-filing system is not warranted. Our conclusion is based on several factors. First, it is imperative to note that prosecutorial and judicial resources are not unlimited. To the extent that mandatory case processing results in an inherently inefficient process represented by cases that are brought but later discontinued with a finding, it is incumbent upon those advocating this process to demonstrate why this process is justified. Furthermore, supporters should explain what other criminal cases the finite number of prosecutors and courts should not handle in order for them to have time to focus on the domestic violence cases that are apparently not successfully processed to conviction.

Second, as we have noted elsewhere, most reoffending occurs during the period prior to judicial decision making; therefore, an extended period of inaction by the court system often is not to the victim’s advantage.

Third, we believe that disempowering victims by removing their ability to have input into charging decisions is a strongly negative outcome. In this case, only 17% of victims decided they were opposed to prosecution in the Bronx. Should all the negative impact of victim disempowerment be imposed on everyone simply to facilitate prosecution of the small percentage of cases that realistically have a vanishingly low probability of remaining in the system until conviction? This is especially true since some victims
realistically might be endangered by case prosecution. As a result, it appears the more discretionary approach used in the Bronx rather than the more mechanistic one adopted in Brooklyn holds more promise.
Integrated Domestic Violence Courts and Their Impact on Convictions

While we may critique Brooklyn’s use of mandatory filings, there is far less doubt that another aspect of their approach has been extraordinarily successful. One recent study suggested that their development of an integrated domestic violence court had a profound impact on conviction rates. King’s County (Brooklyn, NY) has an integrated domestic violence court (IDV) if there otherwise would be multiple family cases involving custody, state supreme court cases involving matrimonial disputes, or minor criminal cases.

The integrated domestic violence court in Brooklyn adjudicates criminal cases of domestic violence involving defendants who also have family court custody, visitation, or family offense petitions pending or a concurrent supreme court matrimonial case. All of a defendant’s related cases are scheduled for appearances on the same day, and the IDV judge makes decisions in all the cases. Each IDV court has its own presiding judge. To enable these judges to hear matrimonial cases, the New York State Office of Court Administration (OCA) established the IDV parts as supreme court parts. The IDV parts also have the authority to hear supreme court felony cases, however almost all the criminal domestic violence cases heard in the IDV parts are misdemeanor, not felony, cases. These IDV misdemeanor cases would have been transferred to a specialized criminal court domestic violence part if there had not been any concurrent cases (Peterson, 2014, p. 18).

Although there has been no explicit goal of increasing conviction rates in the IDV court, it has happened. Peterson (2014) reported that, in a study of cases that went to just to criminal court versus the cases that went to the IDV court, conviction rates increased from 28% criminal court to 49% IDV court. This was true even after an extensive effort was made to match samples to eliminate any differences in the types of cases.

The key to the increase in convictions was not necessarily due to any action of the courts. Instead, the vast difference appeared to be due to victim/witness
participation. Fifty-nine percent of victims in the IDV court were witnesses, compared to only 27% in the criminal court. Peterson (2014) estimated that this accounted for two thirds of the 21-point difference in conviction rates.

This difference may be predictable. In a criminal court, the victim often has only indirect, if any, benefits from the conviction of the offender. In fact, as discussed in earlier chapters, many victims may feel more at risk or suffer financial loss if a conviction occurs. In contrast, having one judge hearing the criminal case as well as child custody, divorce proceedings, and other related matters more fully engages the victim of an assault because she has somewhat conflicting goals of wanting to prevail on the custody and matrimonial issues even if she does not care about the prosecution of the criminal case. The prosecution, however, would use the same evidence in both settings.

Unfortunately, studies of IDV courts have not consistently found such an increase in convictions. One study, conducted in Erie County, New York, by Picard-Fritch (2011) reported an increase in conviction rates. However, no such result was found in Suffolk County, Long Island (Cissner, Picard-Fritsche, & Puffett, 2011), nor in a study of the IDV courts in the nine other counties in New York State (Katz & Rempel, 2011). Similarly, in Vermont, the Vermont State Center for Justice Research evaluated the IDV court for Bennington, Vermont, and also found no increase in the rate of convictions (Schlueter, Wicklund, Adler, Owen, & Halvorsen, 2011).

These results are somewhat difficult to interpret as a whole. Obviously, to some extent, the King County (Brooklyn) courts took great efforts to increase victim participation. That effort may not have been as systematic or as well funded in the other jurisdiction. Similarly, as noted by Peterson (2014), several of the other courts had less official case processing. The studies of Suffolk County and the other nine New York counties, where case processing time was longer, showed that the number of appearances was greater than in the normal family court cases (Peterson, 2014). That factor alone is highly predictive of lower conviction rates.

Unfortunately, several other measures of the success of IDV courts—victim satisfaction and defendant’s compliance with orders of protection and reduction of recidivism—also have been inconsistent. For example, several
of the studies found no real differences in victim satisfaction, and one of the studies actually reported a higher rate of rearrest for violations of protection orders (Katz & Rempel, 2011). None of the studies found expected reductions in recidivism (Peterson, 2014).
Summary

Domestic violence cases can be, and are still, prosecuted in traditional criminal courts, and many of these courts have vastly improved their commitment to domestic violence. There also are increasing efforts to develop more responsive and innovative approaches and be more responsive to victim needs and offender accountability. Many still believe that criminal courts may be the preferred option for all cases of domestic violence offenses to ensure that there is a clearly identifiable offender and victim, and to highlight domestic violence as a crime.

Others prefer a more focused approach in which domestic violence cases are treated in separate court facilities for more rapid and more appropriate disposition. Those who advocate this approach believe that offenders are more likely to be held accountable and processed through disposition. Innovations in some special purpose courts, both in the United States and Great Britain, suggest what elements of a court structure and case emphasis might be useful for managing domestic violence independent of the actual court structure.

Both approaches have advantages and disadvantages. There are no clear answers as to the preferred approach. To a large extent, this depends on the criteria used to measure success—organizational outcomes such as cost per case processed compared to more victim-centered measures such as victim safety, offender accountability, offender punishment, or offender treatment.
Discussion Questions

1. Integrated domestic violence courts attempt to save victims multiple trips to court by hearing all related matters including child custody hearings and restraining orders on the same day. However, it has been argued that since civil courts look at victims and offenders “equally” rather than assuming a victim/offender dichotomy, this strategy is disadvantageous to victims. Can this be resolved in a typical court?

2. Integrating all matters in one day means that each matter might have its own set of attorneys. Thus, the victim and the offender may have attorneys (and possibly a victim advocate) for the criminal charge and a different set of attorneys such as a public defender or a private attorney for the civil matters. Does this inhibit the processing of criminal charges?

3. Can general jurisdiction criminal courts be realistically improved to offer many of the same advantages in terms of expeditious case handling and ensuring offender accountability that are offered (at least in theory) by special purpose domestic violence courts but at a lower cost given limited judicial resources?

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1 Although it is clear that the number of these specialized courts has markedly increased over the past decade, no one is certain of the number of such courts, as definitional distinctions can expand or contract the number reported. For example, one study was more restricted than expected, specifying that they had to be “criminal” courts as opposed to “family courts.” Using these criteria, the study identified 129 domestic violence courts in the United States (Labriola et al., 2009).
Part III The Societal Response
11 Mandated Institutional Change
Chapter Overview

Waves of unprecedented state and federal statutory changes beginning in the 1970s and continuing through today have drastically altered the official response to domestic violence in the United States. This chapter will explore how such legislation has markedly changed the official approach. Special attention will be placed on several discrete areas including mandatory arrest and legislation against stalking, including cyberstalking. In addition, the rapidly expanding role of the federal government via expansive statutes and efforts to cover underserved victims will be covered thoroughly. Finally, the growing international reform efforts will be discussed, particularly as they compare and contrast to approaches taken in the United States in their emphasis upon violence of men against women as a class, versus the far more gender-neutral control of family violence as emphasized in the United States.
State Domestic Violence–Related Laws

First, and most directly relevant, has been the passage of state domestic violence statutes. Although there is considerable variation in the scope and limitations of these statutes, they clearly have made profound structural changes in the response of government agencies. These concentrate on reforms in three areas: the police response to domestic violence, the handling of cases by prosecutors and the judiciary, and the increased availability and enforcement of civil restraining orders.

Second, the passage of state statutes against stalking have dramatically changed the legal landscape for a crime that has exploded, a phenomenon at least partially due to the unintended consequences of past success of domestic violence statutes in removing violators from their residences.

Third, the federal government has become very active in trying to effect change through enactment and reauthorization of VAWA and the Affordable Care Act of 2010, efforts to extend protection to underserved populations, and through legislative funding of innovative and experimental programs designed to spread best practices.
Early Changes in Laws

As we noted in our summary of the history of intervention, there were few legislative mandates addressing domestic violence until the last quarter of the 20th century. Nearly unprecedented change commenced with the 1977 enactment of Pennsylvania’s landmark Protection from Abuse Act. Since then, every state has adopted such reforms.

These statutes, especially in their earliest forms, were not uniform and often contained significant exceptions or limitations. Furthermore, they rarely allocated funding or other resources needed to ensure that organizational change really occurred. Despite such limitations, these statutes collectively began to provide the first comprehensive legislative framework to build reforms.

A complete review of all of the substantive provisions of reform legislation would be far beyond the scope of this effort. In December, 2005, Neil Miller of the Institute for Law and Justice wrote an excellent compilation of such provisions enacted as of that time. His compendium, which was updated in 2010, demonstrated the diversity of statutes current at that time along with cogent suggestions for continued reform.

Despite their variety, state domestic violence reforms have focused on several key areas: the removal of barriers to warrantless arrests, the expansion of substantive grounds for arrest, the enactment of comprehensive criminal codes, and the placement of limits on official discretion.

Statutory Removal of Procedural Barriers to Arrest

Procedural impediments to the use of arrests have at this time largely been eliminated. Before the late 1970s, most states followed English common law requiring an officer to witness a misdemeanor before making a warrantless arrest. Because most acts of domestic violence are classified as simple assault and battery, a misdemeanor, this posed a key limitation. If the act was not repeated in the presence of the officer, no arrest could be made, and thus, a
victim had to initiate and sign a criminal complaint separately—an action rarely undertaken or enforced subsequently by an actual arrest. This practice was in sharp contrast to the ability of an officer to arrest without a warrant on finding probable cause that a felony had occurred.

As a result, in the past, police, if they chose to take any action at all, were forced to arrest for a general purpose, non–domestic violence charge such as disorderly conduct or public intoxication. Neither charge, however, connoted a serious incident. Consequently, they would usually be flushed from the system by case dismissals prior to trial.

By the mid-1980s, the first wave of statutory enactments had eliminated most of these statutory restrictions. In fact, as early as 1992, 47 states and the District of Columbia had already enacted statutes authorizing warrantless arrest in domestic violence cases. Now every state has. Enacting this provision alone was initially expected to result in a significant increase in arrests for domestic assault.

**Expansion of the Grounds for Arrest to Include Violations of Protective Orders**

At the same time that the procedural restrictions were swept away, the first domestic violence statutes incorporated other changes allowing greater use of arrests. Civil protective and temporary restraining orders were soon authorized in all 50 states for prior restraint on possible assailants.

Of particular importance to the police, such statutes either initially, or through later amendment, expressly provided for enforcement of a protective order by warrantless arrest. In effect, their enforcement was thereby criminalized even if no substantive crime for their violation was recognized. This was in sharp departure to the older-style peace bonds, in which conduct might have been prohibited by a magistrate but enforcement was via simple civil forfeiture of the bond—a rather cumbersome and rarely used process.

This reform had considerable potential importance. Police previously operated with extraordinary caution, often refusing to find probable cause. In contrast, the temporary restraining order or more permanent protective order
typically restrained any contact between the suspect and the person under protection, giving police far greater ability to find probable cause to make warrantless arrests. The existence and violation of the orders also was much easier to prove in court. Finally, police failure to enforce a known protective order at first led to numerous lawsuits on a variety of constitutional grounds contesting passive police practices.

The Creation of Domestic Violence–Specific Crimes

Another major change has been enactment of substantive changes to states’ criminal laws. All states have enacted statutes creating a separate criminal offense for domestic or family violence. At first glance, explicit domestic violence laws may appear superfluous. After all, since English common law, every jurisdiction has a lengthy legal history of prohibiting assault and battery.

There are, however, several key advantages to a statute specific to domestic violence. These statutes direct law enforcement to types of crimes more common with domestic violence, not the specific requirements of common law assault and battery. For example, through various amendments during the past 15 years, coercive behavior such as harassment, intentional infliction of emotional distress, or threats other than the threat of assault that technically were neither assaults nor batteries could be independently prosecuted.

Also, the existence of one centralized statute that addressed most types of domestic abuse as well as traditional violent assaults helps focus law enforcement attention. Officers typically receive training on new criminal legislation and, somewhat cynically, also are trained to understand their increased risk of civil liability for a knowing failure to enforce a specific criminal statute.

Similarly, the general purpose statutes that had simply allowed warrantless misdemeanor arrests for assaults often contained strict procedural limits such as limiting the time between the event and the arrest, requirements of visible injury, or both. The creation of express domestic violence statutes freed the police from imposing such unnecessary restrictions—vitally important in the burgeoning growth of coercive control situations. Similarly, because a
domestic violence assault violation was more specific, the legislative intent to mete out punishment appropriate to the crime would influence courts as they imposed sentences. Although difficult to monitor, it was certainly hoped that calling forth innovative sentences such as including injunction-type conditions, threatening deferred prosecution, and forcing assignment of a batterer to counseling programs would become the norm. Although these sentences were sometimes available prior to passage of such laws, and might be undertaken at the initiative of an individual judge, they were not typically used because in actual practice sentencing judges often reviewed a plea bargain only rapidly for a generalized assault charge.

Finally, most such state statutes (often at the prodding of the federal government as a condition for receiving grants under VAWA) now require their agencies to retain accurate records of the occurrence of domestic violence and resultant case dispositions. In the past, when such cases were aggregated into the generic category of assault and battery, it was essentially impossible to determine accurately whether domestic abuse cases were prosecuted with the same vigor as other assaults.

Although such statutes clearly had great potential for widespread impact, the extent of change in street-level behavior is more problematic. Initially, this was a result of a series of constitutional challenges to such sweeping new laws. The US Commission on Civil Rights (1978) stated that many judges at that time questioned the constitutionality of such statutes on the grounds that they created legally unsound protected classes based on claimed impermissible distinctions of gender or marital status.

In addition, the efficacy of these earlier statutes was limited because initially they were a patchwork of widely dissimilar laws, contained major gaps (such as applying only to married couples), and lacked enforcement mechanisms. In 1991, more than 10 years after most of these laws took effect and after reviewing the new statutes in all 50 states, one commentator concluded that their impact had been severely eroded primarily because “elements of a well thought out program are missing (perhaps) due to haste in drafting, lack of adequate resources for legislative research, or perhaps out of legislative reluctance” (Zalman, 1991, n.p.).
More Recent Statutory Amendments

An up-to-date review of domestic violence legislation in all 50 states can be found at the Womenslaw.org Web site (www.womenslaw.org/statutes_states.php). In addition, the American Bar Association periodically provides an excellent 50-state summary of civil protective orders, mutual protective orders, domestic violence arrest policies by state, and other related areas. The list of arrest practices as prepared by the American Bar Association Commission on Domestic and Sexual Violence (http://www.ambar.org/cdsv) also shows the extreme variety of statutory responses to the problem, the different emphasis placed in each statute, and where recent amendments have been made.

No concise summary can be made of all statutory amendments in each of the 50 states plus territories and the District of Colombia. In general, the glaring deficiencies of the first statutory efforts in virtually all states led to subsequent second and third waves of legislation designed to correct their inadequacies or, as in the case of stalking legislation, address a previously unknown problem.

The impulse to pass new statutes has not abated. In our second edition (1996), it was believed that many, if not most, issues were already addressed. There was extensive discussion on how many new innovations led to growing police, prosecutorial, as well as judicial powers and mandates.

What has continued to be of surprise is that the volume of new statutes has not diminished, but increased. Miller (2000) reported that 100 new laws had been passed regarding domestic violence in 2000, 160 in 1999, 64 in 1998, and 83 in 1997. In his December 2005 report, he noted the continued adoption of statutory amendments. Even after Miller’s second compendium, we continue to hear each year of new refinements to existing domestic violence laws. The legislative changes continued even as we wrote this fifth edition in early 2015.

Although research of such statutes would evidently be dated as of the publication of this book, broad trends of these revisions can be identified.
Typical measures are designed to amend the earlier reform statutes to make them more of a cornerstone for state intervention as opposed to simply one disjointed measure.

Key changes have been concentrated in the following areas.

A. New gap-limiting statutes have eliminated (or severely limited) the marital exemption defense to charges of spousal rape. The issue of sexual assault of married parties had never been widely addressed in the past. Now most states have enacted statutory amendments to allow evidence of a sexual crime under certain narrowly defined circumstances. Typically, the use of these statutes is still somewhat limited. There are, for example, strict time limits for reporting such sexual assaults in a marital setting. Usually, they also mandate evidence of the victim’s past efforts to stop sexual relations or the cessation of cohabitation. Some amendments show awareness that earlier domestic violence statutes were often poorly drafted or not well enforced. Thus, many legislatures tried to limit the ability of police, prosecutors, and magistrates from turning severe assaults against intimates into simple misdemeanors by providing various aggravating or enhancing aspects of an assault that would make such an assault a felony.

B. Many states amend statutes to increase penalties for particularly egregious conduct. One or more of the following are often used to change a misdemeanor into a felony: use of a weapon in an attack, a certain degree of injury to the victim, the presence of children witnessing the crime, a second or third act of domestic violence, and a second assault occurring within a certain time period (often 24–72 hours) of the first. Each of these may result in an enhanced sentence per statute.

C. New amendments mandating arrest in more circumstances continue to be enacted. These reflect continued concern over the actual street-level justice as matters formerly left to officer discretion are increasingly becoming statutorily mandated. Because of the singular importance of this change, we will cover this topic in more depth later in this chapter. Legislative mandates for police behavior in these new statutes, however, have not been confined to simply making an arrest. Instead, specific conduct of the officer often is now being addressed. These include
imposing requirements on the officer such as the following:

- Determining whether there is an existing restraining or protective order.
- Providing transportation for the victim and her children and attention to any children present (this is now routine in most states).
- Arranging for social services.
- So-called victims’ rights notices requiring that police inform a victim of the right to demand an arrest and to obtain court protective orders and often to have shelters available.
- Mandating not to release offenders prematurely if they had been arrested for violation of a restraining order.
- Developing and implementing written incident report forms identifying the alleged occurrence, the police response, and reasons for their actions if an arrest was not made (under the impetus of the VAWA), requiring that such incident reports be filed, and, even more significantly, mandating that if no arrest is made or if a dual arrest has occurred, reasons be stated explicitly.
- Requiring police to remove any dangerous weapons from the scene of a domestic assault.
- Perhaps, in the ultimate recognition of their inability to protect victims, a South Carolina statute was amended to authorize officers to take victims of domestic violence into protective custody if the officer believes the victim is in a life-threatening situation (SC S. 1287, 1994)
- Requiring the police to recognize the primary offender in order to avoid unnecessary dual arrests.

D. Legislative amendments changing the operation of courts and prosecutors’ offices have tended to be somewhat less coercive than laws directed toward the police, displaying greater deference to prosecutors. Such changes include the following:

- Formally granting more discretionary authority for prosecutors to charge a domestic assault as a felony rather than as a misdemeanor.
- Allowing courts to sanction uncooperative victims who refuse to testify at trial. For example, although limited as to the grounds, California statutes grant a court the right to find a victim in contempt of court for refusing to testify (CA A. 363, 1991). Note, however, that in response to an immediate outcry by some battered
women advocates, several years later, a less-punitive provision was adopted, allowing the introduction of a victim’s videotaped testimony at a preliminary hearing to be admitted into a trial, if otherwise admissible, thereby obviating the need for her further testimony (CA S. 178, 1993).

- Prohibiting mutual orders of protection from being routinely issued unless clearly needed.
- Giving presumably more capable and sympathetic family courts exclusive jurisdiction over cases involving any violations of domestic abuse orders.
- Adding provisions in the victim’s rights statutes mandating that prosecutors offer to meet with victims to discuss offender sentencing or before they are allowed to accept reduced charges.
- Requiring prosecutors to have written policies on handling domestic violence cases.
- Adopting compulsory no-drop statutes (discussed extensively in Chapter 8).
- Allowing judges to grant probation to a convicted abuser upon an express condition that requires participation in a batterer treatment program.

E. Many states have broadened the original scope and duration of ex parte temporary restraining or protective orders (at the request of one party without requiring the presence of the charged party). Some states have extended their duration from the original 10-day norm to up to a 1-year ex parte order if the respondent fails to appear at a hearing after notice is attempted. Similarly, enforcement of violations of court orders has been significantly boosted by legislative enhancement of penalties associated with violation of these orders. Now, in all states, violation of an existing court order constitutes a separate offense. Adding teeth to this measure, a growing trend has been to make repeat violations of restraining orders a statutory felony.

F. Sentencing practices also have been extensively addressed in amendments. Such measures are generally designed to punish more severely rather than expressly to accelerate rehabilitation. In fact, some states now limit a batterer’s access to diversionary programs. For example, California requires that defendants charged with misdemeanor domestic violence offenses not be eligible for any diversionary program.
unless the defendant had no conviction for any violent offense and had not been diverted under similar statutes within the past 10 years (CA A. 226, 1993). Michigan does not specify an express date, but limits the number of instances in which an alleged offender can ever have domestic charges dropped (MI H. 4308, 1994).

G. Training of key officials is increasingly mandated, not left to individual departments’ discretion. This is especially true for police where, in response to complaints of inadequate police training, the types and levels of training of agency personnel and comprehensive standards of conduct are increasingly specified by statute. Most states now require some level of police training on domestic violence. In addition, a small minority of states statutorily require continuing in-service domestic violence training.

H. Finally, with potentially profound impact, most states by statute now require local written police policies and procedures for handling abuse cases. This forces higher-level administrators to prioritize resources and set standards. Such policies, if communicated widely and enforced, will hopefully standardize police responses. By providing a standard of care should a victim be injured or killed because the policy was not followed, these policies may become a virtual roadmap for litigation against the police department or the individual officer.

The diversity of state-level statutory change prevents any easy generalization as to the statutes’ cause and probable effect. In fact, as we more fully detail in the discussion on stalking statutes that follows, the inability to develop consistent requirements regarding domestic violence may actually impede effective responses to crimes, at least in the short term, until some consistency between new rules, funding for new mandates, and new training requirements become more standardized.

During the long term, we would expect this cascade of new legislation to diminish as it has since the last edition of this book in 2012. It is hoped that organizational adherence to best practices will become standardized. Whether such behavioral changes occur because of actual attitudinal change as opposed to statutory mandate, is subject to ongoing debate.
Sometimes Very Explicit New Legislation Is Needed to Overcome Incredible Judicial Rulings
Ex-Wife Ordered to Pay Alimony to Abusive Ex-Husband: Crystal Harris Case

Crystal Harris was ordered in November 2011 by Judge Gregory Pollack, a San Diego County Family Court Judge, to pay alimony to her ex-husband who had repeatedly threatened to kill her and had been convicted of sexually assaulting her (forcible oral copulation). While the husband had admitted to “anger management” problems and prior domestic abuse, no one might have believed Crystal Harris if not for an audio recording of the sexual attack where she apparently said no approximately 50 times. He was convicted of a felony and sent to prison for 6 years.

The family court heard a recording of the entire violent act. According to the judge, Crystal Harris would, if he followed policy, have had to pay her ex-husband alimony $3,000 a month. This was reduced to $1,000 a month because of his conduct (what some have called “the rape discount”). The judge also ordered her to pay an extra $47,000 for her husband’s attorney’s fees, apparently for daring to contest the award of alimony.

The judge rationalized his decision because Crystal earned about $120,000 per year as a financial analyst while her husband was unemployed—and likely was unemployable having been convicted of felony rape. The judge also did not terminate future changes in alimony allowing for the possibility that, upon release from prison, she would have to face her abuser in a request for increased alimony. The judge defended his order as lawful being that there was “no law prohibiting alimony for sex crimes,” only a prohibition for alimony in the event of attempted murder or solicitation of murder.

We note that alimony was ordered despite the fact that, in the then existing California code, a history of domestic violence and the criminal conviction of an abusive spouse were factors a judge “shall” (not “may”) consider in awarding or eliminating alimony (California Family Code Section 4320 et seq.).

More important, there was no law that made alimony mandatory; it is awarded at the judge’s discretion “applying... financial need factors... with fairness and equity considerations.” Therefore, the judge didn’t need a law to support a decision not to award alimony. Instead the lack of such a law allowed him to do so, apparently due to the judge’s determination that the convicted ex-husband needed financial support.

An additional order by Judge Pollack required immediate reunification with the couple’s two children upon the husband’s prison release apparently without requiring further evaluation or counseling despite the ex-husband now being a convicted sex offender who had violently assaulted their mother while they were home and despite their mother’s expressed fears for her safety.

Ultimately Ms. Harris requested that Judge Pollack recuse himself from the matter and that a new judge be assigned to the case. This motion was granted, and a then pending motion by the defendant husband demanding attorneys’ fees incurred in her appeal of the award was denied by the new judge. The defendant husband’s appeal of the felony conviction was
Not surprisingly, legislation to close this loophole was quickly introduced in the California legislature, passed unanimously in both the California Assembly and California Senate, signed into law by Governor Brown, and became effective January 1, 2013, as new Section 4324.5 of the Family Code.

The summary of the need for the law stated: Existing law provides that, in addition to any other remedy authorized by law, when a spouse is convicted of attempting to murder the other spouse or of soliciting the murder of the other spouse, the injured spouse shall be entitled to 100% of the community property interest in his or her retirement and pension benefits, and a prohibition of specified support or insurance benefits from the injured spouse to the convicted spouse. Existing law defines “injured spouse” for these purposes. Under existing law, a family court is required to consider specified factors in ordering spousal support, including the criminal conviction of an abusive spouse.

This bill expanded the above-described provisions to apply when a spouse is convicted of a specified violent sexual felony against the other spouse, and requires the court to consider the convicted spouse’s criminal conviction for a violent sexual felony in ordering spousal support, as specified. The bill also requires the court to order the attorney’s fees and costs to be paid from the community assets if warranted by economic circumstances. Under the bill, the injured spouse, as defined, is not required to pay any of the convicted spouse’s attorney’s fees out of his or her separate property. The bill further, at the request of the injured spouse, defines the date of the parties’ legal separation as the date of the incident giving rise to the conviction, or earlier if the court finds that the circumstances justify an earlier date, for community property purposes.

It is noteworthy that this new statute change should never have been necessary. The then existing law already had dealt with domestic violence in setting terms for alimony.

SECTION 1. Section 4320 of the Family Code

4320. In ordering spousal support under this part, the court shall consider all of the following circumstances:

(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following....

(i) Documented evidence of any history of domestic violence, as defined in Section 6211, between the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party.

(m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4324.5 or 4325.

(n) Any other factors the court determines are just and equitable.

SEC. 2. Section 4324.5 is added to the Family Code, to read:

4324.5. (a) In any proceeding for dissolution of marriage where there is a criminal
conviction for a violent sexual felony perpetrated by one spouse against the other spouse and the petition for dissolution is filed before five years following the conviction and any time served in custody, on probation, or on parole, the following shall apply:

Ch. 718 — 2 —

(1) An award of spousal support to the convicted spouse from the injured spouse is prohibited.

(2) Where economic circumstances warrant, the court shall order the attorney’s fees and costs incurred by the parties to be paid from the community assets. The injured spouse shall not be required to pay any attorney’s fees of the convicted spouse out of the injured spouse’s separate property.

(4) The injured spouse shall be entitled to 100 percent of the community property interest in the retirement and pension benefits of the injured spouse.

While we often justifiably bemoan continual statutory amendments and resultant “churn” in what are relatively new and fairly comprehensive statutes, it does appear that without express direction some judges simply do not use discretion in a manner that adequately protects victims of domestic violence. Therefore we anticipate similar amendments in the future.

We do also note that the California Statute cited in this sidebar is extraordinarily limited in scope. Ninety-five percent of all domestic violence cases are handled initially as, or ultimately plead down to, misdemeanors. In these cases, the new California law simply would not apply, although we would hope that a judge would consider this as part of his commitment to be “fair and equitable.”

❖ Even a cursory review of US experiences shows that the state, as well as the federal, response to domestic violence leans heavily toward criminalization of the conduct and significant limitations on discretion of police, prosecutors, and the courts, primarily because of past lax enforcement. This approach is not universally taken, even in some other countries that are equally committed to addressing this problem.
Statutes and Policies Mandating or Preferring Arrest

As covered earlier in this chapter, all states now have passed statutes empowering police to make warrantless arrests in cases of domestic violence. Many states have not been satisfied with the result, or have been influenced by early research and political pressure to go further. As a result many state statutes now expressly reduce police discretion by mandating a specific action—arrest—when responding to an incident. These statutes and enabling police policies vary considerably in their efforts to limit police discretion. The three types of statutory schemes that now exist may be fairly grouped into three classes: mandatory arrest, preferred (or presumptive) arrest, and discretionary arrest.

This categorical distinction is highly significant as this impacts actual police behavior both in intended and in unintended ways. Mandatory arrest statutes direct action and, at least in theory, wholly limit police discretion; presumptive or preferred arrest statutes direct police to make arrests unless there are specific reasons justifying otherwise, while a discretionary arrest statute simply serves to guide, albeit strongly, officers’ use of discretion in the direction of making an arrest. In a presumptive arrest jurisdiction, the statute might explain the advantages of making an arrest, however the actual decision of whether to arrest, separate, or merely warn parties is made by the officer on the scene.
Rationale for Mandating Police Arrest

Mandatory arrest statutes and police departmental policies that follow these are primarily based on the belief that mere statutory policy pronouncements in favor of the police arresting offenders are insufficient to change street-level justice. They began to be passed as a further reform of the original domestic violence statutes. Proponents, especially in the early years of police reforms, felt police needed to be coerced by statute into doing the right thing—making arrests of obviously guilty batterers. Their issue was plainly the abuse of police discretion.

More recently, as the process of change has become ingrained in police culture far more deeply and as considerable evidence has shown an increase in the rate of arrests for this crime, the primary rationale for mandatory arrest has changed and such statutes and policies have become more popular among police officers. While at first deeply resented by rank-and-file officers, one recent study reported that 75% of officers now realize policies emphasizing arrest were necessary and effective (Deveau & Tititampruk, 2014). This fact, in some ways, undermines the initial theoretical justification of mandatory arrest statutes.

Proponents of these statutes and resulting policies now do not necessarily state that rank police abuse of discretion remains the only, or even the primary, problem with normal discretionary police practices. Instead, they now often state that the basic problem is the inherent situational ambiguity of the police–citizen encounter discussed in the next chapter of this book. Thus, many advocates for mandatory arrest no longer critique the integrity or commitment of most police officers nor necessarily even question their desire to assist domestic violence victims when they fail to arrest.

Proponents believe that giving police substantial discretion in a domestic violence case forces an officer under intense time pressure and a highly charged situation to make a series of critically important decisions. Broken into its components, the officer must interpret often highly ambiguous facts rapidly, usually while hearing several wildly different explanations, make an initial determination of the legal requirements needed to invoke a variety of
possible criminal statutes, and then analyze all the potential consequences of these various alternatives. Only then can discretion be applied appropriately.

Furthermore, proponents realize that although theoretically there should be an independent decision for each specific domestic violence intervention, inevitably the police officer will be influenced and often bound by his or her background in such cases and the response will depend on whether the officer believes the immediate problem is capable of resolution by police actions. Consequently, supporters of mandatory arrest believe that the inherent problems of applying discretion itself, not its intentional abuse, justify statutorily mandated arrest.

Many proponents of mandatory legislation and administrative policies also recognize that many officers, even today, still lack sufficient domestic violence training to respond effectively, while still others, especially those hired in decades before passage of the newer pro-arrest statutes still actively disapprove of their loss of customary discretion. Implementing mandatory or pro-arrest statutes, therefore, tries to force change in officer behavior without first having to change police attitudes. Attitudinal change, although apparently considered of less immediate importance, would then occur at some later point, if at all, by training officers on the rationale of the policy by conversion, resulting from immersion into the procedure, and, over time, a widespread consensus that arrests actually work.

It also of course is hoped that implementation of an arrest statute dramatically increases the likelihood that arrested offenders will be prosecuted. After all, an arrest signifies to other key actors in the criminal justice system, including prosecutors and judges, that an officer believes there is probable cause that a crime has been perpetrated by the defendant. In contrast, prosecutors and judges in general, and in domestic violence cases in particular, widely disfavor victim-initiated criminal complaints.
Variations in Police Use of Mandatory Arrest

We can safely state that research on mandatory arrest has resulted in increased arrests. This is dramatically illustrated by a study conducted by Hirschel, Buzawa, Pattavina, Faggiani, and Reuland (2007) that examined arrest patterns among jurisdictions in 19 states using NIBRS data. It does seem that implementation of mandatory domestic violence arrest statutes results in the highest overall arrest rates. Not surprisingly, preferred-arrest states have had the next highest arrest rate, followed by discretionary-arrest rates. Thus, it seems that legislation has had at least some impact. Nonetheless, research continues to find considerable variation in the use of arrests, even after passage of stringent statutes. What is perhaps most puzzling is the extreme range of arrests within mandatory-arrest states (Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007). Some diverse findings among studies regarding factors affecting the decision to arrest are to be expected—however, it is clear that other factors, beyond that of passage of a statute, are very important in actually obtaining limits on police discretion. The conclusion to be drawn might simply be that these observed variations are real; no one set of variables works as a constant among all departments (Buzawa & Hotaling, 2003, 2006; Buzawa, Hotaling, Klein, & Byrne, 1999; Hirschel, Buzawa, Pattavina, Faggiani, & Reuland, 2007).

The reality of how police organizations actually respond to pro-arrest statutes and policy directives remains problematic and, at times, unpredictable. The process of implementing organizational change rarely receives adequate attention from legislatures. As a result, a pattern of state-mandated changes in law enforcement practices has been decoupled from the administrative detail sufficient to ensure actual change. A failure of statutes and high-level policies to focus critically on strategies to implement change often results in inadequate or even simplistic solutions. The result might be that policies fail to change actual practices or street-level behavior.

Alternatively, policies might become so transformed in practice that the problem not only remains but also creates new problems (e.g., the phenomenon of dual arrests described in Chapter 7). Because neither statutory changes nor administrative policies automatically translate into
effective operational behavior, we feel it is important to discuss not only the actual mandate of change but also provide some discussion on assessing, even if on a very generalized basis, the likely impact of such mandates on actual service delivery.

What do we know about implementation issues in this area? Researchers have for decades been aware of the difficulty in successfully implementing politically mandated change on independent agencies (Bardach, 1977). Since the 1970s, concerns have been raised that bureaucratic institutions simply transform many statutory or policy mandates into their own standard operating procedures and their own mechanisms for rewarding and punishing official behavior. Most policy researchers now recognize that bureaucratic discretion coexists despite the exercise of clearly legally ascendant political control. As a result, there is a wide variety of responsiveness depending on the type of agency and the type of directive involved.

Such issues are, in turn, compounded by the structure and traditions of the criminal justice system. Police departments, despite their reputation as paramilitary command-and-control bureaucracies, continue to be known for remarkable resistance to change. This is partially because of the inability of command officers to observe officer behavior directly, the ingrained respect and deference for officer discretion from commanders who were former line officers, and the training systems for which formal academic instruction is limited and in-service training often nonexistent. Rookie officers train with more experienced officers who often remain attitudinally cynical and resistant to change. In many departments this is coupled with strong police unions preventing administrators from enforcing their policies.

Such structural bases for resistance to change often are supplemented and reinforced by a widely recognized feature of the police culture: a highly insular and self-reinforcing organization in which both civilians in general and civilian and even political control over police practices in particular are regarded suspiciously and perhaps with cynicism or simply are dismissed with outright derision (Manning, 1997, 2010).

Most large police departments we have studied now have adopted detailed policies about handling a maze of subjects. These policies typically include domestic violence (sometimes to an excruciating level). They read well in
that they express institutional commitment to statutorily correct policies and administrative control. For the reasons stated above, the reality of street-level policing is often different than statutes and policies mandate. After all, statutes, unless training and enforcement are funded, may be written more to address political pressure than to guarantee change. Similarly, policies might be written in part to insulate the department from legal liability rather than to express genuine concern for policy adherence. At times, absolute compliance might not be expected or even desired by department leadership, especially if there are competing higher-level enforcement priorities for the limited number of street level police officers. This makes street-level implementation of any legislation or policy directives problematic at best. To our minds, directives should focus attention on the methods used to facilitate actual behavioral changes.
State Anti-Stalking and Cyberstalking Legislation

*Until he rapes me or kills me, the police can’t do anything. When I’m a statistic of some kind, they’ll put every man they have on it.*

—From a victim of stalking
Initial Statutes

In many ways the sudden enactment of anti-stalking statutes in the 1990s mirrored the rapid rise of domestic violence laws in the late 1970s to the 1980s. Before 1990, no state had explicit anti-stalking legislation. Instead, statutes generally addressed “criminal trespass” and “terrorist threats” and were very specific requiring a particular pattern of criminal behavior. Hence, they were only occasionally used for domestic violence situations.

Common harassment statutes, of the type on the books in virtually all states, considered stalking-type behaviors to be low-level misdemeanors. Such omnibus statutes were really designed to curtail offensive physical contact, insults, false reports, and other relatively petty offenses. Harassment laws, which were general in nature, also were severely limited in application by numerous judicial decisions that had held that unless “fighting words”—epitaphs, outrageous slurs, or other speech not generally protected by the First Amendment—were involved, and such laws might be unconstitutional. As such, they also did not prove useful in combating stalking related to domestic violence or other serious predatory behavior.

Similarly, although many local jurisdictions had separable anti-stalking ordinances, such efforts were scattered, could be circumvented if the victim or offender left the jurisdiction, and provided for minimal enforcement or punishment. In this regard, the criminal code for stalking situations largely paralleled the frustrations of policing domestic violence. Prior to the passage of domestic violence legislation, police were stymied in that typically no actionable crime was committed before a violent assault.

The nation’s first statewide anti-stalking statute was enacted in California in 1990. This statute was passed largely as a response to the stalking and subsequent July 1989 murder of actress Rebecca Schaeffer, who starred on the television show My Sister Sam. In addition, five murders the year before had taken place in Orange County, California, where the victims had actually obtained domestic violence restraining orders and had reported to authorities that the restraining order did not work.
The California statute originally defined stalking in a narrow explicit manner (California Penal Code, 1992, section 646.9). A stalker is someone who “willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in fear of death or great bodily injury.” By its terms, the statute required concurrent findings of the following elements: willful malice, repetitive following or harassing, a credible threat, and intent to place the recipient in reasonable fear of death or great bodily injury.

This statute was obviously limited in that it required finding both behavior and intent, leaving its application severely constrained, in particular because an overt threat and proof of intent to cause fear of the threat were required. In addition, it did not provide for warrantless arrests, increasing penalties for violating a court order, nor for conviction in subsequent offenses. It also had less than adequate provisions for victims of domestic violence–related stalking in which the incidents might individually seem trivial (such as repeatedly going into the same stores right after the victim entered). In an effort to respond to such criticisms, California revised its stalking statute in 1992 to increase the grounds allowed and to increase the attendant penalty for violation.

During the next several years, increasing (although largely anecdotal) evidence of a rise in stalking in most states led to the recognition of obvious statutory gaps. There ensued a virtual deluge of new statutes. For example, unusually tough legislation (potentially imposing up to 4 years in prison for aggravated stalking) passed in Illinois. Why did this pass? In hearings prior to passage, lawmakers were told that stalkers had killed five victims in Illinois in the past year; most offenders were husbands or boyfriends who had been removed from their residences, then stalked and killed their former intimates. In addition, victims of domestic violence–related stalking in what is now a familiar pattern recounted to the legislature how they were terrorized even after the newly issued restraining orders were imposed and how they continued to receive harassing mail and calls even after the attacker was incarcerated.

Subsequent anti-stalking laws have become extraordinarily varied in both their terms and level of enforcement. Specific provisions of such statutes now
typically include the following general prohibitions:

- pursuing or following,
- harassing,
- nonconsensual communications,
- surveillance or lying in wait,
- trespassing, approaching, or continued presence,
- disregard of warnings (to leave), and
- intimidation.

In addition, some states that did not expressly state proscribed acts expressly grant courts to sanction stalking behavior.

One governmental victim’s advocacy group, The National Center for Victims of Crime, maintains an up-to-date list of all applicable stalking statutes on their Web site: http://www.victimsofcrime.org/. They characterize the various 50 states’ statutes in several key dimensions:

- Whether the state’s statute was broad enough to include all behaviors that stalkers employ, including use of surveillance technology and cyberstalking.
- Whether a simple act, if threatening enough, would trigger the statute, or if multiple acts are needed to show a pattern of behavior.
- Whether “general intent”—for example, the intention to engage in the behavior—is enough or is specific intention for the resulting consequences of the action (fear by the victim) required.
- Whether actual fear on the part of the victim is required or it is sufficient that a “reasonable person” would have such fear (a critically important evidentiary standard).
- Whether the level of fear suffered by the victim is specific or extremely limited.
- Whether a creditable threat by the offender is required. (Stalking Resource Center, National Center for Victims of Crime)
The Model Code Provisions and the Second Wave of Anti-Stalking Statutes

Later statutes began to adhere to the following tenets of the 1993 Model Anti-Stalking Code for the States (National Criminal Justice Association, 1993), proposed by the National Institute of Justice:

Section 1. For purposes of this code, (a) “Course of conduct” means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person [note electronic harassment was not covered]; (b) “Repeatedly” means on two or more occasions, and (c) “Immediate family” means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who, within the prior 6 months, regularly resided in the household.

Section 2. Any person who (a) Purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or herself or a member of his or her immediate family or to fear the death of himself or herself or a member of his or her immediate family; and (b) Has knowledge or should have knowledge that the specific person will be placed in reasonable fear of bodily injury to himself or herself or a member of his or her immediate family or will be placed in reasonable fear of the death of himself or herself or a member of his or her immediate family; and (c) Whose acts induce fear in the specific person of bodily injury to himself or herself or a member of his or her immediate family or induce fear in the specific person of the death of himself or herself or a member of his or her immediate family is guilty of stalking.

The key components of this code were that (a) an explicit threat would not be required (the code recognized that conduct, even absent a threat, may be just as serious a predictor of future violence); (b) a course of conduct that would cause a reasonable person to have fear was covered, even if the intent to actually cause fear was not present (because many stalkers, especially domestic violence stalkers, may be under a delusion that their victims want to
reunite with them); and (c) states were encouraged to make violation of the stalking code a felony (to allow greater flexibility in sentencing and to impress on potential offenders and the criminal justice system the seriousness of the crime).

Despite the promulgation of the 1993 Model Code, statutory coverage remains quite varied. For example, many states wrestle with a threshold issue: What level of threat is required to sustain a conviction? Threat requirements for conviction seem broken into several groups. The majority of states do largely follow the Model Code and merely require a threat, or even conduct without an expressed threat, that would make a reasonable person fearful. This is the easiest standard for prosecutors to meet because it allows them to introduce circumstantial and cumulative evidence in place of a smoking gun–type of expressed threat.

In contrast, the states that did not adopt the Model Code mostly still require that an express threat be made and that the threatening person have the apparent ability to carry out the threat or have commenced actions. The weakness in such statutes is evident. Stalkers may seek to operate (barely) out of its statutory confines by not making overt threats even while seeking to terrify victims. This is a potent threat, especially when some observers have commented to the authors of this book that at some batterer treatment groups, conversations still take place about “how to get even with the ***** by making her life miserable” while trying to circumvent the wording of domestic violence and stalking laws.

Thus, a significant limitation exists in these states if proof that the defendant intended to cause and then actually did cause a reasonable fear on the part of the person being stalked was required. Although theoretically it could be argued that intentionally frightening behavior should be the only conduct that is criminalized, such intent is customarily denied by the defendant and is in practice very difficult to prove.

As a result, many states began experimenting with a third standard, adopting a more flexible statute structure by providing for an aggravated or enhanced offense on the presence of certain types of stalking while loosening the requirements for a misdemeanor conviction. For example, some states have made it a felony to possess or show a weapon in aid of stalking, whereas
other states treat the use of a weapon, the confinement or restraint of the victim, or the subjection of the victim to bodily harm as an aggravating offense, justifying substantially increased penalties.

Not surprisingly, penalties for violation are also extraordinarily varied. In most states, the basic penalty is a misdemeanor—subjecting those convicted to not more than 1 year in jail (or less) plus a fine. On the other hand, many states have allowed enhancement of penalties to a felony level in cases involving the violation of court orders, prior felonies, and possession of weapons, creating a credible threat, or causing bodily harm. There are now three punishment models. For the first offense, 14 states make any conviction for stalking a felony; whereas 35 states make the first act of stalking a felony or misdemeanor depending on aggravating behaviors or effects on the victim. Thirty-five states make conviction for stalking a felony for the second offense. Finally, one state—Maryland—has stalking listed only as a misdemeanor (Stalking Resource Center, 2014). Although the statutory directives to law enforcement remain somewhat limited, some states have paralleled their treatment of domestic violence to states that have given the police the power to make warrantless arrests of stalking subjects on determination of probable cause, even absent witnessing the incidents (similar to domestic violence cases). In addition, some states expressly require law enforcement to provide victim assistance or notification that a defendant has been released before trial. In other states, that duty may be implicitly assumed.
Recent Trends in Stalking Laws

States have been adopting ever more comprehensive statutes. For example, a growing trend is to recognize explicitly the inter-jurisdictional nature of stalking by allowing enhancement (increased sanctions) in a stalking offense based not only on conduct committed in their state but also on previous violations in other states. In addition, there is often no statutory requirement that the second offense justifying sentencing enhancement be against the same victim, demonstrating knowledge that it is not only the behavioral interaction between the offender and a particular victim, but the innate behavior of the offender, that accounts for the crime’s importance to society. Finally, in some states, a “presumption of ineligibility for bail” exists in the event of a third stalking offense.

The level and number of statutory changes make it impossible for a volume of this type to keep current with the restrictions now being set forth in statutes. Indeed, in the second edition of this book, published in 1996, we were able to state that, after passage of the California law in 1990, virtually all states had anti-stalking statutes, often having already been amended to cover apparent loopholes and changing technology employed by stalkers. Since then, for the past 20 years, the statutory basis has continued to change at an almost dizzying rate. The most recent directions of stalking amendments have been eclectic because there is no unifying authority. New measures have tended to mirror societal trends and include the following:

- Adding cyber-threats to the definition of stalking
- Allowing the courts to compel psychological evaluations
- Expanding the coverage of stalking laws to differentiate between “normal” stalking and aggravated felony stalking, based on a prior court injunction or restraining order
- Compelling statewide data gathering on stalking behaviors
- Authorizing anti-harassment protective orders
- Prohibiting the purchase or transportation of a firearm or explosives for any person subject to a stalking order of protection
- Requiring employers to provide leave for crime victims (including victims of stalking) to attend court hearings and receive medical or
psychological treatment
- Requiring police officer certification training to include instruction on stalking
- Authorizing preventive detention or electronic monitoring if danger to the victim is demonstrated
- Allowing employers to seek an injunctive order against harassment of employees at the workplace
- Allowing the crime of stalking even if the alleged perpetrator is already incarcerated
- Creating address confidentiality programs for victims of stalking
- Assessing court fees against the harasser rather than the complainant in successful civil harassment order proceedings

What does this frenzy of state laws indicate? We believe several factors are evident. First, in common with the early statutory experience with domestic violence, the initial statutes did not truly prevent many forms of stalking. If they did, it is doubtful that the majority of states would be changing them on such an ongoing basis. Such change indicates a high degree of continued legislative frustration.

Second, state statutes are not being amended in any consistent manner. The actions are instead somewhat disjointed and idiosyncratic, indicating perhaps a response to specific failures (e.g., cases in which a stalker has injured or killed a victim despite an existing statute when the statutory structure was perceived to contain an unacceptable loophole).

Third, our concern regarding the constitutionality of some of these laws is still germane. When legislation is passed quickly and without consistency, it greatly increases the chance that certain provisions will be held unconstitutional especially on grounds of being void for vagueness or impermissibly reining in free speech.

Fourth, this degree of legislative churn makes it difficult for police officers as well as prosecutors and court officials to know the current status of the relevant statutes. Although advocates and researchers will be able to uncover this information from recognized authoritative sources, it is nearly impossible to train agency workers when laws change continually.
Fifth, until laws standardize and become stable, research on the efficacy of such statutes will be difficult, will become dated very quickly, and will not be able to guide policy effectively, as opposed to reacting to anecdotal events or pressure from interest groups.
Are Anti-Stalking Statutes Constitutional?

In the second edition of this text, written 18 years ago, we predicted that there would be extensive litigation regarding constitutionality and application of anti-stalking statutes. This has indeed proven true. The May 2001 US Department of Justice publication *Stalking and domestic violence: Report to Congress* chronicled 464 state and 17 federal stalking and related cases in which challenges to anti-stalking and related laws were addressed. Of these cases, 157 challenged the express stalking statutes (124 largely on constitutional grounds; US Department of Justice, 2001). Defense attorneys raised constitutional challenges using a myriad of grounds including First Amendment rights and freedom of expression as incorporated in the Fourteenth Amendment prohibiting unwarranted state (and local) curtailment of such liberties. They also argued as a factual matter that stalkers were merely expressing their feelings toward the victim. This argument is significant because it claims that, while such expressions might place an individual in fear, however reasonable, society should not curtail another citizen’s rights to self-expression. It also was argued that because the definitions of improper conduct were not clear, they might have a chilling effect on permissible communications and hence be challenged as being impermissibly overly broad because of their natural tendency to inhibit otherwise protected free speech or, by being too vague, to be unconstitutional for being void for vagueness.

Court challenges aside, the reality is that courts have always recognized that the right to free speech has never been considered absolute. Limits have long been set on unprotected speech, such as obscenity, defamation, and imminent threats of illegal activity (see *Miller v. California*, 1973). Similarly, the time, place, and manner of making comments, even if not expressly falling under one of the recognized exceptions to free speech, have long been held to justify reasonable limits (see *Paris Adult Theatres v. Slaton*, 1973). Thus, a balancing of interests was required.

The keys to the successful resolution and enforcement of these statutes, as briefly summarized by the Department of Justice, were as follows:
1. Statutes need not (and typically did not) require any proof that the defendant was going to carry out his threats.

2. An intent to knowingly cause a victim’s fear must be included in a case, thus giving the trier of fact (ultimately the jury) the ability to decide whether the conduct might be unintentional.

3. Statutes must use careful wording. Terms such as “to annoy” or “to alarm” are too loose and need limiting definitions to prevent challenges for being too vague.

As a result of litigation and after a series of amendments, most stalking statutes now require a trier of fact to determine whether a defendant willfully and intentionally instilled fear in the recipient. The courts have even allowed statutes that sanctioned reckless behavior by the offender to be used as proof of intent to cause reasonable fear. After all, it is rare that a perpetrator with knowledge of the existence of an anti-stalking law would say, “Sure, I intended to cause her to fear me.” An evasive response is far more typical, citing the repetitions of coincidence and misinterpretation by the victim.
Gaps in Current Laws

The issue remains that some stalking behavior can be so amorphous that, over the years, potential stalkers find ever-changing, repetitive, novel behaviors that, at least at first, are difficult to define as illegal even under the most comprehensive stalking statutes. Perhaps the most evident gaps today deal with the rapid change of technology.

There are already laws against listening in on people’s phone conversations and there are specific laws against cyberstalking in many states. However, technological changes including GPS on smartphones, make cyberstalking potentially more insidious. Many newer phones, including the latest several Apple iPhone models, provide for easy tracking of lost phones. In addition, there are a number of new apps available for a number of operating systems that effectively can operate secretly on a cell phone transmitting the user’s location information without their knowledge. Companies developing this software claim that can be used legitimately for the lawful monitoring of a cell phone the buyer owns and has a right to monitor, like their children’s cell phones—and that is true. However, this becomes especially problematic in cases of domestic violence where there is no way to insure against the unauthorized monitoring of physical whereabouts by stalkers who at one point, even in the distant past, had access to a victim’s cell phone through marital or dating relationships. Such monitoring presents the victim with the possibility of terrifying, and even at worst case lethal, confrontations at wholly unexpected times and locations.

Similarly, new technologies have clearly facilitated other newer forms of inappropriate behavior. For example, the explosive growth of e-mail has inevitably led to cyberstalking, which rapidly became a primary method to stalk victims—and is now starting to be addressed by specific cyberbullying legislation. Prosecution of such offenses often requires specific statutory language prohibiting the use of these media to harass since, by and large, courts did not interpret the older stalking legislation to cover recently developed communications technologies. Thus, many states needed to enact specific legislative bans on the use of such media for stalking purposes or as part of a separate anti-cyberbullying statute.
Aily Shimizu (2013), in an excellent article, covered the recent explosion of state statutes directed at the new phenomenon of cyberstalking and offered some compelling and logical extensions to current anti-stalking statutes. However, as she points out, most statutes currently remain tentative in nature while protective orders, so useful in the control of domestic violence, rarely cover abusive Internet behavior or other forms of cyberstalking.

In reality, no existing statute adequately covers the full range of stalking activities. The hope is that the risk of serious sanctions imposed broadly deters conduct. The dilemma for stalking legislation is that any particular act may not, by itself, comply with narrow categories contained in any statute. As amply demonstrated by explosive violence committed by stalkers who often have been prevented by court order from contacting their victims, no one can deny that the failure to restrain stalking places people at risk, especially past victims of domestic violence—in which case the offender’s propensity for violence and choice of target are clear. As a matter of practice, judges hearing stalking charges should be fully aware at the bail hearing of any circumstances of stalking, presumably including all past instances of domestic violence. Conditions for release should specifically include propensity for future violence against and targeting of a particular victim.
The Federal Legislative Response

In our first edition, we observed that there was only a modest federal response to domestic violence. In our second edition, we discussed the then recently enacted VAWA of 1994, sponsored by then Senator Joe Biden. VAWA was reauthorized in 2000, later in 2005, and again in 2013—in each case increasing the scope and content of the law.
Initial Efforts

The initial strategy of those advocating change to the federal response to domestic violence was to publicize the failures of the state-based criminal justice system and thereby demonstrate federal interest in a matter largely deemed the states’ responsibility. Sympathetic congressmen in the late 1970s and early 1980s held numerous hearings on proposed federal legislation, but these focused primarily on shelter funding as well as on mass education and training for state agencies.

These hearings uniformly heard witnesses explaining the widespread nature of the problem, decrying the inability of state law enforcement and the judiciary to take effective action and emphasizing the necessity of federal funds to assist in upgrading and standardizing shelters and other victim resources. The US Commission on Civil Rights (1982) ultimately issued a widely cited report. In this report, domestic violence was described as a civil rights problem of “overwhelming magnitude.” Ironically, before this report was even published, virtually all of the federally funded programs that were positively cited in this report had already been eliminated because of the new Reagan Administration’s changes in federal priorities.

Indeed, strong conservative opposition kept federal funding of shelters and research on domestic violence prevention and treatment to a minimum. In an example of such a reaction, then South Carolina Senator Jesse Helms critiqued the provision of any federal support to domestic violence shelters because they constituted “social engineering,” challenging the husband’s place as the “head of the family” (Congressional Record, 1980).

Despite resistance by social conservatives, several federal agencies in the Attorney General’s Office, including the National Institute of Justice, the Bureau of Justice Statistics, and the National Institute of Health have remained active in funding much-needed research and demonstration projects; these federally funded projects in turn became springboards for evaluation and policy recommendations.

Although promising individual projects had been funded, little long-term
sustaining effort was in place until the federal government in 1994 passed VAWA.
The Violence Against Women Act of 1994

VAWA was sponsored by then Senator Biden and enacted as Title IV of the Omnibus Crime Control and Law Enforcement Act of 1994. This legislation promised a significant increase the level of federal commitment to the control of violent crimes against women and children. Among other provisions designed to deter sex and hate crimes against women were measures expressly targeting control of domestic violence.

Several key provisions in VAWA dramatically increased the federal government’s role. First, $120 million was made available from fiscal year (FY) 1996 to FY 1998 for grants to state and local government as well as to Native American tribes to implement mandatory or pro-arrest policies; improve tracking of domestic violence victims; increase the coordination among police, prosecution, and the judiciary; strengthen local advocacy and service programs for victims of domestic violence; and educate judges about domestic violence. Similarly, VAWA authorized $30 million in grants to rural states, localities, and Native American tribes to improve prosecution of domestic violence and child abuse, (although for reasons discussed later, the exercise of such powers in Indian Reservations was severely compromised until the 2013 VAWA Reauthorization Act was enacted).

State and local agencies that applied for such grants for the first time had to certify that their laws encouraged or mandated arrests for domestic violence offenders and those violating restraining orders; demonstrate that their laws, policies, and practices discouraged dual arrests of offenders and victims; and commit funding sufficient that the victim need not pay costs for filing criminal charges or to secure a protection order. By this indirect method of withholding funding, national advocacy groups emerged within state government. Parenthetically, we note that few if any real efforts were made to test whether these certifications were actually implemented in practice.

Second, VAWA funded the National Domestic Violence Hotline (NDVH), which became operational in February 1996 and has since become a very significant source of assistance to victims. A nonprofit private organization, the Texas Council on Family Violence was selected to establish and operate
this toll-free service, including maintenance of a national database of local providers of services as well as those providing local and state hotline services. According to the NDVH Web site, that database now contains more than 4,500 providers and resources in the United States, Puerto Rico, the US Virgin Islands, and Guam.

Currently, the Web site is comprehensive, allowing victims and service providers to get answers to frequently asked questions, gain access to resource materials, and find assistance in each state. It also provides specialized materials on domestic violence in the workplace, teens and dating violence, and community and outreach programs.

Moreover, there is a distinct difference between the service populations of people who seek help from the hotline versus those who seek help from police. According to NDVH data, for approximately 60% of callers, contacting the hotline was the very first step taken in contrast to the past, whereas calls to local police were the primary entry point for victim assistance; many callers having stated that they were unaware of existing community resources or were afraid to ask for help at local agencies where they might be recognized. This is important because, as described earlier, no matter which measurement is adopted, close to 50% of victims of domestic violence never contact the police.

The real area of the NDVH’s impact may be on the hard-core offender, given the inability of the locally based criminal justice system to protect against a truly determined assailant. Not surprisingly, the hotline receives calls from victims, survivors, friends, and family members, law enforcement personnel, domestic violence advocates, and the general public.

The NDVH has been exceptionally successful. From 1996 through 2013, the NDVH and affiliate sites answered more than 3.4 million calls, increasing in number almost every year. It provides access to translators in more than 200 languages. In 2013, it provided 126,305 referrals to domestic violence providers and 36,840 referrals to additional resources across the nation. Of these 6,300 were non English speakers.

In 2013, the hotline received:
331,078 total contacts, comprising
- 264,415 calls,
- 55,610 online chats, and
- 11,053 texts.

There were also 77,484 contacts unanswered due to a lack of resources. This is obviously a troubling trend. The number may be increasing due to a gap between increasing call volume and lack of any commensurate funding increase, despite this being by far the most effective method at rapid, accurate dissemination of information to victims and concerned witnesses.

Third, VAWA started to address major structural impediments to existing state-based criminal sanctions against abusers. It created a new federal felony for anyone who traveled across state lines with the intent to injure a spouse or intimate partner or to violate the terms of a protective order and then subsequently committed a violent crime that caused injury or violated a protective order. In effect, this provision federalized interstate domestic violence and related stalking laws.

Fourth, federal court proceedings increased their victim orientation by expressly allowing victims of interstate crimes the right to appear in court to speak about the danger of pretrial release of the defendant. At the same time, state courts were also required to enforce protection orders issued by the courts of another state. This made it markedly easier for women forced to vacate their homes to evade violence without having to reapply for court protection in a new location (which of necessity required revealing their new address to the offender).

Fifth, various provisions of VAWA increased funding for community-based agencies that target domestic violence and stalking. One provision allocated $325 million to be provided to states and Native American tribes. State coalitions against domestic violence and various research centers were to disseminate funds for construction and operational costs for battered women’s shelters and other projects designed to “prevent family violence and to provide immediate shelter and related assistance for victims of domestic violence and their defendants” (Violence Against Women Act, 1994). Finally, development of a number of model programs were funded to teach youth about domestic violence and violence among intimate partners; $10
million was given to nonprofit organizations to set up community programs in domestic violence intervention and prevention.

When VAWA was enacted, it was not universally popular. Conservatives attacked it as being an unnecessary and overly intrusive invasion on states’ rights and, as Senator Jesse Helms so artfully put it, “an invasion on a husband’s right to rule his family.” Of equal concern, even major organizations such as the ACLU expressed concern about VAWA, stating that the increased penalties it added were rash, that the expressed desire to achieve pretrial detention in the form of pro-arrest policy was “repugnant to the US Constitution,” and that the mandatory HIV testing of those charged but not convicted of a crime was an infringement of a citizen’s right to privacy (American Civil Liberties Union, 1994).

Nevertheless, we note that in a 2005 letter, the ACLU reversed policy and supported the reauthorization of VAWA and stated that

> VAWA is one of the most effective pieces of legislation to end domestic violence, dating violence, sexual assault, and stalking. It has dramatically improved the law enforcement response to violence against women and has provided critical services necessary to support women and children in their struggle to overcome abusive situations. (American Civil Liberties Union, 2005)

We also note that some provisions that required state action as opposed to providing funding for state initiatives were struck down by the US Supreme Court in 2000 for violating states’ rights on federalism grounds (United States v. Morrison, 2000). We note that only the civil rights remedy of VAWA was struck down. Program funding was upheld, as were demonstration grants, as well as the overall intent of the program.

VAWA was originally supposed to have a sunset after the provisions were adopted widely by the states and Native American tribes. This has not occurred and is not likely to occur, and the federal role in domestic violence prevention inevitably seems to grow.
The VAWA Reauthorization Act of 2000

The original VAWA provisions were set to expire in 2000. Extension of the act became the subject of heated congressional debate not only regarding the amount of money expended but also the philosophical issue of whether the federal government should lead an intervention in what had historically been an area solely at the discretion of state governments. Despite this doubt and a significant delay to achieve bipartisan support, the reauthorization legislation passed, and the total amount of money authorized during the next 5 years was $3.3 billion. Major new initiatives included STOP grants, with $925 million for distribution to police, prosecutors, and courts as well as state and local victim service agencies; $875 million to fund communities to develop shelters; and $200 million to fund civil legal assistance to help women obtain civil protective orders. In addition to these relatively highly funded items, there were additional areas that were not well funded, including $25 million transitional housing for victims and their families and $30 million for supervised visitation centers. These can best be viewed as demonstration projects of possible best practices.

It is clear from the type and extent of funding that high priority was given to criminal justice and legal service agency efforts that were, in effect, of indirect benefit to victims, with less money directly channeled to assisting victims themselves. If we were more cynical, we would surmise that this was a result of a bureaucratic compromise in which funding for the agencies was the chief goal of the federal government—or at least that the lobbying by state and local agencies was more effective than that of the national women’s groups supporting victims.

Nonetheless, when federal money was not an issue and simple policy declarations could demonstrate legislative effects, the reauthorization legislation clearly broke new ground. Included were requirements that states give full faith and credit to each other’s protective orders; that immigrant women subjected to threats of domestic violence, even those illegally in the country, would be protected and might even get permanent legal status; and that studies would be conducted to determine whether victims of domestic violence had equal access to insurance and unemployment compensation, as
well as whether employers were adequately dealing with the problem. In addition to providing increased funding, the VAWA Reauthorization Act of 2000 added a much-needed legal assistance program for victims of domestic violence and sexual assault and promoted the reform of structured supervised visitation programs.
The VAWA Reauthorization Act of 2005

Originally in 1994 VAWA was considered by many to be a one-time remedy. However, by 2005, despite the election of a Republican Congress and a Republican President (George W. Bush), and despite opposition by conservative talk show hosts like Rush Limbaugh, support for VAWA became a mainstream political position and the Act was again reauthorized.

In addition to past funding streams that were largely continued, in the 2005 reauthorization now contained provisions that exclusively served to target protection of immigrant victims, as previous efforts—even including that of the 2000 reauthorization of VAWA—were considered inadequate. For example, federal funding was provided for culturally sensitive and linguistically specific services for certain targeted communities. Also, programs and services were funded for victims with disabilities and VAWA service provisions now expressly included violence against teenage victims of abuse, most, not married. Although the crime of rape is not exclusively, nor even primarily, specific to domestic violence, it certainly occurs in the context of marital rape. Thus, the first federal funding stream to support rape crisis centers as authorized by the 2005 Act also was significant to victims of domestic violence.

Funds also were given to grantees to develop prevention strategies to stop violence before it occurred. A provision was added to protect individuals from being evicted from public housing because of their status as victims of either domestic violence or stalking.

Over time, the reauthorization of funding for VAWA in 2000 and 2005 has had an enormous impact. In September 2009, on the occurrence of the 15th anniversary of the initial funding of VAWA, the Department of Justice reported on sub-grantees receiving funds from the various states and Native American tribes reported during the year 2007. They noted that 505,000 separate victims were served in one capacity or another, more than 1,200,000 services were made (some victims obviously requiring multiple interventions), and more than 4,700 individuals were arrested for violations of protective orders (US Department of Justice, 2009).
The reauthorization also provided additional mandates as to federal agencies responses. For example, the US Post Office was directed to protect the confidentiality of domestic violence shelters and abused persons’ addresses if so requested. Similarly, other various federal agencies were required to collect data and conduct research on domestic violence. Overall responsibility for the development of a research agenda was given to the NIJ. The Office of the Attorney General was delegated the role of determining how states might collect centralized databases. Federal crime databases were to be made available by state civil and criminal courts to assist in responding to domestic violence and stalking cases. At the same time, $6 million was provided to assist states and local governments to improve their data collection, and the Centers for Disease Control and Prevention was directed to study the costs to health care facilities for victims of domestic violence and related issues.
The VAWA Reauthorization Act of 2013

In March 2013, the most recent VAWA Reauthorization Act added several key dimensions to the federal effort against domestic violence targeting previously largely underserved classes of victims. One of the most important changes was the explicit recognition that domestic violence was evolving into a major problem on college campuses, similar to the problem of sexual assaults. A new focus was therefore placed on domestic abuse, dating violence, and stalking on college campuses. The law now requires colleges and universities to train staff to prevent and report such crimes as well as the sexual assaults already required to be reported annually by them under the Cleary Act. In addition, violence based on national origin or sexual orientation has been added to a list of hate crimes required to be reported under the Cleary Act.

The policies that were mandated require colleges to inform victims of their rights to notify either or both local law enforcement or campus police. If the incident was being investigated by campus authorities, investigators are to receive specialized training, and their work must be conducted according to fairly detailed procedures including requisite standards of evidence—to make campus investigations much more analogous to those conducted by the police.

Several other major changes were also enacted as part of this measure:

- Victims now specifically prosecuted include all intimate partners regardless of marital status.
- Further procedural safeguards were extended to immigrant victims of domestic violence regardless of legal status and broadened the use of U&T visas for victims of such violence even if they were undocumented.
- Grants made to nonprofits could include projects specifically targeted to LGBT victims.
- For many categories, the 2013 Act actually reduced either significantly or symbolically the federal grant money available. For example, the previous four programs that were to stop the intergenerational
transmission of violence were consolidated and funding reduced from $37 million to $15 million. Further, an already minimally funded program to assist helping needs of victims was reduced from $20 million to $8 million, quite obviously a wholly insignificant token amount given the size of the problem.

In summary, the 2013 Reauthorization appears to be an effort to increase the breadth of the federal role in controlling domestic violence, and certainly did so for underserved groups like victims of college dating violence and Native Americans living on reservations. But it also reflected stark budget realities, especially in the era of sequestration, and therefore showed no increased willingness to fund interventions. Whether this is the intent of Congress or merely the result of an uneasy balance of political forces, the role of the federal government is not likely to increase much more in the immediate future.

Everyone acknowledges that the population subgroup most plagued by domestic violence is Native Americans and Alaskan Natives. Fairly reliable studies show that a staggering percent of these women are victimized in their lifetime (from 39%, using official data, to 61%, as reported by the National Congress of American Indian Policy Research Center, 2013).

Despite this glaring problem, a legal patchwork between federal, state and tribal entities for the roughly 500,000 Native American and non–Native Americans living in formal reservations basically has meant that domestic violence on these reservations has been very poorly handled. State law enforcement officers, unless specifically authorized by federal statute, are not allowed to exercise jurisdictional authority on reservations (Singh 2014). Meanwhile, Native American tribal authorities are not typically given jurisdiction for crimes committed by nonnatives living on the reservation, despite evidence that nonnative abusers on the reservations committed the majority of acts of domestic violence against Native American victims. Finally, the federal government by statute and long-standing policy only prosecuted major felonies committed on reservations, and without staffing few US Attorneys’ offices were prepared to prosecute domestic violence offences.

It was not until the 2005 Reauthorization of VAWA that a provision was added specifically for Native Americans. This consisted of three goals

(1) to decrease the incidence of violent crimes against Indian women; (2) to strengthen the capacity of Indian tribes to exercise their sovereign authority to respond to violent crimes committed against Indian women; and (3) to ensure that perpetrators of violent crimes committed against Indian women are held accountable for their criminal behavior. (Singh, 2014, pg. 211)
This was a good start in helping Native American women but did not truly address the major impediments to effective action. Even after this reauthorization first allowed federal authorities to prosecute major crimes in reservations, jurisdictional quagmires, lack of any required communications, mistrust between authorities, and a general lack of earmarked funding continued to stymie effective prosecution. Only a small minority of domestic violence cases were prosecuted in subsequent years. Similarly, because tribal courts by treaty and legal precedent were not required to provide free public defenders to the accused, their verdicts were not counted for determining if an abuser was a habitual offender, a status well recognized as being a significant factor in likely recidivism and typically in modern statutes justifying the imposition of enhanced sentences as a repeat offender.

The passage of the Tribal Law and Order Act of 2010 (TLOA) was the first step toward understanding the particular difficulties facing this population and took measures to safeguard Native American women living in reservations. The TLOA focused on two main themes, “the confusion and lack of communication between tribal, federal, and state officials about their role in domestic violence cases and law enforcement’s often incomplete response to incidents of domestic violence” (Petillo, 2013). Interagency communication is obviously critical at all levels of law enforcement, especially when it comes to tribal/federal/state law enforcement due to the importance of jurisdiction. TLOA first provided for large scale funding for the systematic training of Native American Tribal police in collecting evidence and statements in domestic violence cases so that their prosecutors could make a stronger criminal cases (Petillo, 2013).

The VAWA Reauthorization Act of 2013 tried once and for all—or at least until the next reauthorization—to address domestic violence on the reservation. Since only major (felony) crimes can be prosecuted by the federal government, and most DV cases rarely qualify as a felony, non–Native Americans, even when living on the reservation, with Native American intimates weren’t able to be prosecuted in tribal courts; these individuals therefore were effectively safe from prosecution for these crimes until passage of the 2013 VAWA Reauthorization Act. This loophole has now been closed, at least tentatively—however, this provision is surely going to be challenged in federal court as being unconstitutional.

During the signing of the VAWA Reauthorization Act of 2013, President Obama stated that “tribal governments have an inherent right to protect their people, and all women deserve the right to live free from fear. And that is what today is all about” (Gilette & Galbraith, 2013). The VAWA Reauthorization of 2013 as described by the US Department of Justice will allow tribes:

“To exercise their sovereign power to investigate, prosecute, convict, and sentence both Indians and non-Indians who assault Indian spouses or dating partners or violate a protection order in Indian country. VAWA 2013 also clarifies tribes’ sovereign power to issue and enforce civil protection orders against Indians and non-Indians.”

This is a very specific law in that, under certain circumstances, it gives tribes power in domestic violence related cases. The Act itself involved significant compromises with tribal authorities. The defendants in these cases have to be given all the rights that they would be granted in any state or federal courtroom. For example, currently, as stated earlier, most tribal courts do not offer free counsel to defendants. However under VAWA 2013 the
defendant of such crimes must be given counsel and be tried in front of a group of his peers. Also, non-Indians must have significant ties to the tribal community in order to be prosecuted in tribal courts. The overall effect is to somewhat diminish tribal methods of justice (emphasizing “reconciliation”) and thereby force the tribal communities to be more like the US government court systems, somewhat diminishing their sovereignty further.

However, anticipating many legal challenges, and illustrating the thorny legal issues faced this provision of VAWA 2013 did not go into full affect until March 2015.
Federal Efforts to Combat Stalking

The federal response to stalking has been unusually swift. In 1993, the US Department of Justice Bureau of Justice Assistance first mandated federal assistance to state and local law enforcement, only 3 years after passage of the first state statute. One result was that NIJ funded a proposal to develop the model state anti-stalking statute described earlier. In 1996, a federal interstate stalking law (18 U.S.C., §2261A) was enacted, prohibiting as a federal offense the crossing of state lines (or in US maritime jurisdiction) with the intent to injure or harass another person (provided that) this caused reasonable fear of death or serious bodily injury to that person or to a member of that person’s immediate family. The Federal Interstate Stalking Punishment and Prevention Act, 18 U.S.C., 2261A, made cyberstalking a federal offense if done with the intent to kill, harass, injure, or cause serious emotional distress to another, but serious constitutional questions immediately were posed that at least initially prevented this from having much impact. Similarly, even with such a law, there is no real evidence that the very busy attorneys in US Attorneys’ offices throughout the country had the resources to aggressively prosecute many such cases. Although the original law covered only the intent to injure or harass, as stated earlier, the VAWA Reauthorization Act of 2000 expanded the definition to cover interstate travel with the intent to kill, injure, harass, or intimidate another person, the person’s family, or the person’s former or current intimate partner (Federal Interstate Stalking Law, 2000). Similarly, the law now federalizes the use of mail or cyberstalking via the Internet.

Federal crimes, of course, invoke federal criminal sanctions and federal sentencing. Guidelines dramatically limit the authority of federal judges to change sentences. Of these sentences, penalties range from 13 months and supervised release to life imprisonment. Restitution also has been granted. Finally, because of the existence of this relatively new federal statute, extensive federal resources at the US Department of Justice were committed. These funds were used to develop combined federal and local anti-stalking task forces and multijurisdictional training programs for law enforcement, prosecutors, judges, and victim advocates.
Although potentially the most sweeping of all anti-harassment statutes, the federal response is limited and, per the US Department of Justice, is not meant to supplant state efforts. There simply are not enough federal resources to prosecute significant numbers of cases. Hence, this effort should best be considered as an adjunct best used when the interstate nature of harassment effectively prevents state prosecution.

Since enactment of the new anti-stalking statutes from 1996 through October 2000, the US Department of Justice had prosecuted 35 cases against 39 stalkers and had won convictions against 25 stalkers in 23 cases (11 cases were still pending by 2001; US Department of Justice, 2001). This extraordinarily high conviction rate shows that the statute can be effective but obviously remains only selectively used. This is perhaps because of the lack of knowledge of the underlying incidents, because prosecutorial discretion has limited the number of cases brought, or possibly because state and local law enforcement agencies were already prosecuting these cases.

The 2013 VAWA Reauthorization Act relaxed the former federal requirements for stalking to now include intimidation along with intent to kill, injure, harass, or place under surveillance. It also helped define emotional distress as causing, attempting to cause, or doing something that would reasonably be expected to cause, substantial emotional distress. Lastly, and most importantly, it added interstate cyberstalking, in common with the trend in many states.

Finally, in keeping with the federal history of funding demonstration programs with high potential impact, it added funding for innovative programs to prevent, or at least combat, all forms of stalking. Such funding has been instrumental in developing best practices for police departments, prosecutor’s offices, courts, and shelters.
The Affordable Care Act

It has long been known that domestic violence survivors and their families face many difficulties in obtaining and keeping medical insurance. Obviously, being physically attacked, often repeatedly, by an intimate generates a high volume of costly medical interventions. Such interventions, without statutory protection, were at times considered callously by some health insurance companies to therefore be preexisting conditions not covered by new insurance policies—or, even if a policy was continued, such preexisting conditions might subject a family to crippling increases in premiums based on past medical costs or being in a risky lifestyle (Hoskins, 2012).

In fact, as early as 1994, the issue was recognized as serious when several women in Pennsylvania reported their insurance being cancelled when the insurer’s medical bills related to their abuse. Within the next 20 years, 43 states passed legislation expressly forbidding this discrimination. However, few states adopted mandatory reporting by health-care workers or covered the type of screening and counseling services likely to be necessary for long-term remediation. From this perspective, a clear need for a national solution became evident. According to the Family Violence Prevention Fund, “seven states allowed insurers to deny health coverage to domestic violence survivors, and only 22 states had enacted adequate domestic violence insurance discrimination protections” (Health Resource Center on Domestic Violence, 2010).

Further, there were few requirements for effective medical interventions. Medical care, until recently, rarely screened for domestic violence during routine appointments. Counseling for domestic violence was itself typically outside the scope of most current insurance plans or consigned to very limited mental health–care specialty insurers, with their own predictions to restrict coverage leaving medical intervention and treatment exposure not readily available for many (Buchanan, Power, & Verity, 2013).

Effective in 2014, the ACA changed the legal framework dramatically for medical coverage through insurance. This coverage is at least applicable to
female victims of domestic violence. The actual provision is contained in the section of the statute listed as “women’s preventive health”—that is, in a section that would be similar to gynecological care. We would hope that insurers would apply the same standard for male victims of domestic violence whether from a female abuser or as part of a LGBT relationship.

The law made it illegal for insurers to consider domestic violence history when setting premium rates. This allowed victims the effective ability to seek other insurance if their original insurance was through their abuser. Additionally, insurers now are required to give domestic violence screenings and subsequent counseling without a co-pay.

As one commentator correctly stated, the enhanced coverage plus the individual mandate for insurance provided both better coverage and potentially the vehicle by which many otherwise not covered victims would be able to afford this coverage (Buchanan, 2013).
Future Legislation

It is by no means the case that legislative initiatives at any level of government have been completed. We are aware of numerous efforts to amend state laws and increasing efforts to involve the federal government in the control of domestic violence.

Another possible area of expansion is using US foreign aid and other measures to assist international victims of domestic violence. In February 2010, landmark bipartisan legislation, called the International Violence Against Women Act (S. 2982), was introduced by Senators Carey and Boxer, democrats from the Senate Foreign Relations Committee, and joined by Republican Senators Collins and Snowe. Similar legislation (H.R. 4594) was introduced by Representatives Delahunt and Schakowsky, democrats, and Poe, a republican. The bill was endorsed by Amnesty International USA, The Family Violence Prevention Fund, and 40 international and 150 US-based groups. The primary goal was to have the US government expressly support nongovernmental organizations that combat violence against women, bolster international education-oriented programs for women, strengthen health services for victims of violence against women, and require that foreign government participants bring perpetrators of violence against women to justice.

This proposal was not passed in that Congress and, at the time of the writing of this edition, is unlikely to be passed in this congressional session; however it initially received 21 cosponsors in the senate and, as noted earlier, had bipartisan support. While it was not enacted at that time we expect that this measure will not be the last time that the US foreign policy tries to address violence against women as a diplomatic priority.
International Legal Reform and Human Rights

A commonly cited statistic is that one woman in four worldwide is a victim of partner violence, with some countries reporting rates that are considerably higher (World Health Organization, 2014). Since the late 1990s, there has been growing awareness outside the United States that the state response to these women is inadequate, not only in countries that have yet to criminalize violence against women, but also where the response is developed. Mounting pressure from a variety of sources has led policy makers in a number of countries to sign region-wide conventions or to enact legislation that expands the definition of domestic violence to include coercive control (discussed in Chapter 2) and to set legislative reforms in the context of women’s human rights. This section explores sources and expression of this new approach in the European region, focusing on the empirical, practical, legal and political contexts for broadening the definition of abuse beyond physical violence; tracking the evolution of human rights doctrine to encompass crimes by private persons; identifying partner abuse as a violation of human rights; and translating the broad, human rights perspective into new policies and laws.1

We outline the terms of The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, or Istanbul Convention (IC), adopted by the 47-member Council of Europe in 2011. As of August 1, 2014, when the IC went into effect, it had been signed by 36 countries and ratified by 13 countries.2 We conclude by describing recent legislative reforms in England and Wales.

VAWA specifically targets sexual assault and domestic violence against women. However, domestic violence statutes and administrative rules in the states governing the consideration of domestic violence in criminal, family, and juvenile court proceedings are gender neutral. In part, this reflects the local power of groups advocating for “Fathers’ Rights,” survey and criminal justice evidence that women commit domestic violence as well as men, and the fear that affording privileges (such as custody) to abuse victims will undermine principles of equity that guide family proceedings. Some US researchers have linked domestic violence to sexual inequality and women’s human rights (Stark, 2007; Jones & Schechter, 1992). But this connection has been conspicuously absent from policy debates.
In marked contrast to those in the United States, policy reforms in Europe have followed a growing international consensus that partner abuse is part of a larger pattern of “violence against women and girls”; that this pattern is rooted in, exploits, and reproduces sexual inequality; that, therefore, it is a form of gender discrimination; and that, as such, violates women’s human rights. Debate continues about whether legislation addressing abusive relationships should extend to forced marriages, dowry crimes, genital mutilation, and other forms of abuse suffered by women and girls. While there is general agreement that the definition of domestic violence should encompass more than physical assault, countries differ on whether, in what combination and with what terminology the statutory response should include sexual and financial violence; stalking and other forms of intimidation; psychological abuse (such as chronic degradation); and tactics used to isolate, exploit, and control female partners—what the IC refers to as “arbitrary violations of liberty.” Where France identifies psychological abuse as a separate criminal offense, it was included under coercive control in the expansion of the definition of domestic violence by the Home Office in England in 2013 as well as in the new statutory offense of coercive control enacted by the English parliament in 2015 and discussed below. The IC and certain country-specific initiatives highlight prevention alongside prosecution and emergency safety, an emphasis with possible relevance for the United States.
The Context for a Broader Response to Woman Abuse

The new approach to partner abuse in Europe was prompted by three converging currents: a broad understanding of abuse that emerged from research and advocacy; the expansion of human rights doctrine to encompass violations of women’s safety, liberty, and autonomy in personal life; and grassroots pressure galvanized around dramatic instances of partner violence against women that drew national attention to the inadequacy of the state response. The first two developments shaped the substance of reform while women’s activism constrained governments to expand (rather than contract) their commitments. A less-visible factor in stimulating reform was the social and economic cost of investing scarce resources to combat violence against women with little tangible improvement in women’s prospects long-term.
Coercive Control in Europe

Along with the United States, the Netherlands, the UK, Canada, Sweden, and Denmark were among the leaders in framing the problem of partner abuse as violence against women, making a statutory distinction between partner and stranger assaults, linking the former to sexual inequality, and developing specialized interventions and services to support victims and punish or counsel offenders. In our discussion of the health dimensions of partner abuse (Chapter 14), we reiterate a widely documented reality, that the hallmarks of domestic violence against women are its frequency and duration rather than its severity and that, in a majority of cases, it is accompanied by sexual assault, stalking, and a range of other oppressive tactics designed to intimidate, degrade, isolate, and control a victimized partner. As we argued in Chapter 2, the prevailing equation of partner abuse with assault fails to address the historical and multifaceted nature of the coercive control experienced by a significant proportion of victims. Suffice it to say here that the same discrepancy between the harms experienced by most abuse victims and the narrow statutory and administrative definitions of domestic violence that constrain the efficacy of the criminal justice, civil and service response in the United States has also limited the long-term efficacy of available protections, sanctions, and services in Europe.

The pattern of ongoing, gender-specific, and multi-faceted coercion and control typical of US victims also characterizes victimization throughout Europe. In a comparison of two cities in Turkey, for instance, researchers found that 61% and 73% of abused women respectively were assaulted more than a few times weekly (34% and 27%) or monthly (27% and 47%; Kocacik, Kutlar, & Erselcan, 2007). Meanwhile, a review of police cases in England revealed that 53% of the male offenders had committed 3 or more offenses, but only 3% of female offenders had done so (Hester, 2006). Partner homicides are also gendered. During the first nine months of 2007, according to a study by the Ministry of Employment, Housing, and Social Cohesion in France, 95 of the 113 homicides attributed to domestic violence involved male offenders and female victims and more than half of male victims had a record of violently abusing the women who killed them (Amnesty International, 2006).
The co-occurrence of frequent domestic violence, repeated sexual assault, and stalking reported by the CDC for the United States (Black et al, 2011) also characterizes victimization in Europe. More than half of the women who identify themselves as rape victims in population surveys in the UK and 31.4% of the women in Turkey report their partner as the offender (Walby & Allen 2004; Akar, Aksakal, Demiral, Durukan, & Ozkan, 2010). As would be expected, the proportions of women reporting sexual assault by their partners are considerably higher in service samples. As in the United States, these sexual assaults often are repeated. Thus, 27% of women in refuge in the UK reported being “forced to have sex against their will” “often” or “all the time,” and 24% reported being forced to engage in anal sex at least once (Rees, Agnew-Davies, & Barkham. 2006). Conversely, 57% of the abuse victims assessed by police in England reported they had been harassed or stalked (CAADA, 2013). In the vast majority of these cases, the stalking began while the relationship was intact and frequently included “proxy stalking.”

The few English language studies of control tactics used by abusive partners in Europe also mirror figures from the United States. In a Turkish health clinic sample, 83.9% of the abused women were suffering economic violence, with 13.6% reporting their partner takes their money and 52.0% reporting their partner makes all spending decisions. More than half of these women (52.9%) were being threatened or berated if they talked to other men and almost half (49.6%) had to report their whereabouts at all times (Akar et al., 2010). According to the World Health Organization (2010), almost a third of Turkish women must get permission to carry out basic activities of daily living such as visiting their family (29%), shopping (31%), visiting neighbors or friends (39.5%), going to the movies (17%), or travelling to another city (11.3%). That these findings are not a peculiar reflection of Muslim culture is illustrated by the similar or even higher proportions of women in the UK who report being controlled. In a study of women in refuge in the UK, victims reported their partners “often” or “all the time” monitored their time (66%), kept them from medical care (22%), prevented them from socializing with friends (71%), kept them from seeing their family (50%), restricted their use of the car (31%), and did not allow them to go to work (75%). Importantly, despite their conservative religious or cultural beliefs, a large majority of Turkish women defined controlling behaviors as part of abuse, including
taking their money (61.7%) and banning their meeting with their family (59.7%) or friends (47.6%; Akar et al., 2010).

Until 2015, there was no specific domestic violence offense in the UK. Nevertheless, the UK spent more on domestic violence than defense and its criminal justice and service system response the response in the United States, with an emphasis on refuge and court protections for victims; arrest, dangerousness assessment, and counseling for offenders; and a coordinated community response locally. As in the United States, training and the development of a specialized police and prosecutorial response significantly increased the proportion of reported cases resulting in arrest. However, the attrition from arrest to conviction and imprisonment in the UK approached 95% and offenders who had been reported or arrested multiple times were no more likely to be charged, convicted, or punished than offenders who committed a single offense (Hester & Westmarland, 2006).

Most of Europe has criminalized marital or partner rape and stalking. However, partners are rarely convicted of these offenses even when they are arrested. Although male partners comprise the largest group of rape offenders reported and arrested by police in England, they are the least likely to be charged or convicted (Hester, 2013). In part, the discrepancy between partner arrests for rape and convictions reflects the frequency with which abused women withdraw complaints (due to intimidation), report multiple rapes, and have behavioral or psychosocial problems as a result of abuse that confound their utility as witnesses. England recently criminalized stalking. However, the offense is never charged in the common and dangerous scenario where the stalking occurs while the relationship is ongoing.
Broadening the Application of Human Rights Doctrine

Complementing the evidence that the state response to partner abuse was inadequate was a growing awareness in the international human rights community that violence against women by state actors in wartime was only one instance of the “gender violence” that extended to abuse by non-state actors, resulted from and exacerbated sexual discrimination, and violated women’s human rights. The relevant agreements are both the outcomes of activism by grassroots organizations and tools they can use to advance women’s rights locally.

Women’s special vulnerability in personal life presents unique challenges to a traditional human rights framework. Following Western political theory, the concept of human rights initially developed to protect individual rights to autonomy and freedom, expanded to protect these individual rights from state intrusion in the international context, and subsequently enlarged to include state responsibility where its agents committed rape or other instances of violence against women (during wars, e.g.) or failed to prosecute such instances where this failure could be traced to discrimination (Beasley & Thomas, 1993). Reflecting mounting political pressure for gender equality, however, the most recent iterations of human rights theory adapt a notion of gender violence that includes economic violence, isolation, limitations on autonomy and liberty, and other prominent features that are widely identified with coercive control; highlights the causal role of gender violence in relationships in perpetuating sexual inequality and discrimination; posits an affirmative responsibility for states to intervene; and identifies community-level activism as a critical tool in pressuring states to act and, in lieu of state action, to directly preserve women’s autonomy.3

Starting with the Universal Declaration of Human Rights (1948), various treaties passed by the UN General Assembly included the right to liberty and security; the right to live free of torture or cruel, inhuman, or degrading treatment or punishment; freedom of thought, conscience, and religion; and freedom of association. Although these are among the rights violated by
coercive control, they were initially treated only as “negative rights” designed to counter state interference. The understanding of these rights was gradually extended to violence against women by state agents. Amnesty International (AI) only began to report on the rape of women prisoners as a form of torture in 1991, for instance.

An early example of a broadened definition of violence against women that recognized its link to human rights appeared in a 1989 literature review on the Status of Women in Vienna. The monograph concluded: “Not only are women denied equality with the balance of the world’s population, men, but also they are often denied liberty and dignity, and in many situations suffer direct violations of their physical and mental autonomy” (U.N. Report, 1989, cited in Beasley & Thomas, 1993, p. 329). Another important step was the adaption of General Recommendation No. 19 by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1992. The CEDAW definition of gender violence as a violation of human rights became the international standard applied to woman abuse. CEDAW linked gender equality and the elimination of violence against women by recognizing that rape and domestic violence are causes of women’s subordination rather than simply its consequences and that, therefore, gender violence was a form of discrimination that “seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men” ("Convention on the Elimination," 1992, n.p.).

These views were formalized by the UN in 1993, when the General Assembly adopted the Declaration on the Elimination of Violence Against Women that explicitly rooted abuse in unequal power, highlighted its role in reproducing male domination and female subordination, included psychological violence and intimidation in community settings such as work or school alongside the traditional forms of physical violence against women, and emphasized “arbitrary restrictions on liberty,” the term used to encompass “control” by the Istanbul Convention. The GA Declaration also cited government inaction to protect women from these forms of violence as a human rights abuse. The World Congress on Human Rights in Vienna added further status to CEDAW’s position by declaring gender-based violence a human rights abuse, a position that was reiterated by the 1995 Beijing Declaration and Platform for Action (PFA). An equally broad
understanding of violence against women appears in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, which came into effect in March 1995, a treaty signed by 28 nations. In 1999, the World Organization Against Torture, an international coalition of NGOs, drew an extended analogy between the isolation, detention, and interrogation of torture victims and the predicament of battered women.

Translating these agreements into concrete policies, laws, and programs has been a slow process. In 2004, Amnesty International launched an international campaign to combat violence against women with the publication of Stop Violence Against Women: It’s in Your Hands. Using examples from dozens of countries, the report linked state sponsored gender violence, violence in the family, and violence against women in the community; embraced a broad definition of liberty harms; and, perhaps most important here, emphasized the role of community-level activism in reforming state law and policy around abuse. In 2008, the UN Secretary General initiated UNITE (to End Violence Against Women), an international campaign that has attracted much attention. But it was only with passage of the IC in 2011 that all of Europe committed itself to adapting and implementing this approach at a country level.
Local Activism: *Opuz v. Turkey*

State reform would have been inconceivable apart from massive demonstrations of public outrage following publicized cases of domestic homicide in which states had failed to protect abused women and their families.

The most important of the shocking cases that stimulated reform was brought by Nahide Opuz against the Turkish government in the European Court of Human Rights (ECHR) after her ex-husband killed her mother. Nahide and her mother had filed numerous assault and death threat reports with the authorities as well as reports of severe beatings and even stabbings, including an incident when the husband hit both mother and daughter with his car while they were walking on the sidewalk. Although both women had reported the abuse numerous times and her mother had reported the death threats to police only a few days before she was killed, they had withdrawn some complaints either because of further threats or because they had been urged to do so by local authorities. Nahide’s husband was convicted of her mother’s murder. But his sentence was reduced because, as the mother was in the process of moving her daughter away when he shot her, she had supposedly “provoked” him by leading his wife into “an immoral life.” He shot her to defend his honor and children.

In its decision for Ms. Opuz in June 2009, the ECHR found for the first time that gender-based violence was a form of discrimination under the nondiscrimination clause of Article 14 of the European Convention and that Turkey had failed to fulfill its obligation under the convention. The government was ordered to pay Mrs. Opuz 30,000 euros. Further, the ECHR found that merely defining domestic violence as a crime was not enough. Instead, the government had a proactive responsibility to exercise due diligence by taking reasonable measures to avoid the risk when it was made aware of violence.

Turkey’s defense in *Opuz* was based on two concepts: Nahide’s right to privacy and her right to autonomy, which she and her mother asserted freely when they withdrew their complaints. The ECHR rejected these arguments
and set a simple standard to guide state actors in deciding whether mandatory state interventions (such as arrest and prosecution) in specific relationships promote human rights or violate a woman’s right to privacy and autonomy. The state was obligated to act, according to the ECHR, if the authorities “knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual... from the criminal acts of a third party” and if they could have taken measures within the scope of their powers that, “judged reasonably, might have been expected to avoid that risk” (European Court of Human Rights, 2009, para. 129).

The ECHR acknowledged the role of psychological as well as physical violence, equated the physical and psychological degradation suffered by Nahide and her mother with torture, and identified them as part of a vulnerable class requiring proactive protections. Nahide’s vulnerability and the apparent helplessness reflected in the withdrawal of complaints was not a reflection of either her psychological status or inherent in her status as a woman, the court held, but the direct byproduct of the ongoing abuse and the state’s failure to protect her. A key facet of the ECHR decision was its emphasis on the discrepancies between the seriousness of the crimes of which it was made aware and the government’s treatment of woman abuse as a very minor crime. The Turkish courts had released Mr. Opuz pending trial, levied only small fines on the few occasions when he was convicted, and created a general climate in Turkey that was “conducive to domestic violence” (para. 198).

The ECHR found fault with both Turkey’s existing law as well in its failure to enforce existing laws and identified factors that authorities should consider in deciding to prosecute when a victim withdrew a complaint. Important among these factors were “the continuing threat to the health and safety of the victim” or “anyone else” (including children) involved and the “history of the relationship,” particularly past violence (para. 134). The recognition of historical abuse and the continuing risk it poses as well as of the enhanced response it requires became a cornerstone of the IC as well as of legal reform throughout Europe. Even so, perhaps because of the facts presented, the ECHR assessed Ms. Opuz’s claims solely against the violence and threats she and her mother had suffered.
In France, the UK, Spain, and several other European countries where partner abuse was already a priority for law enforcement, pressure for reform also reflected a growing sentiment shared by providers that investment in interdiction, and the redirection of scarce resources to abuse from other pressing problems, was ineffective in stemming abuse. This realization was driven home by the negative feedback loop created when arrest logs, court dockets, medical waiting lines, and shelters were filled with the same offenders and victims repeatedly, evoking a sense of futility among frontline service providers as well as victims. Pressuring police to arrest failed to overcome the low morale associated with domestic violence policing, leading to government reports in the UK and elsewhere faulting the police response. When moral persuasion failed to overcome passive-aggressive resistance to enforcement and attempts to decriminalize abuse or reassign it to public health, mental health, or other statutory services failed, institutional leadership in many countries aligned with advocacy organizations in the cry for reform. Law and order and feminism found common cause as they had through VAWA in the United States.

The Istanbul Convention

The first regional treaty on violence against women was the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (1994, Belem do Para) and the second was the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa adopted in 2003. Like these treaties, the Istanbul Convention (IC) recognized violence against women as a human rights violation and viewed eradicating the problem as inextricably linked to the advancement of women in all areas of life. What distinguished the IC from these other agreements was its emphasis on prevention, the comprehensive framework it provided for reform, the fact that it was the first legally binding transnational instrument related to partner abuse and the unique system of accountability it established. Formally drafted and presented in 2011, the IC was the culmination of numerous earlier initiatives by the European Council (EC) and particularly of a 2006–2008 campaign that gathered information on local policies, laws, programs and needs and garnered political support for a legally binding treaty. The IC defined violence against women as “a violation of human rights and a form of discrimination against women” and to “mean
all acts of gender-based violence that result in... physical, psychological, or economic harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty” (Council of Europe, 2011, p. 8).

The IC proceeded from this definition to mandate state action in prevention, protection, and prosecution; the development of integrated policies at all levels of society; and the creation of a two-level monitoring mechanism to evaluate compliance.4

Under the prevention mandate, the IC obliges signatories to develop specialized training for professionals who work with victims, design and run regular public awareness campaigns, partner with the media and the private sector to combat gender stereotypes and promote mutual respect, introduce or integrate education about gender equality and nonviolent conflict resolution into school curricula, establish treatment programs for perpetrators of physical and sexual violence, and work closely with NGOs. Particular emphasis is placed on involving men and boys in combating misogyny at all levels of society.

The protection requirements of the IC emphasize the availability of information for victims; the creation and support of the services most used by victims such as shelters, hotlines, and rape crisis or sexual violence counseling centers (much less common in Europe than in the United States); and sensitizing general social service providers to the realities of abuse. Importantly, the IC requires that the number, geographic distribution, and accessibility of shelters reflect population needs, a mandate that has been interpreted to mean that countries must set a shelter-to-population ratio such as the 1/50,000 ratio identified by Turkish law. A controversial requirement is that police be given emergency authority to remove an offender and order him to stay away from the victim for a specified period of time, a mandate that Turkey has limited to the time it takes to bring the case before a judge.

Following Opuz, under prosecution, the IC mandates states to criminalize psychological as well as physical violence, stalking, rape, and sexual coercion5; includes a mandate to criminalize forced marriage, genital mutilation, and forced sterilization; prohibit the use of honor or cultural tradition as defenses; introduce and conduct risk assessments of future abuse; ensure that authorities are demonstrating due diligence in their response to
calls for help and in their efforts to “prevent, investigate, punish and provide reparation for acts of violence perpetrated by nonstate actors”; and that court proceedings respect the rights of victims and avoid “secondary victimization.”

The IC closes with implementation sections on integrated policies and monitoring that have far-reaching implications. Making allowances for differences in governance, the IC requires collaboration and coordination at the national and local levels among governmental bodies, statutory agencies (such as police and child welfare), and NGOs involved with partner abuse in policy making and program planning as well as in specific cases. It also recommends the formulation of a national plan with measurable goals that reflect the requirements of the treaty. Finally, the IC assigns responsibility for evaluating progress in implementing the IC to a panel of independent experts (the GREVIO) elected by a committee of the parties. As in the United States, many local communities in the UK and elsewhere in Europe host a coordinated community response (CCR) as well as multiagency fatality review teams. On a national level, however, formidable barriers remain to cooperation between representative bodies, statutory agencies, and advocacy organizations, particularly at the national level. Rather than reflecting a current reality, therefore, the mandates for coordination, collaboration, and planning give NGOs a strong basis to demand a seat at the table, a particularly important requirement in countries such as those in Eastern Europe where government hostility to autonomous women’s organizations remains strong.
The Killing of Ana Orantes

Just before Christmas 1997, only a few days after she had given testimony about four decades of beatings by her former husband on a well-known TV show, 60-year-old Ana Orantes was beaten, thrown over a balcony at her home in southern Spain, doused with gasoline, and burned alive. The killing prompted a national debate on domestic violence, street demonstrations and an admission from a leading church figure that a “machismo” attitude is still to blame. Her former husband was arrested and charged with murder, one of 60 cases that year in which a man was accused of killing his wife or former wife.

In the oftshown video of the interview, Ms. Orantes explained “When he came home he always found a reason to argue,” she said. “If the meal was cold, why was it cold? If it was hot, why? The point was to beat me.” She had complained repeatedly to the authorities about her husband’s violent behavior. Yet, after they had separated 2 years earlier, a divorce court ruled that they should have joint custody of their home. She lived upstairs; he occupied the lower level. Several months after massive protests in Madrid and four other cities, the Spanish government produced a national plan to address women’s abuse: the Plan de accion contra la violencia domestica 1998–2000. The government also created a separate division of prosecutors for domestic violence cases and initiated a media campaign about the problem. But the key will be “fighting machismo with a new mentality,” said Archbishop Elias Yanes, president of the Episcopal Conference, the ruling body of the Roman Catholic Church in Spain. He warned that the church might order separation in dangerous situations of domestic violence.

The Union of Separated People, a Madrid group representing 12,000 men and women among the 1.3 million Spaniards estimated to be divorced or separated, suggested that domestic violence might decline if the courts permitted men more joint custody of their children, a proposal women’s groups quickly criticized.
Addressing the Normative Gap

If we think of a “normative regime” as a constellation of the policies, laws, programs, and beliefs related to a problem, then it is important to ask what changes adapting the IC implies for the normative regimes pertaining to violence against women throughout Europe. Most directly, implementing the IC would close the normative gap created in some countries by the absence of appropriate policies, definitions, laws, and programs and, in others, it would set a standard for integrating existing policies, laws, and programs into a national plan. With the exception of Turkey, Scotland, Spain, the Netherlands, and a few other countries, adapting the IC would result in broadening the existing working definition of domestic violence to include coercive control. While still emphasizing physical and sexual violence (which it treats as distinct), the IC mandates changes in accord with this broadened definition, including the criminalization of economic violence, psychological abuse, and “arbitrary violations of liberty,” for instance, while extending educational curricula to address masculinity and inequality.

The outstanding question is whether agreeing to the principles and protocols outlined in the IC will actually close the normative gap between policy, law, programs, and beliefs. Obviously, how countries adapt to the IC prescriptive framework depends on a range of local factors beyond the control of the EC, including political culture and the current status of investment in combating violence against women. It is already apparent that some countries, anxious to be seen as complying with international norms, will report adherence to IC standards when there is none. In some Eastern and Central European countries, for instance, government reports of funding to domestic violence services diverge sharply from reports from NGOs that such funding is nonexistent, erratic, or interrupted for months at a time. Similarly contradictory claims from governments and NGOs about shelter support typify reports from Italy, Ireland, Portugal, Finland, and Poland. The hope is that a combination of local, transnational, and international pressure to confront violence against women will lead change in policies and laws at the top to trickle down to regional and local governments through a process of norm socialization (Schimmelfennig, 2000). Much depends on the capacity of local and international NGOs to mobilize support for reform.
The examples of Turkey, England, and Wales offer contrasting profiles of how countries are attempting to adapt to the broad definition of violence against women and the principles set out by the IC.
Turkey: An Example of Trickle-Down Reform

Despite the major reforms in women’s status following the founding of the Republic in 1923, it was only after activist pressure led to a major overhaul of the civil and penal code between 1998 and 2007 that the state in Turkey assumed formal responsibility for establishing gender equality and combatting violence against women. A 1998 UN Report documented a range of problems with Turkey’s approach to violence against women, including the absence of an integrated and established state policy, failure to move past the planning stage in developing a local coordinated response, and the inadequacy of shelter (guest house) funding (Ilkкарачan & Amado, 2008). In response, Turkey adapted Law no. 4320 (1998) and its amendment (2007) entitling all abuse victims to civil protection orders for up to 6 months and made violations of these orders a crime. Despite these reforms at the top, both the 2009 ICHR ruling in Opuz and a 2011 report from Human Rights Watch (2011) echoed these findings, indicating that 100 of the 166 Turkish cities required by law to create shelters had not done so.

In 2012, following its agreement to the IC, Turkey adapted one of the world’s most comprehensive laws on violence against women. The Law to Protect the Family and Prevent Violence Against Women (No. 6284) incorporated the IC’s broad definition and most of its mandates for prevention, protection, and prosecution. It also provided up to 4 months of paid daycare for victims; created 362 positions to serve women and children in the Ministry of Family and Social Policies, and established Violence Prevention and Monitoring Centers to provide overall coordination for local service delivery, collect data, and mediate a victim’s relationships with the courts and other support services.

The new ministry positions have created an effective internal lobbying presence within the Turkish government that has freed up funds for guest house development, service training, innovative police and service programming, data collection, risk assessment, and municipal and regional planning and coordination. Local and international NGOs were directly involved in the initial draft of Law No. 6284 and religious leaders and Muslim women’s organizations are active in service delivery. But changes in
local programming and practice have lagged far behind the requirements of the new law, though Family Justice Centers modeled after those in the United States have been opened in Ankara and Izmir. In part, the slow pace of norm socialization in Turkey reflects the fact that municipal and regional officials are appointed by and owe their loyalty to the central government and have little incentive to go beyond the planning stages of collaboration. Similarly, most NGOs and other groups capable of exerting pressure for reform on the central government lack the roots in local communities needed to hold police, prosecutors, courts, and officials accountable.
Reform in the UK: England and Wales

If Turkey’s challenge is to develop an anti–violence against women infrastructure de novo to match its law, the normative gap in the UK separates the government’s broad strategic definition of domestic violence as coercive control from the narrower definitions in play throughout a sophisticated, well-funded and multilayered service infrastructure.

The UK had for decades a policy of having police and courts intervene in domestic violence, but without any explicit domestic violence law. Arguments periodically were raised both for and against developing express laws, similar to the US model. The UK made extensive use of victim-driven civil orders including nonmolestation orders and occupation orders allowing a court order to remove an abuser from their home and police-initiated (without court order) domestic violence protection notices or domestic violence protection orders issued by courts for periods of 14 to 28 days. The debate in the UK as to whether to enact a domestic violence crime act was instructive discussing some of the policy dilemmas.

The lack of specific legislation to address this type of behavior has been put forward as a reason to create a specific crime of domestic violence, as it would arguably make it easier for the police and the Crown Prosecution Service (CPS) to prosecute offenders.

Another difficulty that arises when discussing the criminalization of domestic violence is whether it is in the victims’ best interest. The CPS prosecutes on behalf of the state, rather than the victim. Criminalization cannot, however, be seen as a strengthening of existing law, in the Home Office’s words. If it does not take into account the complex socioeconomic and cultural reality that domestic violence entails, victims’ needs, and those of the services best suited to support them (Graça, 2014).

Despite reporting, arrest, and conviction rates that are comparable to those in the United States, the absence of specific domestic violence offenses in the UK meant that statutory and nonstatutory agencies and organizations, and even different segments of the government, operated from different,
competing, and even contradictory definitions. Meanwhile, the risk assessment checklist (RIC) used with abuse victims by police includes questions about isolation, psychological abuse, and control. Until recently, however, their only option was to refer high-risk cases to a local multiagency risk assessment conference (MARAC) for case management.

In 2013, after a consultation to which advocacy groups had significant input, the Home Office added coercive control to its definition of domestic violence, though without reference to gender (see box insert). Although not a legal definition, the change signaled the Tory Government’s response to growing frustration with the inadequacy of the legal and police response to partner abuse among all parties involved.

In early 2015, after another public consultation and a critical review of the police response, Parliament added a new criminal offense of coercion and control punishable by up to 5 years in prison. Modeled after a stalking statute enacted several years previously and “seeking to address repeated or continuous behavior in relationships where incidents viewed in isolation might appear unexceptional but have a significant cumulative impact on the victim’s everyday life,” the new offense would be committed where a person (A) repeatedly or continuously engages in behavior toward another person (B) who is controlling or coercive and, at the time of the behavior, A and B are personally connected, the behavior has a serious effect on B, and A knows or ought to know that the behavior will have a serious effect on B. For the purposes of the offense, controlling behavior includes economic abuse, emotional abuse, and a range of attempts to monitor or otherwise regulate a partner’s behavior (Bradley, 2015, NC9). Unlike the IC, the law fails to identify gender as a key factor in the offense, allows the accused party to prove a protective relationship to a partner as a defense, and excludes former partners from coverage, a major omission in the eyes of women’s aid and other advocacy groups.

Another important piece of legislation enacted in 2015 was the Violence Against Women, Domestic Abuse, and Sexual Violence (Wales) Bill (Violence Against Women, 2015). Like the English bill and the IC, the Welsh legislation adapted a broad definition of domestic abuse as coercive control, though its coverage extended to girls as well as to persons who are living
separately. While the new law in England focused only on a heightened criminal justice response, however, the new Welsh bill followed the guidance of the IC in its emphasis on prevention, accountability, and transparency rather than punishment.

Calling for national and local strategies to combat gender-based violence, the new law detailed the responsibilities of each level of government, including local councils and health boards, in developing and implementing the strategies; setting specific timelines for establishing goals, gathering data, formulating the strategy, and putting it into play; requiring the identification of quantitative and qualitative indicators of violence against women and girls; and establishing a system of statutory guidance to ensure that local strategies conformed to the national strategy. The bill also created a new office of National Adviser with broad powers to initiate new legislation, conduct research, prepare reports (including reports soliciting support for underserved victim populations such as lesbians or transgender persons), and monitor the overall development and implementation of the strategy. Perhaps the most innovative feature of the new law (and one that excited considerable controversy) was its mandate that curriculum furthering the goals of the bill be introduced, monitored, and published in all schools beyond nursery school, including institutions of higher learning. Paralleling the role of the adviser nationally are champions in schools and other institutions whose leadership and guidance are critical to the success of local strategies.

Legislative developments elsewhere in Western Europe differ widely. An outstanding challenge posed by broadening the definition in Europe is adopting a standardized definition of coercive control. Repetitive domestic violence is defined as harassment or coercive control in England, for example; habitual abuse in Andorra; patriarchal violence in Sweden; gross or repeated maltreatment in Norway; historical abuse in Scotland; and is included under maltreatment of a family member in the Czech Republic. At one extreme is the Organic Law of Spain (2004) that covers all women suffering gender violence and encompasses all acts of physical, psychological, and sexual violence, including offenses against sexual liberty, threats, coercion, and the arbitrary deprivation of liberty (Heisecke & Werner, 2014). At the other extreme are the Netherlands and several Scandinavian countries where gender-neutral language has been substituted...
for the earlier emphasis on violence against women, discussion of sexual
inequality has been muted, abuse has been redefined as a public health
problem, and counseling for offenders has replaced punishment as the
favored response.
The new definition of domestic violence
Gov.uk, Ending Violence Against Women and Girls in the UK

In 2013, the Home Office in England adopted a “new definition” of domestic violence that added coercive control. The new definition reads:

“Any incident or pattern of incidents of controlling, coercive, or threatening behavior, violence, or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse:

- psychological
- physical
- sexual
- financial
- emotional

Controlling behavior is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance, and escape, and regulating their everyday behavior.

Coercive behavior is: an act or a pattern of acts of assault, threats, humiliation, and intimidation or other abuse that is used to harm, punish, or frighten their victim.”

This definition, which is not a legal definition, includes so-called honor-based violence, female genital mutilation (FGM), and forced marriage, and makes clear that victims are not confined to one gender or ethnic group.
Do Organizational Policies Mediate the Impact of Mandatory and Presumptive Arrest Statutes?

Policy manuals: Don’t bother. If they’re general, they’re useless. If they’re specific, they’re how-to manuals expensive to prepare and revise.... The only people who read policy manuals are goldbricks and martinets. The goldbricks memorize them so they can say (1) “That’s not in this department,” or (2) “It’s against company policy.” The martinets use policy manuals to confine, frustrate, punish, and eventually drive out of the organization every imaginative, creative, adventuresome woman and man. If you have to have a policy manual, publish the Ten Commandments.

—Townsend and Bennis (2007, p. 98)

Although sometimes we are equally frustrated by rigid policies, we do recognize that in practice they are invaluable, both to exert organizational control and to demonstrate what issues are most salient to command officials. In the case of policing domestic violence, policies can be a barometer of the organizational commitment to statutory requirements. They represent a formalization of the organization’s expected conduct and reduce variability among individuals by limiting their discretion and proscribing a uniform organizational response (Hall, 1991). In fact, the National Research Council emphasized the significance of policies to formalize restrictions on officer discretion. They also observed that there was evidence to support the importance and efficacy of policies to affect line behavior (Skogan & Frydl, 2004).

No one expects that domestic violence can, or even should, be equal. The reality is that more than 16,000 local and state law enforcement agencies exist in the United States and that approximately half employ fewer than 10 officers (Reaves, 2007). For example, a policy in New York City requiring a two-officer response and immediate access to victims’ services is likely to be unrealistic in a rural area. Many states have included model policies as part of
their legislation that all jurisdictions are expected to follow. It is likely that agencies need to tailor these policies for the reasons stated previously even though it broadly is expected that policies are developed in accordance with existing or new statutory mandates. In general, it would be anticipated that departments in states with mandatory arrest statutes provide less discretion in their policies compared with departments in states with presumptive or discretionary arrest statutes.

Nonetheless, police administrators retain considerable discretion in their decisions regarding the development of domestic violence policies. Although many police administrators try to respond aggressively in preparing detailed policies, others display lower levels of commitment at monitoring their implementation. Consequently, administrators might provide an unstated message regarding the relative importance of statutory mandates, which might serve to provide tacit approval for the continued use of officer discretion and practices for nonarrest in cases of domestic assault.

Once a domestic violence policy is developed, several factors determine its impact. First, there is a need for regular policy revisions and updates in response to continuous statutory changes. This change is not driven simply by new, improved methods of policing now being advocated by administrators. A review of state domestic violence statutes revealed that the volume of new statutes and statutory revisions continues to grow. Miller (2005) reported that more than 1,500 new domestic violence statutes have been passed since 1994. The extent to which police policies promptly reflect these changes is unknown.

Second, departments need to develop effective strategies for their dissemination (Buzawa, 1982; Buzawa & Austin, 1988; Miller, 2005). The significance of their dissemination might be enhanced or, alternatively, minimized and marginalized through both preservice and in-service training programs (Buzawa, 1982).

Third, supervision seems to be a critical variable in identifying the failure of police to comply with policy mandates (Rothwell & Baldwin, 2007). Street-level practices historically demonstrate a pattern of line officers subverting policies that are not supported by the rank and file. These practices include call screening and officer downgrading or redefining calls to not require
immediate assistance in the hope that such delays would allow the situation to resolve itself (Buzawa, 1982; Manning, 1997). In fact, supervision practices (e.g., management reinforcing abstract policies) have been reported as the only significant predictor related to the frequency of reporting for minor conduct violations by police officers (Rothwell & Baldwin, 2007).

Fourth, patrol officers often consider policies to be abstract and unrealistic and unable to solve the types of concrete problems they confront (Dixon, 1997; Manning, 1997). Therefore, it is important that policies focus on responses at the patrol officer level. In this case, policies often are written by attorneys and are not really targeted to the audience for which they are ostensibly written. It can be argued that their primary purpose might be to protect the jurisdiction from liability. In the case of domestic violence policies, they are typically written by the City Attorney or State Attorney General’s Office. It has sometimes been argued, perhaps somewhat facetiously, that policies are written by attorneys, for attorneys.

Research suggests that a large percentage of, if not most, jurisdictions have some type of domestic violence policy in place that conforms to statutory mandates (Hirschel Buzawa, Pattavina, Faggiani, & Reuland, 2007). In addition, the trend in jurisdictions in states with discretionary arrest statutes seems to be the implementation of more restrictive policies than otherwise mandated by state statute.
Impact of Policies

These policies matter. One study examining domestic violence policies for the year 2000 reported that only 28% of jurisdictions in discretionary arrest states reported a policy allowing an officer’s discretion in their arrest decision (Hirschel Buzawa, Pattavina, Faggiani, & Reuland, 2007).

Eitle (2005) examined the impact of mandatory arrest policies on the probability of arrest across 115 cities and reported that cities with mandatory arrest policies even in the absence of statutory requirements experienced higher arrest rates in domestic violence incidents than those without mandatory arrest. This finding was true even when organizational variables (i.e., formalization of policies, organizational size, and education level) and incident characteristics were controlled (Eitle, 2005).

Little attention has been focused on organizational commitment to change and what structural changes are made to ensure compliance. Unfortunately, many police departments still have minimal domestic violence policies despite state legislative requirements. Although many police administrators try to respond aggressively to this problem, others display varying levels of commitment to domestic violence through their efforts at monitoring policy implementation.

Some administrators simply file these policies in their office. Others distribute the policies at rapid-fire roll calls. Still others discuss them in detail at roll call. Finally, there are departments that mandate a strong effort to ensure that all officers receive in-service training both on the new policy and on their role in intervention.

The impact of policies also depends on what happens to them after they are published. For example, researchers worked with several departments to develop a common domestic violence incident report form. One department was successful in having all officers complete these reports, another was somewhat successful, and a third was totally unsuccessful. The difference is that the department that succeeded in gaining compliance simply designated a sergeant to review all officer reports and ensure that the supplementary form
for every domestic assault was included. The sergeant took the needed time to provide constructive feedback to officers and to require officers to provide additional information where needed and where appropriate, including the rationale for failure to arrest (Buzawa & Hotaling, 2003).

Differences in observed arrest practices might largely reflect different implementation strategies. From these data, we can conclude that although changes might occur after initiation of new policies, these might be inconsistent among departments and do not always comply with the ideal contemplated arrest profile.

Such factors lead us to dismiss, or at least seriously question, the global conclusions of researchers who either try to generalize results from a limited number of departments or who rely on aggregate data from many departments—or national data—that mask major departmental variations. Obviously, many departments have recently instituted pro-arrest policies, which have the potential to predict officer behavior more accurately; however, past circumstances suggest that new policies might not override an organization’s past practices and culture. These departmental differences might be based on organizational attributes or possibly on the general orientation of the department toward calls for assistance and the community in which it operates. Although little empirical research is available in the context of departmental responses to domestic violence, several researchers have differentiated between service and law enforcement–oriented agencies.
The Importance of Training

Training is a primary vehicle for reinforcing existing and planned practices reflective of the goals of an organization’s leadership. In the context of policing, training becomes decisive because the methods and practices of police training historically have been instrumental in either implementing change or, conversely, thwarting implementation of new progressive policies. Manning and Van Maanen (1978) discussed the overriding importance of the academy in the police socialization process in which police occupational perspectives are transferred to new recruits and the course content is presented in such a way as to ensure its continuance.

Before conferring arrest powers, police departments rely on an extensive routinized training program of at least 8 weeks to impart basic knowledge of substantive criminal law, criminal procedure, and departmental regulations to recruits. Even after the formal training program, officers maintain rookie or probationary status. In most departments, rookies are assigned to experienced patrol officers until they are considered sufficiently familiar with required tasks and departmental practices. The failure to provide police training might greatly contribute to the likelihood of diverse practices that either enforce or even sabotage policies that ostensibly favor arrest. Often, especially in smaller or more rural jurisdictions, this is simply a function of resources, either for the agencies to develop and provide their own training, or to spare the time needed for personnel to attend outside training. Whatever the reason, the lack of training increases the likelihood of a more varied response to legislative or policy mandates for arrest (Sudderth, 2006; Van Hightower & Gorton, 2002).

Before we explore the impact of more current policies, we need to understand how training affected past practices. For a variety of reasons, classic police training programs made the response to domestic violence less effective. In the past, every component of the training process—time allocation, instructor selection, content, and in-service traineeship—tended to reinforce existing negative stereotypes against domestic violence cases. Harris (1973) observed that in classic police academies, great emphasis was placed on the “ethic of masculinity” and on the development of the officer’s identity as “first and
foremost... a man” (p. 291).

Before the 1960s, typically there was little or no specific training on domestic violence. In the 1960s and, in some departments for years thereafter, officers were instructed simply to quiet tense situations, advise on social welfare agencies that might provide assistance, and quickly extricate themselves (Bard, 1970; Berk & Loseke, 1980–1981; Loving, 1980).

In the late 1970s, when assisting the Detroit Police Department in the development of a new training program, one author of this book (Buzawa, 1978) conducted a nationwide review of existing domestic violence programs. At that time, in virtually all police training programs, the training component related to domestic violence was perfunctory and typically composed of a single, 4- to 8-hour lecture segment under the general rubric of handling “disturbed persons.” The content was not restricted to, nor did it even necessarily address, the topic of domestic assault. Instead, it included proper techniques for handling hostage situations, potential suicides, mentally disturbed individuals, violent alcoholics and addicts, as well as child abuse, with brief mention of domestic disturbance calls. To the extent that they were addressed as a separate topic, domestic calls were explained to the recruits as a largely unproductive use of time, ineffective in resolving a family problem, and potentially dangerous for the responding officer. Recruits were told that the desired outcome was to restore peace and maintain control as a vehicle of restoring the public order and self-protection. Arrests were actively discouraged as a waste of time. The only exception was if disrespect or threats by an offender or victim indicated that the officer might lose situational control. Recruits were trained that arrest, therefore, was primarily to assert authority rather than to respond to prior criminal action.

In the past, departmental choice of training staff did not usually result in interested or qualified instructors in the field of domestic violence. Except for those relatively few larger departments with dedicated permanent training sections, police academies traditionally used senior line personnel. Frequently, the basis for their selection was temporary disability or other special duty restrictions, such as having been involved in a prior shooting or other incident requiring a departmental investigation prior to being placed back on active duty. These instructors had little interest in training itself,
generally lacked instructional background, and had little substantive expertise or affinity for the topic of domestic violence.

As a result, it is not surprising that the primary mode of instruction was an explanation of official policies of nonintervention accompanied by colorful (if not totally accurate) stories about their own personal experiences. Few, if any, training materials or multimedia aids were available or used, and outside expertise was rarely sought. Formal in-service training in this area was rare before the early 1980s. During the initial entry period, a recruit relied on the perceptions of relevant teachers such as experienced officers to develop his or her own views toward proper organizational practices and objectives. The trainee, after all, had few relevant experiences to guide his or her behavior during the often-frightening immersion into the reality of policing (Van Maanen, 1975). The field training process, in which the rookie was assigned to learn under the direction of an experienced officer, usually reinforced prejudices against domestic violence cases. In fact, this experience often served to undermine an academy’s instruction in those few cases in which the academy might have attempted to promote a more activist police response (Van Maanen, 1973). For these reasons, it was acknowledged by both senior police officials (Bannon, 1974) and researchers (Loving & Quirk, 1982) that traditional police training failed to provide police officers with any rudimentary skills required for successful domestic violence intervention. In one study based on research conducted in the mid-1980s, 50% of the officers in a department were not even aware of the elements of probable cause for domestic violence assault (Ford, 1987). As Bannon (1974) observed, “the real reason that police avoid domestic violence situations to the greatest extent possible is because they do not know how to cope with them” (p. 4).

Until recently, police training programs reinforced prevailing occupational ideology toward domestic violence. The net effect of such a training process was to enhance the likelihood that officers would attempt either to avoid a response or to complete domestic violence calls as quickly as possible to devote energy to the more “appropriate” police work. In summary, the training process in the 1970s and the 1980s was a largely unrecognized factor that impeded the implementation of actual change even when officially desired by departmental leadership.
Domestic violence legislation has provided a major impetus for many states to improve their police preservice and in-service domestic violence training. However, only 8 states mandate in-service police training as a component, which has been attributed to the failure to stipulate in-service police training requirements in general (Miller, 2005).
Current Training

As noted by Miller in 2005, legislation has greatly changed the landscape of police training. Many departments, either through their own initiative or following training curricula recommended by organizations such as the International Association of Chiefs of Police (IACP), have transformed training from a factor blocking arrests to one that supports stated pro-arrest objectives. In this regard, these organizations have been leaders in trying to institute change. Their most recent policy on domestic violence, written in 2006, is exceptionally detailed, describing issues such as the proper role of police, making referrals to appropriate agencies, promoting officer safety, and providing for extra training for command officials. As such, the IACP assumes that departments will commit considerable department resources.

Aspects of this type of comprehensive training include emphasizing the role of domestic violence intervention by police, arrests in the context of domestic violence strategy, and training that focuses not only on the law but also on attitudinal change. Innovative teaching methods such as role-playing, especially of instances in which the officer is placed in an unusual position (acting as the victim or the offender), also might prove beneficial (Malefyt, Little, & Walker, 1998).

It would be wrong, however, to assume that training has been transformed uniformly to support aggressive police intervention. In most departments, basic training time has not increased. Officer candidates still spend an overwhelming, perhaps inordinate, amount of time on physical fitness and firearms techniques (Eigenberg, 2001). In sharp contrast, the amount of time devoted to domestic violence varies considerably from 2 to 30 hours, with an average of 10 hours. Similarly, the ability of training to be relevant to specific organizations and their communities and the trainer’s skill at influencing officer attitudes and behavior through such training has a critical impact.

Nonetheless, progress is occurring and the vasty majority of states now mandate extensive domestic violence training. Therefore, a critical question to be addressed is whether the training content of the program is determined by statute or departmental policies, and who delivers the training.
In addition to mandating the quality of domestic violence training to get maximum impact, all officers need to be aware of and trained on their agency policy as well as state statute. In some jurisdictions, in-service domestic violence training, which provides updates to police officers on best practices and legislative updates, are provided only to those officers in a specialized domestic violence unit. As a result, much of the relevant information is not provided to patrol officers that might critically impact the initial police response and how the incident report is written. On a somewhat anecdotal basis, as part of a class project for one of the authors, a police officer gathered information on the domestic violence training provided to his unit and the prosecutor’s office. He reported how helpful the class assignment was because neither he, nor his peers, had received any information on how to identify a primary aggressor, despite the existence of a primary aggressor statute intended to limit dual arrests. Thus, although a simple statement in their policy mandated this, officers simply did not know how this was done.

The impact of inadequate training for the rank and file resonates throughout the entire system. Typically, only reports for those incidents identified as domestic violence must be reported to the domestic violence unit. According to one study based on observations of reports in several Massachusetts police agencies, between 40% and 50% of reported domestic incidents involved domestic assaults but were never characterized as an assault and, therefore, never were processed further within the entire criminal justice system (Buzawa & Hotaling, 2007). What is included in those cases not forwarded might be situations in which the officer did not or could not identify a primary aggressor, lacked probable cause, or simply preferred the old way of settling such incidents informally.

Equally problematic is the continuing reliance on unofficial training that rookies have with experienced officers. To date, we are not aware of any official training programs in the country that rotate new officers to specific tours of duty with experience in handling domestic crises. Instead, the typical pattern is a rotation with an experienced patrol officer who might be a good role model in general but might or might not be particularly responsive to domestic violence incidents or be trained to import such skills to new recruits.
In-service police training is equally problematic. In-service domestic violence training is now routine in many departments and, in fact, is mandated under some state domestic violence statutes; however, the extent and quality of such training varies enormously from a brief roll call or video (not effective) to a much more formal, and far more likely to be effective, departmental or offsite training program (Gaines, Kappeler, & Vaughn, 1999).

Because such programs cost considerable funds in the form of overtime for other officers to replace those receiving training, there are strong organizational disincentives for departments to allocate resources for these purposes (see Eigenberg, 2001, pp. 277–281, for a review of why training continues to have a problematic impact). As a result, the uneven status of training might explain a great deal of the variation in arrest practices among departments, despite the fact that approximately 30 years have passed since pro-arrest policies were widely adopted and publicized.
Summary

This chapter provides an overview of the development and growth of state and state, federal and international legislation addressing violence against women. Although state statutes were initially limited and narrowly circumscribed, they have evolved into far more comprehensive and powerful tools in the battle against domestic violence. Similarly, VAWA now has become institutionalized and has undergone several reauthorizations. Support for this type of legislation is clearly becoming accepted as necessary by increasing numbers of the general population. State and federal anti-stalking acts have begun to address the unintended consequences of earlier statutes—stalking of victims who successfully left their abuser. Following adaption of the Instanbul Convention, the UK and other European countries broadened their policies and laws to encompass coercive control as well as domestic violence.
Discussion Questions

1. What should domestic violence legislation cover in terms of relationships and proscribed acts?
2. What do you think is missing from your state statute? How does it compare to other statutes?
3. Unlike the federal legislation, most services are funded annually and agencies seldom receive multiyear funding appropriations. How can consistent funding for state efforts to support domestic violence services be ensured?
4. Do you think VAWA should expressly address male victims of domestic violence and sexual assault or victims in same-sex relationships? If not, why not?
5. Why were many groups, such as Native Americans living on reservations or college students, not more rigorously protected until almost 40 years after passage of the first domestic violence abuse statutes?
6. Does the rapid growth of stalking and cyberstalking legislation reflect the reality of unintended consequences of the success of the initial laws in removing batterers from their homes?

Think Critically with SAGE journal articles study.sagepub.com/buzawa5e

We have chosen to focus on Europe because this region is closer to the United States than other regions in culture, economy, and political systems; because its response is well-developed; and because it offers a stark contrast to developments in the United States. Our limited grasp of non-English sources also limited our survey, so we highlight evidence from and reforms in the UK. A comprehensive analysis of domestic violence laws in Europe, let alone in other regions, is beyond the scope of this text. This site contains only a sample of relevant laws and focuses mainly on OECD and Eastern countries and may not be current. The field would benefit from a comprehensive, country-specific review of legislation as well as a database of laws, practices and programs in different cultures. One effort to chronicle such laws can be found at www1.umn.edu/humanrts/svaw/domestic/laws/international.htm or www.stopvaw.org/UN_Treaties_and_Conventions. This effort is admittedly a sample of relevant laws focused more on OECD and Eastern European countries and not necessarily kept current. The field clearly could use an expanded version for legislatures in various countries to have a current database of best practices modeled not only on the US and British regimes, but also on the civil law, traditions, and judicial practices of many cultures.
These countries are Albania, Andorra, Austria, Bosnia and Herzegovina, Denmark, France, Italy, Montenegro, Portugal, Serbia, Spain, and Sweden. The full convention and updated information and signatures can be found at www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=210&CM=&DF=&CL=ENG (accessed October 14, 2014).

In Europe, the term “gender” violence is meant to refer to the structural-cultural source of partner abuse in sexual inequalities. In the United States and the UK, however, the term has a more ambiguous connotations and implies that policies to combat violence against women be complemented by programs to protect abused men as well.

The full text of the IC is available at www.coe.int/t/dghl/standardsetting/convention-violence/about_en.asp.

The prosecution mandate includes defining forced marriage, genital mutilation, forced abortion, and forced sterilization as criminal offenses.

The UK National Policing Improvement Agency already had issued detailed guidance for police officers on how to address domestic violence in 2008, but according to the Home Office in 2014 there were still numerous shortcomings and variations in the way police forces across the country tackled domestic violence (Graça, 2014). The pattern of distrust of police use of discretion is all too familiar to those experienced with policing in the United States.
Community-Based and Court-Sponsored Diversions
Chapter Overview

Many members of the judiciary recognize that the criminal justice system has not effectively responded to domestic violence in the past and has been relatively inflexible or limited in options for intervention and treatment modalities. This chapter will address the strengths and limitations of current and potential approaches for intervention.

Two models of diverting domestic violence cases from the criminal justice system have been developed during the last 25 years. First, less formal systems based on the principles of restorative justice have been proposed as an alternative to formal criminal justice case processing through convictions. These build upon earlier informal strategies designed to address victim, offender, and community needs. We will focus on the practice most used historically—victim–offender mediation—and discuss several different variants on restorative justice (e.g., family group conferencing and peacemaking circles). Although restorative justice has been somewhat eclipsed by BIPs in the United States, this method and its variants remain the mainstay in many other countries. It is also possible that this might possibly return to favor in this country given the ever-changing political climate toward criminal justice involvement, diversity in victim needs, existence of systemic financial constraints, and concerns over the relative efficacy of batterer intervention programs compared to alternative options.

Next, this chapter will discuss batterer intervention programs and other intervention programs mandated as a condition for pretrial diversion or as a part of a sentence subsequent to guilty plea or trial verdict. We will discuss in depth the key components of such programs, how they differ, and what we know about their use, effectiveness, and limitations.
Restorative Justice Approaches

Restorative justice in cases of domestic violence encompasses a wide variety of informal strategies intended to meet the needs of victims, offenders, and communities alike. Its strength is its potential for better reaching the large percentage of victims of domestic violence who do not call the police. The current approach of arresting offenders and criminalizing domestic violence may actually serve as a deterrent to many victims who fear the consequences of an arrest. As a result, despite the vast increase in domestic violence arrests, a very large number of victims still do not call for police assistance. Regardless of the relative merit of criminal justice versus informal methods of handling such cases, the traumas and specialized needs of these victims, will never be brought to public attention unless there are viable non-traditional techniques.

Restorative justice seeks to expand available options for victims and the community while maintaining a measure of offender accountability. This differs from the criminal justice system’s focus on the offender and criminalizing behavior.

In the context of the criminal justice system, the needs and expectations of the victim often are of only ancillary interest to the main players in a criminal case—the police, prosecutors, defense bar, and court. Victim advocates long have argued that, in the past and currently, the victims have not been well represented in formal criminal justice proceedings (Goodman & Epstein, 2008; Sokoloff & Pratt, 2005). Even in courts with a well-funded victim advocacy program, advocates typically are retained by prosecutors’ offices and, as a result, have the goal of ensuring the victim’s cooperation even when it is against her express wishes (Labriola, Bradley, O’Sullivan, Rempel, & Moore, 2009).

Restorative justice tries to address these victim-centered needs and originates out of a long-standing desire to develop viable alternatives to the criminal-justice system. The key concept is to draw the victim into the resolution of an incident, have the offender truly understand the degree to which he or she has violated the rights of the victim and or the community, and finally to have the
offender participate in some effort that will remediate the harm caused and lessen the possibility of the antisocial action reoccurring.

A variety of different means has been used. Although methods of restorative justice differ, they share the following traits:

1. A primary goal is to repair the harm done to the victim (and often the community).
2. A forum is provided to give the victim a chance to address to the offender and the community the impact of the offense.
3. The organizers demonstrate a desire to decrease the official role of the state while increasing the involvement of the families and the community.
4. The proponents might be as concerned with the community impact of violence as they are with the punishment of a particular offender.

The most common methods include court-sponsored mediation but not mandated or victim–offender reconciliation or dialogue efforts; family group counseling, also called “community conferencing”; and the “peacemaking circle,” which we will mention briefly. These efforts began in the 1980s in an effort to provide a nonpunitive response to crimes committed by juveniles. These approaches have been adopted widely for juvenile offenders in many international jurisdictions, especially in Europe, and also are used as part of traditional approaches to achieve justice among Native Americans. One study reported that more than 1,200 such programs had been developed worldwide (primarily for youthful offenses; Ptacek & Frederick, 2009). Another study noted that while these alternative programs were relatively common for juvenile offenders in the United States, they are far more common in the United Kingdom, Germany, France, China, and India (Braithwaite, 2006).

Studies of the effects of restorative justice models in the original target population of juvenile offenders have been positive (see Ptacek & Frederick, 2009, for an extended discussion). However, there is a lack of research examining the application of such techniques to cases of domestic violence and the application of techniques of restorative justice to domestic violence has been controversial. In response to the demands of battered women advocates, many jurisdictions effectively ban such techniques in domestic violence cases out of concern that they might be inappropriately used in
practice as a mechanism to shield criminal behavior from the purview of the courts that would punish actual crimes (Daly & Stubbs, 2007). Nevertheless, several methods of restorative justice, such as family group counseling and peacemaking circles, have been used in some contexts in the area of domestic violence, and the techniques are still being taught (see especially Nixon, Burford, Quinn, & Edelbaum, 2005, and Ptacek & Frederick, 2009).

We will cover mediation as a method of restorative justice in the most detail, as in the past it was the de facto standard alternative to criminal case prosecution, and by far the most has been written about this area. While there is extensive research on the role of divorce mediation in cases involving intimate partner violence, much of the literature involves theoretical arguments for and against mediation in these contexts. The complexity of the issue and the legitimacy of arguments on both sides lead to calling divorce mediation in the context of domestic violence “one of the most controversial issues in family law today” (Holtzworth-Munroe, 2011, p. 120).
Domestic Violence Mediation Programs

Mediation in cases of divorce first began in both the United States and Canada in the 1980s. Initial reports were quite favorable as they expanded available alternatives. In one community survey, respondents preferred court-sponsored mediation to conviction for abuse followed by jail or even probation (Stalans, 1996; Stalans & Lurigio, 1995). Only if the female victim was punched or “hit hard” did the percent favoring arrest increase to between 50% and 90%, depending on the degree of injury inflicted (Klein, Campbell, Soler, & Ghez, 1997). Clearly, mediation and counseling have a legitimate, although bounded, scope of support by the public.

Based on an assumption of potential cooperation among discordant parties, mediation is largely a self-help process by which the impartial mediator facilitates conflict resolution rather than addressing the safety and personal needs of victims. The mediator does not have the authority to mandate any particular settlement but instead typically seeks to develop a process for solving disputes nonviolently. Marital conflict mediation in the 1990s experienced phenomenal growth as a means of having a client-controlled, less-expensive system of settling disputes (including divorces) among spouses. In fact, during the 1990s, it was observed that most courts used mediation as the first avenue of trying to settle an interpersonal dispute (Umbreit, 1995).

Mediation efforts to contain domestic violence fit into the prevailing societal intervention. Crisis intervention centers nationwide were established in the 1990s to diffuse many kinds of interpersonal disputes, including domestic violence. Mediation programs often were sponsored by prosecutors’ offices that provided structured mediation in divorce cases where past abuse made the threat of criminal prosecution real. These programs were administered by prosecutorial or judicial staff or might have been contracted out using the services of local crisis-management agencies.

Whether or not it is officially acknowledged, court-sponsored divorce-related mediation remains widely used in cases where domestic violence is present. Virtually all studies of divorce mediation suggest that domestic violence is
prevalent in divorce mediations, with estimates of the co-occurrence at 50% to 80% of all mediated divorce cases (Kurz, 1996; Maxwell & Bricker, 1999; Pearson, 1997). Where such court-sponsored programs exist, mediation generally resolves 50% to 70% of referrals without subsequent judicial input. These figures indicate that, regardless of official policies to the contrary, mediation remains a major method of resolving domestic violence. Although typically divorce mediators have the responsibility of advising parties that they can opt out and pursue criminal conduct if domestic violence has occurred, Pearson (1997) as well as Thoennes, Salem, and Pearson (1995) noted that fewer than 5% of such cases were excluded from mediation because of domestic violence and most cases were resolved without further court intervention.

Mediation programs are extraordinarily varied; however, they all entail a meeting with the offender, the victim, and a trained mediator. Stated succinctly, “the mediator is an advocate of a fair process” (C. W. Moore, 1986, p. 54). This is true whether the parties’ shared goal is to reform the relationship or to end it with a minimum of rancor and collateral damage to the parties or their children. The mediator attempts to facilitate negotiations by making each side understand reasonable requests from the other party and appeal to both parties’ desires to achieve a fair result. The process of mediation is, thus, designed to be self-empowering to each of the participants, giving both a degree of buy in, hence making them responsible for the decisions that are reached. To the extent achieved, the result might be accepted more readily than those mandated by a court. Unlike the informal mediation by police historically used at the scene of an incident, mediation is typically initiated by the referral of a case either by a prosecutor, victim advocate, or the attorney for one of the parties. Some programs use a structured framework seeking to teach long-term dispute resolution in a nonviolent context or to negotiate key aspects of legal separation through divorce-related mediation.

Some even have included initial direct sessions with a mediator and a surrogate or advocate for the adversary. A typical mediation session involving intimates is designed to use a neutral trained facilitator or mediator to provide both parties with a safe and structured forum in which they can express their needs and aspirations in a relationship and hear those of the
other party.

In contrast to ongoing public support, the extent to which domestic violence victims favor such approaches is far less certain. Hotaling and Buzawa (2001) reported in that, in a study of cases actually prosecuted (a subset of victims likely more seriously victimized than average), only 13% of these victims would have preferred mediation as an alternative to court prosecution, and less than one third preferred informal meetings with a court official to work out a judicially enforced solution. This was true even though more than two thirds of victims believed psychological counseling for offenders offered the greatest potential for preventing reoffending, and few believed traditional criminal justice sanctions would be effective.
Advantages of Mediation

Mediation does have several significant advantages in some cases. It is well known that in many cases the offender, and even at times the victim, may deny that a crime has occurred. While this has obvious disadvantages, mediation may avoid making such a determination (or, from a different perspective, may improperly refuse to make such a finding). Instead, the process and techniques for settling future conflicts without violence may be taught to both the offender and the victim. For some, this is preferable to an impersonal court system that discriminates against the needs of individual victims. It serves also as a method of educating both parties about their legal rights and responsibilities.

Ellis (2000) listed four reasons that divorce mediation is a greater contributor to a victim’s safety than the traditional legal system. First, the screening involved in mediation, which is rarely conducted in legal negotiations, can flag cases where there is potential danger. Second, signing required legal affidavits can increase the anger and hostility of the parties, which further increases the risk of violence. Third, partners involved in mediation may learn conflict resolution techniques that they would not learn in legal negotiations. Fourth, mediators primarily are concerned about the safety of the parties, unlike attorneys for whom safety may be only a peripheral concern.

Of equal significance, mediation addresses the apparent desires of the many victims who may have indicated that they do not want the offender prosecuted. The parties, facilitated by the mediator, may achieve outcomes that are best for the victims and, as they perceive, for their children.

Even more significant, previous chapters in this book have demonstrated amply that many, if not most, victims prefer alternatives to the punitive orientation of the criminal justice system. As discussed earlier, many victims remain dissatisfied with decisions or at least processes of the criminal justice system. We predict that levels of discomfort increase as prosecutors increasingly place more aggressive attention on claims of child endangerment, especially since advocates for these children rarely believe the
victims’ interests are important.

Despite intensive time commitments for counselors and mediators, most cases do not require much of the far scarcer and costlier prosecution and judicial resources. Consequently, mediation might be considered expedient to an overburdened system facing gridlock in trial courts.
Does Mediation Actually Reduce Violence?

While we know that many participants of effective programs view mediation as being fair and generally rate it favorably, at least in comparison with the traditional court systems, we know far less about whether it actually prevents future violence. If the mediators are prepared for the possibility of domestic violence and are correspondingly careful to address the inequity in power relationships and maintain mechanisms to intervene actively if it seems that violence is likely to recur, mediation might prove beneficial even in the context of domestic violence.

Few empirical studies have been performed, especially since batterer intervention programs began to eclipse mediation in the late 1990s. Some findings have suggested that, in appropriate cases, mediation might provide approximately equal reductions in the rate of violent recidivism, at least as compared with traditional sentencing and when applied to a subset of relatively less violent offenders. One early study found the District of Columbia’s mediation service to be effective in reducing future violence, and mediation was considered fair by both parties, both good measures of success (Davis, Tichane, & Grayson, 1980).

In the context of domestic violence case disposition, mediation might have some public support; it has been used widely and is less expensive to the system than traditional processing through conviction. What is less clear is whether empirical research has demonstrated the actual positive impact of mediation on participants. Although limitations to court-sponsored mediations to date are real, empirical research has not found that divorce court-related mediations, which are the most typical form, have increased the disempowerment of women or increased the likelihood of violence during or after participation in the mediation process. One study following a series of cases reported a steady and relatively sharp decrease in abuse during the year after termination of the mediation (Ellis & Stuckless, 1996).

A second comprehensive study used a variety of data techniques to explore how domestic violence issues impact divorce-related mediation (Pearson, 1997). Pearson reported that through training of mediators, presence of
criminal court alternatives, and other safeguards, the chance of negative impacts on victims did not seem significant. As a result, satisfaction with the entire mediation process was not negatively correlated with a history of domestic violence (Ellis, 1993; Ellis & Stuckless, 1996; Pearson, 1997, quoting Davies, Ralph, Hawton, & Craig, 1995; Newmark, Harrell, & Salem, 1995).

Of course, it might be inappropriate to compare recidivism rates with rates in the 1980s, a time when domestic violence cases were far more likely to be poorly handled. Despite the merit of this critique—we should aim for the best response possible—comparisons between real-world alternatives are among the best indicators of useful social policy. It is therefore essential to carefully consider the comparative advantages and limitations of mediation.
Limits of Mediation

Mediation shares some of the basic tenets, and hence limitations, of the conciliatory style of policing. Specifically, mediators as a profession and mediation as a process are not inclined to fix blame on either party. Typically mediators do not insert their value judgments regarding actions of the parties. As a result, mediation often will fail to identify explicitly either a victim or an aggressor. This may underscore the potentially unbalanced nature of the mediation. Partner abuse often occurs as part of an overall pattern of power and control. Subjecting the victim to divorce mediation raises serious concerns about fairness and balance. Unlike the legal system, mediation resolutions do not have to reflect what the law would provide or what is objectively fair. (Semple, 2012). This can diminish “law’s ability to constrain power abuses” and may lead to “preexisting power disparities, rather than the law” dictating the terms of the agreement (Semple, 2012, p. 219).

Implicit in domestic violence mediation is the assumption that the parties can still compromise disparate interests to maintain and correct what previously had been a dysfunctional, violent relationship. Precedence in these cases should be given to violence abatement as opposed to the implied primary goal of mediation and maintenance of the family unit in a mediation setting without violent behavior. From that perspective, mediation without recognizing past violence simply might be an attempt to address family maintenance concerns without changing the underlying neglect of women’s legitimate interests for protection from violent acts committed against them.

This effect might be subtle. In the zeal to reach a mutually satisfactory accommodation, victims might be pressured into abstaining from aggressive or “provocative” behavior, thus achieving the abuser’s goal of dominating a relationship without evens the necessity of resorting to violence. For example, we assume a mediator would not react well to claims of such provocative behavior as failing to perform household chores adequately; however, are we certain the mediator might not tell an abused woman not to protest if her partner does not do any household chores or perhaps stays out all night, leaving his wife to care for minor children?
It is precisely these types of behavioral conflicts that often precipitate acts of intimate violence. In short, should the mediator ever counsel a woman to agree with her partner simply to avoid physical abuse? In this context, what should be addressed is the inability of the aggressor to resolve inevitable familial conflicts without resorting to violence rather than a conflict to be mediated. Without overstating the point, it is critical that mediation not be allowed if there is evidence of serious, repetitive violence. Otherwise, the guise of keeping a family together may well restrict a woman’s autonomy, as well as the ability of the criminal court to intervene.

Research does not entirely support claims that unequal bargaining positions are fundamentally unfair to victims. Contrary to expectations, abusive males actually have lower levels of assertiveness than nonviolent men (Barnett & Hamberger, 1992; Blumberg & Coleman, 1989; Ellis, 2000). This assertiveness deficit has been described as a “discount factor,” because they discount the supposed power of the abusive party. While abusive men may score lower in assertiveness, it is reasonable to assume that the threat of violence or a continued pattern of domination could result in a skewed outcome.

Several studies have looked at the results of divorce mediations involving couples that did and did not experience partner violence and found little difference between the two groups. Mathis and Tanner (1998) reported that couples with partner violence were slightly more likely to award custody of children to mothers. Beck, Walsh, and Weston (2009) found no significant differences in the custody arrangements of the couples in an analysis of 463 cases. Holtzworth-Munroe (2011) also found no differences in physical or legal custody decisions between the groups. Ellis (2000) similarly discovered that women who experienced physical or emotional abuse were as likely to achieve their desired outcomes as women who didn’t experience partner violence.

These results can be taken in two different ways: On one hand, the lack of difference between the two groups may indicate that victims were not unduly influenced in their decision-making. In other words, a history of partner violence did not make a difference on the outcomes of the mediation. This could address the concerns of those who fear that the power imbalance might
work against the victim. At the same time, the results can be understood in another way. If we assume that the presence of violence in a relationship should lead to more favorable outcomes for the victim in regards to child custody (e.g., a violent partner should have less contact with the children), then the lack of difference between the groups may indicate that the power imbalance may have led to unfair resolutions. At the same time, one study found that mediations involving partner violence were less likely to reach a final agreement than other mediations. This suggests that victims of domestic violence are not necessarily intimidated into giving in to their partner’s demands (Semple, 2012).

Mediation proponents also argue that the concern about power imbalance ignores the greatest benefit of mediation—the empowerment of victims. In the words of one mediation advocate, “Mediation can empower the powerless by enabling them to speak in their own voice and assert their own interests, perhaps for the first time” (Landrum, 2011). Each party is given an opportunity to speak, uninterrupted, about their concerns, fears, and needs. In this way, mediation gives each party a voice. An experienced mediator will address any disparities in private sessions to ensure the other party is heard. Mediators can also use “reality checks” if an agreement appears unfair. For instance, if a financial arrangement seems unfair, a mediator can ask each party how their expenses will be covered under this settlement.

Not surprisingly, a critique of divorce court–sponsored mediation has developed, arguing that the common practice of mandatory mediation in divorce cases, regardless of domestic violence, deprives women of their right to be recognized as victims of a crime and might even decrease their safety while the case is being “mediated” compared with aggressive prosecution of acts of domestic violence (Gagnon, 1992; Hart, 1990).

Many divorcing couples have experienced intimate partner violence. Almost half of first marriages end in divorce and more than 50% of divorcees report partner violence. The partner violence is not tangential to the divorce; couples report that intimate partner violence is a major cause of the separation (Holtzworth-Munrow, 2011).

Mediating a relationship involving domestic violence creates numerous problems, some possibly insurmountable in cases of serious violence. Such
cases should be very limited in the context of the mandatory mediation
divorce statutes that many states developed during the 1980s. Most such
divorce statutes have since been abandoned in the United States where
domestic violence is present. They are, however, still used in many other
countries with a stronger tradition of “marital sanctity,” and in some states in
the United States. In California, mandatory mediation efforts in the context of
a divorce may still be required even if domestic violence has been disclosed,
while other states including Connecticut screen for severity of abuse
(Holtzworth-Munroe, 2011).

At a minimum, at the first mediation session, both parties should be informed
that any further violence either party will not be tolerated and that, to be
successful, constructive techniques for expressing anger must be developed.
In the unlikely case where there is a high potential for continued violence and
the parties insist on continuing mediation, the victim should be given
thorough, independent legal guidance about her legal rights, including
prosecution and available support systems for victims of battering.

This practice was widely adopted; virtually all modern divorce-related
mediation services have protocols on how to handle cases of domestic
violence. Some programs show an explicit understanding of these issues and
ensure careful preparation and individual counseling of both the accused
offender and the victim prior to any joint sessions. These programs also
ensure that there is a careful evaluation of the parties’ commitment to
mediation, that each party understands his or her rights and responsibilities,
and that there is a pathway to ensure that any needed counseling is received.
To memorialize the process and reinforce the commitment to change, a
formal signed mediation agreement usually is prepared that sets forth
mutually agreed-on goals.

Recent statutory amendments typically prohibit the use of mandatory
mediation if domestic violence is present; however, if both parties deny past
violence out of guilt or shame (a not-uncommon phenomenon), then this
barrier is unlikely to serve as a limitation.

Mediation as a strategy might, therefore, allow a batterer to avoid the
criminal justice process, despite having committed clear criminal acts of
domestic violence. Some of these offenders will be psychologically better
able to continue denying the reality of their criminal actions. In fact, it is possible that, by implying that neither party is solely responsible, mediation might encourage an assailant to view his conduct as not being expressly wrong but merely the result of a problematic relationship in which his actions are at least partially attributable to victim provocations.

In short, the basic concern with mediation is that in these circumstances, when used inappropriately, the result might be continued victim subjugation, with clear criminal acts treated as a byproduct of a dysfunctional relationship between involved parties. At worst, mediators might facilitate domestic abuse inadvertently by ignoring the criminal nature of an assault and assuming that there is mutual responsibility for the physical aggression of one party, by explicitly assigning a higher value to facilitating agreement than addressing violent behavior, and by trivializing past and potential future assaults in the mediation contracts or agreements.

Such negative outcomes are a real risk. By analyzing transcripts of mediations, one author described how mediators of that time ignored or trivialized past violence in their effort to reach a therapeutic mediation. From this, she concluded (but without presenting any empirical data) that mediation likely increased the risk of subsequent injury to the abused party (Cobb, 1992). This ignorance might not be intentional because, as we noted earlier, virtually all mediation services have established protocols on handling domestic violence mediation. Despite such policies, it has been observed that, often, the mediator fails to uncover many instances of violence because of their inability to draw out the information or because they are reluctant to ask probing questions that might seem to compromise the mediator’s neutrality (Landrum, 2011; Holtzworth-Munroe, 2011).

Only half of mediation programs used systematic screening via validated questionnaires. The other programs asked questions about potential assault, which is a less effective way of uncovering truth about the violence (Langhinrichsen-Rohling, 2005). Even mediators who believed they were using comprehensive screening techniques such as checking court records and calling the parties before the mediation failed to identify many violent cases reported on a concurrent questionnaire (Ballard, Holtzworth-Munroe, Applegate, & Beck, 2011).
Other times, the process of mediation itself cannot be considered a serious intervention in an ongoing violent relationship. Although there is the potential for long-term mediation or counseling to address issues, the mediator often will not recognize unfolding patterns of abuse—particularly if the victim is subdued in affect and by posttraumatic stress, intimidated by the offender, or perceived by the mediator as being “overly demanding” (Maxwell, 1999). For this reason, most authors critique mediation because cases of repeat assault should be treated as a crime rather than subjected to mediation as part of a conflict situation. If not, the opportunity for identifying, sanctioning, and deterring future violent behavior might be lost, and the process simply “mediates violence.”

As a result, ineffective mediation might have unfortunate results even beyond the missed opportunity to intervene effectively by prosecuting to conviction. After all, even if ineffective at stopping violence, mediation does increase the likelihood of the family unit staying together, at least during the period of the mediation. Unfortunately, it is a truism that intimacy and frequency of contact increases the potential for further conflict. If the mediation is unsuccessful at stopping a prior assailant from committing repeat acts of violence, then there is a real probability that more harm will result than if a domestic violence crime case had not been diverted into mediation.

Some early research suggested that violence even after mediation is no idle concern, with 36% of victims reporting more violence after mediation and 41% having increased fears of revenge (Smith, 1983). Unfortunately, this study did not have a control group and therefore could not determine what percentage of these women would have had such a poor result without mediation because they were already at high risk. Similarly, by the nature of the study (one program), it could not reflect the potential for enhancing the program by adding conflict management. Ellis (1993) noted that the research at the time showed the lack of any empirical evidence to support claims of a harmful effect resulting from mediation. Not surprisingly, most mediators also vehemently deny allegations that they were simply mediating violence.
When and How Should Pretrial Mediation Occur?

We need to synthesize these diverse findings. There appears to be a role for mediation, but it is limited and best reserved for less-serious cases of violence where there is no prior criminal history. One example might be in court-sponsored mediation, in the case of a single assault where no weapon was involved, low likelihood of serious injury, and low likelihood of future violence. Finally, mediation rather than prosecution must be preferred by the victim after she has been counseled about all her legal alternatives. A similar case might be made for mediation where the specific act of violence seems to be more in the context of an ongoing mutual conflict than of one disempowered party (typically the woman) having been continually victimized by an intimate partner.

These limitations potentially create serious intake or selection problems, given the lack of agreement over the definition of “severe abuse” or whether an imbalance of power prevents a woman from effectively being able to mediate. Using these criteria to disqualify a couple might, for example, include even one incident if it involved major injury, intent to cause such an injury, or use of a weapon. The key would be that participation by a couple with a high potential for serious abuse should not be allowed in a program designed solely to address relatively minor abuse. This would be consistent with the increased trend in many statutes to categorize repeat misdemeanor domestic assault as a felony, subjecting the assailant to the potential for more severe sentencing.

Some scholars believe that mediation is only appropriate for certain types of domestic violence. In cases of many of the most common types of domestic violence, violence is situational and often caused by stressful situations or the use of drugs and alcohol. It is “not embedded in a relationship-wide pattern of power, coercion, and control” (Kelly & Johnson, 2008, p. 485). In cases where violence is first instigated upon separation, violence is trigged by the powerful emotions associated with the termination of a relationship, such as feelings of abandonment, humiliation, and jealousy. In cases where violence is part of a pattern of coercive control, aggression is used to maintain power and control in a relationship. This group of offenders has been described as
intimate terrorists because they use fear and intimidation to keep control. Kelly and Johnson (2008) argue that mediation is appropriate—and can be beneficial—but only for couples who experienced situational couple violence. With the proper safeguards, mediation can also help couples with separation-instigated violence. The only category of violence for which mediation may not be appropriate is coercive controlling violence. Of course, the immediate problem with this approach is that, in its application, it may be impossible for any mediator to correctly identify which type of violence a couple has experienced.

Mediation in this context also should contain the following structural safeguards, many of which have been adopted by security protocols endorsed by the American Bar Association (Holtzworth-Munrow, 2011):

1. The mediator should have the assailant admit unconditionally that he or she did assault the victim and develop a consistently applied and carefully preserved record of any prior violence that might have precipitated the mediation, perhaps in the form of mutually signed agreements in which the violent episodes are described in detail. If this structural safeguard is adopted, then in the case of a subsequent assault, the prosecutor should be able to introduce such an agreement as admissible evidence of past wrongdoing and perhaps even invoke laws for habitual offenders or at least commit to have his or her office prosecute fully due to past offenses to past offenses.

2. Structured mediation should be developed that begins to resemble a conditional sentencing that is fundamentally different than the typical nonjudgmental emphasis in common divorce mediations. Ultimately, the result is a contract or agreement containing “teeth” that establishes conflict-resolution strategies and behavioral modifications to which both parties agree.

3. Any such sanctioned agreement must include no-abuse covenants and, if needed, commitments for either or both parties to attend substance abuse or anger control therapy.

4. If a trained mediator believes one party (typically a victim suffering posttraumatic stress) cannot adequately represent his or her interests, then mediation should not be allowed. Similarly, if the mediator believes that inappropriate temperament or the desire to exert control in the
relationship is present, then criminal justice case processing with a victim advocate would be preferable to mediation. Alternatively, to address the valid safety concerns of mediation in the context of intimate partner violence, there have been several security protocols recommended by the American Bar Association. These practices include holding separate mediation sessions or using shuttle mediation and private sessions to keep the parties physically apart. To further avoid contact between the parties, mediators can stagger the arrival of the parties. Holding the mediation at a courthouse or other place where law enforcement is present can reduce the threat of violence. Mediators can notify parties that, if they feel unsafe, the mediation can be immediately terminated. Mediators also can refer parties to community resources if they fear violence.

5. The prosecutor’s office should be involved to the extent that it is willing to enforce the nonviolence provisions of mediation agreements either through careful case monitoring if mediation is conducted under court order or through an announced willingness to pounce on any subsequent violence. For example, the prosecutor’s office should consider an express statement by the parties where mediation is sought so that it will prosecute both the initial crime (whose prosecution may have been suspended) and any subsequent offense to the full extent of the law if additional violence occurs.

6. Even if mediation is desired by both victim and offender, they must be made to understand and expressly acknowledge in a document that would be admissible in court that participation in court-ordered mediation carries with it an enhanced risk of future penalties in the event of future violence.

7. A prosecutorial commitment must be secured to reinstate a suspended prosecution for both the original act of violence, if possible, and certainly for any new offenses.

Such requirements obviously would limit inappropriate use of mediation. Because a mediation program requires the participation of both parties, it is not appropriate for separated parties where neither party seeks reconciliation.

Despite the ability to structure mediation, in some jurisdictions no use of divorce-related mediation in the presence of an active domestic violence
restraining order is permitted. Furthermore, the Court Mediation Service of Maine refuses to take any domestic violence cases because they believe mediation between parties with obviously unequal bargaining power is inappropriate.

Finally, we need to realize that the criminal justice system, simply by prosecuting offenders, creates a vital boundary maintenance function—a formation that can never be accomplished in private mediation. Offenders of intimate partner violence simply are not punished in mediation. There are two reasons why offenders are not punished in mediation. First, mediators are not given the authority to impose punitive decisions, but instead are neutral and impartial third parties who let the parties reach their own solutions. Second, mediation is forward-oriented in that more attention is given to moving forward in the relationship than to addressing past behaviors. Some mediators may see the violence as an issue from the past and seek to deal primarily with future issues such as visitation schedules, financial arrangements, and custody. Therefore, the abuse can be reduced into a fact or claim that barely gets discussed in mediation and never identified as an area for potential criminal prosecution. However, mediation is party-driven. If a party wants to talk about the violence, the discussion will focus on the violence. Mediation may offer the couple the first opportunity to have a meaningful conversation about the violence. The imposition of punishment is not a purpose of mediation, and therefore those who seek punishment are given other options within the criminal justice system. This naturally concerns many victim advocates as they believe this sends a message to offenders and potential offenders that domestic violence is just another area of contention and not a crime that will be punished.

Finally, education programs require a continued commitment of sufficient state and local funding. Too often, structural mediation and other demonstration projects, announced with great fanfare by federal and state funding agencies, begin, prove initially effective, and are continued for a time. In subsequent periods of budgetary austerity, however, the push for efficiency in terms that are easily quantifiable becomes overwhelming. Mediation programs might be uniquely vulnerable to such dilution because they are highly dependent on the qualifications and time commitments of all parties including the mediator. Degradation of results might easily occur if
quantifiable metrics of efficiency, such as cases per mediator, become the measure of efficacy. Unfortunately, outcome accountability of mediation is low because of the necessary secrecy of most mediation and inability to track success in any meaningful manner. Therefore, systemic decay caused by insufficient funding or a decline in organizational commitment might not be recognized immediately.
Family Group Conferencing and Peacemaking Circles

Family group conferencing, which is also termed “community conferencing,” uses a trained facilitator who meets with the parties’ family members, friends, criminal justice personnel, and service providers (Ptacek & Frederick, 2009). Unlike mediation, which involves only the couple, community members play an important role and settlements cannot be reached until representatives of the community at large agree with the result.

Many of the same advantages and disadvantages of mediation are present with family group counseling. Clearly, this practice has a place in the use of community resources to understand and control what might otherwise be private abuse within a family. In fact, community involvement in the process has several distinct advantages over largely private mediation. First, it signals to both the existing abuser and any potential abuser who hears of this practice that the community itself will not tolerate the actions of those who continue to abuse. Several authors have reasoned that this method could sharpen the community’s focus on the problems of victims of intimate violence (Pennell & Buford, 1994).

Second, the victim can develop powerful alliances within the community, helping to rebalance an existing imbalance of power that occurs whenever violence is adopted as a means of one person controlling the actions of another person.

Third, it is implicit to us that if the community representatives recognize the existence of an underlying issue such as substance abuse, then they will make certain that the resources are given to resolve these issues concurrently.

Fourth, this may be a method favored by many Native Americans as it recognizes the primary role of the community in dispute resolution and, if substance abuse is a contributing factor, the community members may be able to insist on this being addressed in any settlement.

Finally, as pointed out by Koss (2000) and by Koss, Bachar, Hopkins, and
Carlson (2004), the existence of such alternatives might mitigate either actual or perceived racism that might now be preventing victims of color from seeking adequate levels of assistance from the criminal judicial system.

Unfortunately, community conferencing does share many of the problems of private mediation discussed previously. If a victim is pressured to participate, then she may be perceived publicly as simply part of a battling couple, more or less as responsible as her abuser. A continuing cycle of abuse does not necessarily mean that the results will be superior in any objective sense in the form of stopping future violence. Little research has been performed to examine the efficacy of this approach, and it is certainly possible that the results could be worse than with the mediator alone. For example, in many recent immigrant communities, as well as certain other more insular religious groups, a woman, in the interests of preserving the family unit, might find herself under even more pressure from her community (especially in some traditional Asian immigrant communities where family disputes are to be settled only by the community) to acquiesce to the demands of her husband.

As discussed previously, many such communities put the burden of family stability squarely on the shoulders of the woman, whether abuse has occurred or not. Such pressure would not occur in a modern court or even with a competent mediator. However, there can be no assurance that cohesion of the family unit will not become the overriding goal of the family or community participants. On the one hand, we recognize that many battered women’s advocates remain deeply concerned that such approaches simply have too great a potential to devolve into an invisible fix of the problem of domestic violence by assigning it not to courts with suitably coercive powers but to nonjudicial dispute resolution that could erode the hard-fought gains of past years (Coward, 2000; Daly & Stubbs, 2006; Frederick & Lizdas, 2003). On the other hand, no one is arguing that such innovations should supplant criminal justice agencies. If viewed as an adjunct in appropriate cases, then this might add a degree of flexibility to the handling of domestic violence cases that unfortunately is sorely lacking in a time of mandatory arrest and mandatory prosecution policies.

Closely related to family group counselling are peacemaking circles. Peacemaking circles originated in numerous indigenous cultures. This
practice shares the same goals as both mediation and conferencing. As with conferencing, it includes members of the community, criminal justice personnel, and service providers. However, the distinction is that there can be multiple circles, or meetings, with different parties on different aspects of the case (Ptacek & Frederick, 2009). Therefore, the victim might be in a circle with social service providers while the offender is in a circle with criminal justice personnel.

The Circles of Peace program shares many of the comparative advantages and disadvantages as with family group counseling. Clearly, in some cases, the community is oriented toward such approaches as they are a traditional method of solving relatively minor disputes. See especially the discussions about the use of such traditional methods among Native American populations in the United States and Canada in Stuart (1997) and in Ptacek and Frederick (2009).

In the case of such communities and in smaller jurisdictions composed of relatively homogeneous ethnic and social groups, we believe that these might prove very valuable as an adjunct or even, in appropriate cases, as a replacement for traditional criminal court determinations. One empirical study of the results of peacemaking in a Native American context (a Navaho reservation) reported that many preferred this to the regular justice system, which was viewed as far too hierarchical, with a win–lose mentality, and not doing enough to improve the actual living conditions of victims of domestic violence (Coker, 1999).

Even in these contexts, some authors have expressed concern that inherent pressures to settle short of a criminal conviction might force abused women in such communities to lose the benefits of new legislation in protecting their safety through convictions and other coercive measures taken against batterers (Aboriginal Women’s Action Network [AWAN], 2001; INCITE!Boston, 2003; and the extensive discussion presented in Ptacek & Frederick, 2009). Furthermore, even Coker’s (1999) largely favorable study of this in the Navaho context found that pressure was placed on some victims to participate and that agreements, even when reached, were difficult to enforce as some peacemakers felt it their responsibility to promote family unity, and these agreements lacked the legal standing to bring courts in to
prevent future abuse by a past offender.

Regardless of potential merit, peacekeeping circles as an institution may be far too difficult to implement in a large and diverse metropolitan area where the innate inefficiencies of seeking consensus might become overwhelming and the knowledge gained from any particular circle of peace would be difficult for the community at large to know about or absorb as a “boundary-maintaining” mechanism. In other words, it is unlikely to influence others the way it might in a small insular community. Without such an external effect, the additional costs of seeking a consensus among a wide variety of people would be difficult to justify compared with straightforward mediation or even the use of criminal courts where decisive actions can be widely publicized.

The concept of restorative justice through mediated settlements is worthy of consideration as it may have an important role to play in cases of domestic violence. However, until more rigorous, empirically based research is conducted, such measures should have a limited role running parallel to traditional court-based systems and operating only with strict guidelines and procedures.
Circles of Peace is a program that began in 2004 and uses a restorative justice circle approach. It was founded by a Santa Cruz County Justice Judge, Mary Helen Maley, and Linda Mills, a professor at New York University. Their intent was to establish a culturally sensitive domestic violence prevention and treatment program. Their program consists of 26–52 weeks of meetings known as Circles that include the batterer, the family, and the victim, if desired. Trained professional facilitators and community volunteers facilitate these meetings, and a person close to the family is identified to ensure victim safety during the treatment period.
Batterer Intervention Programs
The Role of Batterer Intervention Programs in a Divergent Offender Group

In cases where the potential effectiveness of pretrial diversion is limited, it may be more appropriate to utilize BIPs. It is clear that any attempt to address domestic violence systematically must include some effort to reform the behavior of acknowledged offenders. Not surprisingly, court-mandated batterer treatment programs have become the mainstay of the criminal justice response to domestic violence offenders. In 2014, one estimate made by extrapolation found that there were 2,500 such programs in the United States enrolling 500,000 individuals (Boal & Monkenski, 2014).

Although BIPs and mediation share the distinction of diverting offenders from the criminal justice system, they function very differently. BIPs rely on correcting inappropriate actions of the offender and their interaction with the victim, if future interaction is desired. Such programs should result in the offenders’ realization that they have acted inappropriately and that there is a need for them to change their behavior. This is in contrast with the conflict-resolution model implied by mediation.

BIPs have since proliferated throughout the country. The most recent estimate identified 2,265 batterer programs nationwide in 2007, and the researchers believed this to be much lower than the actual number (Labriola et al., 2007; Rempel, 2009). The increasing relative importance of court referrals has changed the orientation of many programs. Initially, mental health practitioners maintained that the profound personality changes needed to eliminate deeply ingrained violent tendencies could occur only when the client chose counseling by voluntarily identifying his behavior as problematic.

There is good reason to link counseling with court-ordered BIPs. While it may be theoretically true that a batterer ideally would seek counselling to address his violence, in practicality, this simply does not occur. Many batterers rationalize their conduct by making facile explanations of mutual combat, undermining the seriousness of the violence, or blaming the victim.
Even if batterers understand that their behavior is unacceptable, they typically do not control their behavior due to deep rooted psychological issues, substance abuse, or ingrained patterns of violence. It is therefore necessary to mandate most batterers to attend intervention programs. Some batterers wrongly perceive that society tolerates (or has tolerated) domestic violence as part of an overall patriarchal society. Criminal justice intervention in itself, regardless of type of independent rehabilitation efforts, might signify to this group that domestic violence is no longer acceptable. For many of these offenders, a continuing relationship with the victim or minor dependent children increases their motivation to change their behavior even without formal therapeutic intervention.

Many other batterers are not sufficiently motivated to undertake, or for whatever reason fail to complete, independent therapy. As early as the mid-1980s, it was estimated that one third of offenders being treated by counselors came from court referrals either through the initial diversion of the suspect before trial or as part of the court’s oversight (through probation) of a sentence (Goolkasian, 1986). Diversion to an intervention program before trial may be informally handled by prosecutors, formally through administrative procedures (as in most of the federally funded demonstration projects), or explicitly required by state statutes.

Court-mandated intervention programs have rapidly grown as a part of sentencing or as a condition of a plea bargain. Rebovich’s (1996) study of large prosecutors’ offices found that 50% relied on post charge diversion options suspending case processing while the offender is treated. Eighty percent of prosecutors using such programs believed that they were effective. It was interesting that 63% of the programs were pretrial diversions even though 66% of the offices described how they had instituted no-drop policies. Pretrial diversion often was incorporated into no-drop policies; 93% of the prosecutors reported that successful completion resulted in all charges being dropped compared with only 7% demanding conviction, albeit on lesser charges (Rebovich, 1996). By 2001, 80% of program participants were there as a result of a court order (Bennett & Williams, 2001).
Program Characteristics

In the previous editions of this book, we noted that treatment standards varied considerably in duration, modality, and emphasis. It was, therefore, difficult to describe a model program, or even to evaluate batterer treatment programs in general, since one batterer treatment program bore little resemblance to those in another jurisdiction, even in the same state. Now, as part of the increased attention to domestic violence, most states have developed standards for batterer intervention treatment. By the end of the last decade, virtually all states plus the District of Columbia had adopted such standards and regulations, whereas in 1999 only 25 states had, and their standards often were far less detailed (see Maiuro & Eberle, 2008, as compared with Austin & Dankwort, 1999).

Many judges now mandate, as part of a sentence or pretrial diversion, that a batterer attend a BIP. These programs historically assumed that batterers change behavior only after altering their attitudes, perceptions, and interpersonal skills, and that such change is best facilitated by attendance at the appropriate program. Similarly, they generally assume that character traits or inappropriate learned behavior patterns favoring violence leads to recurrent violent acts.

Whether such a program can be effective under a court order has not been documented fully. There is often an implicit assumption that intervention programs do rely on the foregoing assumptions, some of which have not yet been proven empirically as most programs deploy standardized intervention protocols that are believed to successfully alter batterer behavior.

It also is assumed implicitly that offenders want to change their behavior. If not, changing behavior is difficult, and compliance with the conditions of an intervention program may only devolve into an offender learning by rote what to say and when, knowing what the program administrator or therapist wants to hear, and not internalizing real attitudinal change. Paradoxically, many observers of such programs note that some offenders routinely make retrograde misogynist comments during group sessions, which may actually be reinforced by other batterers.
Almost all states use a model BIP heavily promoted by the US Department of Justice, known as the “Duluth Model.” This model is highly structured and prohibits substitution or tailor-making a program for the needs of any particular offender. Therefore, individual therapy, couple or family therapy, substance abuse treatment, or techniques for anger management simply are not used. The Duluth Model, developed in the early 1980s, is gender power-based, assuming that domestic violence is deeply rooted in society and historical constructs that socialize men into thinking that taking control is their role and resorting to violence to maintain dominance is acceptable. The possible impact of an individual offender’s mental status, psychopathology, substance abuse, behavioral dynamics with a certain partner, or even ability at anger control, are considered strictly secondary.

The utility of this model has been found to be of limited effectiveness in reducing recidivism (Miller, Drake, & Nafziger, 2013). Nevertheless, Duluth is the model statutorily required to be used in 26 states in the United States.

Research now supports that a proper intervention strategy begins with an understanding that the classification of batterers is critical. Batterers found to be generally antisocial and suffering from serious psychopathology should not be included in such standardized BIPs because they realistically are unable to benefit from such a program. In addition, those suffering from substance abuse problems; posttraumatic stress disorder, including veterans; and contradictory religious beliefs may benefit from alternative interventions.

The judiciary historically has been reluctant to categorize batterers apart from their prior criminal history and there is a need for this to change. Within limits, such agreements may be tailor-made to the offender’s past and his or her observable needs. Naturally, the long-term goal of all such programs is to rehabilitate the offender, ending his propensity for violence. One of the key challenges in administering these programs is addressing the diverse range of offenders who possess a wide range of attitudes, personality characteristics, and behaviors. Despite their dissimilarities, research clearly has disclosed that, for many of the most severe batterers, the act of domestic assault is merely one manifestation of a pattern of violent behavior reflected by numerous arrests and convictions for violence against family members, relatives, intimates, acquaintances, and strangers. For this group, requiring
batterer treatment with its focus on intimate partner violence will be of limited effect. It is unlikely that any intervention (short of lengthy incarceration) without effective treatment will be effective (Klein, 2009). Even if an offender is no longer violent, other forms of abuse may result. Many offenders adopt alternative and potentially equally harmful behaviors such as sexual assault, verbal aggression, threats, or stalking. Alternatively, offenders may alter targets to other friends or family members of the victim. Still other offenders may target a different partner. For this group, increasing the fear of arrest and ultimate incarceration is unlikely to stop violence and BIPs offer little promise for success.

Currently, virtually all programs ignore such distinctions and, in fact, often only accept batterers in the context of intimate relationships. Other offenders may have deeply rooted personality disorders, dysfunctional expressions of emotions, or severe substance abuse. For these offenders, it is necessary to address a much broader range of issues than typically encompassed in state-certified batterer treatment programs. Alternative interventions may be the only method to prevent reabuse.

When included in such programs, their victims may actually be in increased danger since victims might believe the offender is improving and therefore remain with the offender while in the program. Instead, this type of offender might require long-term, extensive court supervision, incarceration, or more individually based interventions to ensure victim safety. Nonetheless, such offenders were the exception, not the rule. Gondolf and White (2000) reported that 60% of “repeat reassaulters,” who constituted 20% of program participants, showed no serious personality dysfunction or psychopathology. They argued that batterer counseling might be appropriate for many of these seemingly high-risk offenders.

Similarly, in an earlier chapter, we demonstrated the covariance between domestic violence and a variety of factors such as substance abuse, personality disorders, and unemployment. Although the need for an individualized response to batterer psychopathology might be debated, few would disagree with the premise that additional treatment should be given for those whose battering coincides with severe substance abuse. Simply treating such an offender based on a power-control theory or even a more inclusive
therapy that includes techniques for anger management is unlikely to succeed if the critical trigger is the loss of any inhibition after a severe alcoholic binge.

For example, given the strong correlation between substance abuse and domestic violence, many individual programs should contain definitive intermediate goals such as cessation of substance abuse or prevention of any subsequent contact with the victim until substance abuse has ceased and counseling has been completed. The prosecutor’s office might handle case screening with assistance from domestic violence specialists or in an integrated treatment model coordinated through probation.

Similarly, even the timing of treatment programs has a significant impact on their success following the concept of a teachable moment in learning theory. Counseling, or batterer treatment, ideally should begin almost immediately after a violent episode, when the offender feels most remorseful, most frightened of the criminal justice system, and most receptive to demands for change. There is a sound therapeutic basis for such early intervention. It is well known that the defendant might be most amenable to behavioral change within the period immediately after the battering incident.

Avoiding long court proceedings typically lasting more than 6 months from incident to conviction (and then longer for sentencing) therefore might increase the impact of BIPs and their ultimate chance of success. Consequently, most intervention programs now hold the offender accountable by forcing him to acknowledge criminal conduct, even if in the context of an initial no-contest plea to a charge of assault, before offering diversion into the program.
Alternatives to the Duluth Model

The current preferred approach to batterer intervention is to focus on matching offenders with an appropriate program. Treatment programs are likely to be effective if they are designed to accommodate different types of batterers. For example, a treatment program that did not effectively deal with alcohol abuse might not fully address the unique problems of an alcoholic who is abusive only when drunk. Although each treatment program is perforce unique, it is conceivable that programs might have differential rates of success depending on the qualifications or treatment pursued, style of the program (group or individual), and its length and duration.

The dilemma is that current typologies based on personality types are not of great value because of both the comprehensive assessments needed and the lack of appropriate programs once these assessments are actually made. Because of numerous methodological issues—including high attrition rates, lack of statistical evaluations, lack of control groups, and nonrandom assignment to treatment groups—few definitive conclusions can be made. Perhaps we are now in the long, slow process of moving from the relatively sterile question of whether treatment works to a more productive exploration of the efficacy of many possible interventions with particular types of offenders.

While the Duluth model is most commonly required, batterer treatment programs composed of different elements have been around for more than 30 years. Based on this, we would expect a well-developed, empirically based literature that states what works and what does not work. This outcome would be expected in any intervention strategy. Unfortunately, one of the somewhat discordant facts that research has shown is that the type of batterer treatment program does not seem to affect materially the likelihood of success. The latest research has demonstrated that the type of batterer treatment program, whether it is Duluth-based feminist, psych educational, or cognitive-behavioral, does not dramatically affect rates of reabuse (Klein, 2009; Saunders, 2009; Miller, Drake, & Nafziger, 2013). Similarly, despite predictions to the contrary, programs that were culturally focused on particular groups of batterers (in this case, Blacks) had no greater success
than nonfocused programs (Gondolf, 2005).

This does not mean that a properly customized program might not work. Let us examine factors that might be useful to develop such a program.

**Program Duration**

The standards that states have used vary. An excellent review by Maiuro and Eberle (2008) describes the status of state standards. The standards imposed typically include minimum duration, prescribed content, modality of treatment, and victim involvement. They note that the recommended duration of treatment varies among the states from a minimum of 12 weeks in Utah to a year or more, with most (62%) requiring a minimum of 6 months, and approximately 50% using a 90-minute session once or twice a week. California mandates programs for all domestic violence offenders that seem to be of the greatest duration—a 52-week batterer program supervised by local probation departments (Rempel, 2009). We believe that a longer program is likely to be more effective—either because of more attitudinal change or because the offender knows he is being supervised for an extended time period.

**Program Content**

Maiuro and Eberle (2008) posited an interesting analysis of program content standards. As stated earlier, many states have adopted the Duluth model. In these states, a program seeking certification would need to focus on power and control dynamics. This approach assumes that various other emphases either would be misplaced or might detract from the overall treatment of a batterer. For example, although most domestic violence researchers believe that individual variables greatly affect the likelihood of domestic violence, these are not emphasized.

Similarly, although psychological and psychopathology factors are recognized as possible contributing influences in some standards, these 26 states essentially forbid the primary use of treatments based on mental health or disease models, psychodynamic theory, impulse control disorders,
codependency, family systems, or addiction models. The power control rationale for limiting the use of such approaches is that they might minimize the perpetrator’s sense of responsibility for his own action, therefore creating further potential danger for the victim (Maiuro & Eberle, 2008, pp. 136–137).

There are three reasons why these program limitations are too restrictive. First, as discussed previously, the reasons for domestic violence and likelihood of reoffending vary considerably among batterers. The implicit assumption of relatively rigid standards is framed by a perspective that violence primarily relates to issues of power imbalance. Although this orientation might be appropriate for many batterers, its emphasis minimizes the role of mental health issues, anger-management skills, and substance abuse. These factors might limit the efficacy of treatment. Many offenders will never support an orientation focusing on the dynamics of power and control. Prior socialization, psychodynamics, and religious training often result in a belief system supporting the man as the patriarch of his family. For example, a religious leader might say any theory to the contrary defies “God’s law.” Making the assumption that a BIP will supersede strong religious beliefs in order to be effective will undoubtedly limits its success.

Therefore, an alternate approach is needed. We need to understand that many offenders in the United States, and certainly in the rest of the world apart from Western Europe, Australia, New Zealand, and Canada, may never support the equality of women in a relationship. Yet, the majority of these people are not violent toward their partners. Instead, a less ideologically driven program that respects their values and belief system may be more effective. It would be a mistake to assume that the lack of success of a program with a focus on power and control means that a program that instead addresses anger control would necessarily fail.

Currently, there is a growing recognition that programs can be modified or separately established to more directly address cultural and religious variations. Programs that represent their community may better address religious, ethnic, or other cultural variations that better address the specific population being served. In addition, integrating community resources by drawing upon the expertise of supportive clergy and community leaders can facilitate their success. Second, domestic violence is often comorbid with
substance abuse. Many domestic violence–intervention programs won’t accept these offenders into their programs. The assumption that this needs to be addressed is valid, but the dilemma is that reoffending generally occurs within months of the initial incident and long before substance abuse can be totally resolved. Further, an individual’s control of substance abuse is difficult to achieve and maintain over time. Most offenders with substance abuse problems require long-term support.

Third, there is often a serious disconnect between the mission and funding of programs and the various state statutes defining domestic violence. As stated previously, one third of offenders captured under domestic violence statutes are not there because of violence in an intimate relationship. For example, should a 16-year-old juvenile who assaulted his or her parent be mandated to attend a program with a focus on power and control? Should this be the only type of program readily available?

For these reasons, the use of ideologically driven standards to rigidly mandate program content seems problematic at best. While standards are helpful in establishing minimum standards in terms of program structure and staff credentials, they also might set undue restraints on program content which thereby limits their effectiveness.

**Group Therapy as the Treatment Norm**

Virtually all BIPs now emphasize group therapy. Two states, Georgia and Maine, even enacted standards prohibiting the use of individual therapy (Maiuro & Eberle, 2008). Since previous studies have demonstrated that there is no recognized superior modality of treatment (see especially Norlander & Eckhardt, 2005), the real probable reason is that individual therapy is typically too expensive for a state to mandate.

Such guidelines may be too restrictive in cases where an individual’s psychological issues dominate behavior and can only tangentially be addressed in a group setting where there are other individuals with a different range of issues. Similarly, it is well known to psychologists that some individuals are resistant to group therapy treatment. As addressed earlier, the failure of a person to handle conflict verbally rather than physically predicts
future violence, making mandated group therapy even more problematic. Finally, it can be argued that group therapy risks the reinforcement of batterer behavior. Some batterers will get to know each other and, being politically, morally, or religiously resistant to the power and control ideology espoused, might informally discuss alternative methods of tormenting their victim. In short, the facile assumption that group therapy is the ideal approach for all offenders lacks any real justification.

**Victim Participation**

Unlike counseling programs discussed previously in this chapter, virtually all programs prohibit required mandatory or otherwise coerced victim participation in the treatment. Most will, however, notify victims of the status of the offender in the program, and some will allow her participation or the participation of other family members on an as-needed basis. Under certain circumstances, especially if the victim desires to continue her intimate relationship with the offender, this may be an option. If not carefully executed, victim safety may be further compromised, especially if she has chosen to terminate the relationship.

**Continued Involvement of the Judicial System**

Suspension of prosecution is a critical element to diversionary use of batterer treatment programs. In such instances, the criminal case is not heard or the sentence is suspended if the offender agrees to and attends required counseling sessions. If a counseling program is deemed successful for a particular offender, then after an established time—typically 6 months to 1 year—the original suspended prosecution is dropped and records of the original offense are destroyed or filed.

Counseling or BIPs used for pretrial diversion should be considered different from counseling imposed as a form of sentence. In the former case, prosecutors must be cognizant of the responsibility to protect defendants’ constitutional rights; this includes making certain defendants are aware that charges will be reinstated if they quit the counseling program. In summary, batterer treatment programs cannot be viewed in isolation from a strong
criminal justice presence enforced by the prosecution and courts. In a National Institute of Justice–sponsored analysis of BIPs, Healey, Smith, and O’Sullivan (1998) listed, among other things, the following relationships between such programs and the criminal justice system that they thought would increase the likelihood of program success:

- Expedited disposition of domestic violence cases by the system, so that if the offender does not remain in treatment, prosecution is stark and credible.
- Specialized domestic violence courts with centralized dockets, again to reinforce the credibility of the system.
- Rapid collection of relevant offender data to ensure similarity for diversion and that the type of program used is best matched to the offender.
- Coordination of batterer intervention with substance abuse treatment and with the periodic monitoring by probation officers of the offender’s substance abuse status.

Therefore, if the offender voluntarily leaves counseling or recidivates, the prosecutor ideally should be committed to prosecuting both the original and any subsequent offenses. Whereas the counseling itself typically would be handled by community-based mental health professionals rather than by probation officers, subsequent case tracking to monitor for new offenses, violation of terms of probation, or other court orders would be handled by probation officers that have relatively easy access to judges and prosecutors.

The fact is that the history of violence predicts continued violence, even when BIPs are instituted. As such, it might be critical to distinguish risks for future violence by offenders based on a host of factors and risk markers such as criminal history and age at first offense (Buzawa, Hotaling, Klein, & Byrne, 1999), heavy substance use and psychopathology (Gondolf, 1997), victim input (Buzawa et al., 1999; Hotaling & Buzawa, 2001; Weisz, 1999), and even batterers’ self-assessments.

Despite efforts to develop a valid predictive instrument that would best assess when treatment programs could be a safe substitute for incarceration, no such categorization is available and one is unlikely to appear in the near future, given the vast array of factors involved (e.g., situational variables such as
access to the victim, further substance abuse, and offender compliance) that might prove to be intervening variables (Gondolf, 1997).
Advantages of Batterer Intervention Programs

There are several distinct advantages of court-sponsoring and mentoring BIPs. These finesse the two greatest weaknesses of the current response to domestic violence: the inability of the criminal justice system to prevent victims or prosecutors from dismissing charges and the inability to tell how likely a given offender is to reoffend or engage in future violence.

By selective use of these programs as a diversion, the finite resources available in the criminal justice system also might be focused more effectively on recidivist batterers or on cases in which the potential for serious continued violence seems greatest based on an offender’s prior criminal history, severity of the incident in question, or his expressed criminal intent.

Most of our attention will be placed on court-mandated batterer treatment programs since, as we will discuss, they have a higher rate of program completion and seemingly correlate highly with a future successful outcome.

However, in certain cases, perhaps of first-time offenders with a relatively minor offense, a pretrial diversion into treatment—be it anger control, other mental health concerns, or substance abuse—might be appropriate in the instances where the judicial sentence would undoubtedly provide only a monetary fine, probation, or counseling. In these cases, the ideal option for these relatively low-risk offenders is to accomplish behavioral change quickly without incurring the heavy transactional costs to the judicial system or the necessity of labeling the offender as a convicted miscreant, risking secondary deviance or costing the victim and her family.

Because assignment to a BIP is considered less punitive than an adjudicated sentence and conviction for a domestic violence offense, this type of therapeutic intervention can start literally months before treatment is imposed as a condition of sentence. As noted previously, early intervention tends to be far more effective at facilitating long-term behavioral change.

Finally, we should note that an advantage of batterer treatment programs
might be the effect on people other than the batterer. Research has shown that most victims are more satisfied with case outcomes if their batterer is forced to attend a BIP. That is not surprising given that it demonstrates that the system has recognized that a crime has been committed and is actually attempting to prevent future victimization. As will be discussed, the imposition of a BIP might collaterally help the victim because if the batterer cannot complete the program (even if the program itself is not of much use), if the risk of future violence is high, and if prosecutors and the court can come to realize that fact, they will target considerable resources toward those who do not complete the programs.

There also are tertiary benefits to batterer treatment programs for other members of the family; for example, children might be even more likely than their parents not to understand the byzantine machinations of the criminal justice system. They presumably can understand more easily that their father (or mother) has a serious problem that is being addressed. This might make the child more likely to recognize that battering itself is abnormal and is not condoned far more than simply imposing a prison sentence where the family is inextricably broken up by external forces.
Do Batterer Intervention Programs Work?

Even though many states now mandate treatment for men convicted of domestic assault or require treatment as a condition of deterred sentencing, the effectiveness of such programs has been severely questioned. An initial 1998 meta-analysis of seven studies examining the impact of batterer intervention reported no profound effect for treatment, with a recidivism rate of 32% for the treated offenders and 34% for the control group. A subsequent analysis of research relying on police and court data for rates of reoffending found only a modest effect—14% for treated offenders compared with 22% for the control group (Levesque, 1998). A National Institute of Justice analysis perhaps best summarized current concerns.

Although numerous evaluations of batterer interventions have been conducted, most of these studies were inconclusive because of methodological problems such as small samples, a lack of random assignment or control groups, high attrition rates, short or unrepresentative program curriculums, short follow-up periods, or unreliable or inadequate sources of follow-up data (e.g., only arrest data, only self-reported data, or only data from the original victim; Babcock, Green, & Robie, 2004). Among evaluations considered methodologically sound, most have found modest but statistically significant reductions in recidivism among men participating in batterer interventions (Healey et al., 1998).

Klein (2009) summarized the current perspective on the value of most programs as they are currently used (e.g., not necessarily “ideal programs” but those that have actually been implemented):

During this time, there have been more than 35 evaluations of batterer intervention programs, but they have yielded inconsistent results. Two meta-analyses of the more rigorous studies find the programs have, at best, a “modest” treatment effect, producing a minimal reduction in rearrests for domestic violence. In one of the meta-analyses, the treatment effect translated to a 5-percent improvement rate in cessation of reassaults due to the treatment. In
the other, it ranged from none to 0.26, roughly representing a reduction in recidivism from 13 to 20 percent.

On the other hand, a few studies have found that batterer intervention programs make abusers more likely to reabuse or have found no reduction in abuse at all.

The multi-state study of four batterer programs concludes that approximately a quarter of batterers appear unresponsive and resistant to batterer intervention. In this long-term study, based on victim and/or abuser interviews and/or police arrests, approximately half of the batterers reassaulted their initial or new partners sometime during the study’s 30-month follow-up. Most of the reassaults occurred within the first six months of program intake. Nearly a quarter of the batterers repeatedly assaulted their partners during the follow-up and accounted for nearly all of the severe assaults and injuries. (p. 65)

Currently, there are a diverse range of programs which complement the Duluth Model required in most states (Miller et al., 2013). However, while some may be more effective, there is a lack of research that determines the components of these programs that warrant their use. Hopefully, future evaluations of program outcomes and a willingness of legislatures to reconsider current program requirements will increase their effectiveness.
Program Completion as a Marker for Successful Outcomes

Given that evidence does not show the robust effect of BIPs themselves, perhaps a better measure of effectiveness might be the preliminary findings related to program completion. Valuable data concerning the likelihood of future reoffending behavior might be generalized regardless of whether the BIP is itself effective, or is instead a correlate of the likelihood to reoffend. If program completion data predict the likelihood of reoffending, then these data can be potentially valuable in guiding future intervention strategies for a particular offender.

Different batterer treatment programs have variable rates of completion. The most recent estimate analyzing a series of different studies found that different rates of noncompletion range from 25% to 89%, with the average being approximately 50% (Klein, 2009). This variance gives researchers the opportunity to determine whether completion of the program is correlated with future violence. This is important since program completion is highly correlated with reduced future violence; yet the programs themselves are not of significant value. Therefore, the importance of such programs might be that they serve as a highly effective predictor or marker of future violent behavior.

It does seem that program completion is a highly significant marker for future success defined as decreased or cessation of violence. A Chicago study of more than 500 batterers referred to 30 different programs found that recidivism after an average of 2.4 years was only 14.3% for those who completed the program, whereas recidivism for those who did not complete the program more than doubled to more than 34.6% (Klein, 2009, footnote 12). Even more importantly, the relative effect of program completion has been determined both long term and predictive of all forms of future violence.

A Massachusetts study found that, during a 6-year period, those who completed a certified BIP were significantly less likely to be rearraigned for
any type of offense, including a violent offense or a protection order violation. (Massachusetts does not have a domestic violence statute, so researchers could not differentiate domestic from non–domestic violence offenses.) The rate differences for these offenses, between those who completed a program and those who did not, was as follows: 47.7 versus 83.6% for any crime, 33.7 versus 64.2% for a violent crime, and 17.4% versus 41.8% for violation of a protective order (Klein, 2009, p. 69; see footnote 18).

The importance of this research, therefore, is not so much that a particular BIP might make an offender less likely to offend, although, as the preceding data show, some programs do seem to be more successful in preventing repeat acts of violence. The point, however, is that the differentiation of offenders by the simple form of monitoring compliance with batterer treatment programs themselves might prove to be a valuable tool in predicting reoffending. As such, program completion—or, more precisely noncompletion—should become a key variable that judges use to determine final sentencing. This assumes that the sentencing structure and the judge are sufficiently flexible to include program completion as part of the mandated sentence. If the offender cannot control his behavior during the relatively short period of a batterer treatment program, the judge should assume that, absent any other intervention strategy, the batterer will reoffend and, therefore, should consider incarceration as a more radical intervention technique.

This could explain why court-mandated programs are important. They have higher rates of completion and ultimate success than those serving voluntary participants. We know that offenders can deny the criminal nature of their conduct. Without a judicial order, batterers might enter a voluntary program during the honeymoon or remorseful stage of a typical domestic violence cycle. When this mood changes, the voluntary offender might quickly drop out without some form of court or administrative sanction.

Evidence does suggest that batterers who are voluntary participants to treatment are more likely to reoffend than those who are court referred. Gondolf (1997) conducted a 15-month follow-up of 840 batterers in 4 cities and reported that 44% of voluntary participants reoffended compared with
29% of court-ordered participants who reoffended. Similarly, a San Diego study (Peterson & Thunberg, 2000) reported significantly increased program attendance after compliance hearings became routine. It is indeed possible that this differential offender response might be a result of the threat of further criminal justice involvement by offenders already in the court system rather than the treatment itself.

Quite frankly, it might be, as many have implied, that it is the imposition of a court-ordered metric, regular monitoring of the compliance with such treatment programs that become the key variable. One study (Bocko, Cicchetti, Lempicki, & Powell, 2004) showed that, where specialized probation and aggressive monitoring were used, program completion increased to 62% compared with 39% when probation did not include such supervision (see also Klein, 2009; Rempel, 2009).

Hamberger and Hastings (1993) summarized the existing studies on the demographic profile of hard-core offenders. What is perhaps most disheartening, although not altogether unexpected, is that this profile mirrors that of the hard-core offender that the MDVE replication studies suggested were not particularly affected by other interventions such as arrest.

Although completion rates are an important predictor of future conduct, the long-term and far more significant goal is to prevent offenders from reoffending. All programs have criteria by which they determine program success; however, there is an increasing and positive tendency to use competency-based criteria rather than simply that of mere program completion. If a batterer attends half of a 26-week course or attends irregularly, then he might not technically meet program completion requirements even if he did achieve the program goals of attitudinal changes. Contrast this with an offender who attended all sessions but who did not participate nor make any attitudinal changes, such as accepting responsibility for his actions. The latter would have technically completed the program, but success in changing his attitude is, at best, problematic (Bennett & Williams, 2001), even if the data do suggest that program completion is an important predictor of success.

Therefore, it might be wise to reconsider and orient program completion definitions. Should it be determined by the achievement of individual
competency measures rather than the mere attendance at a set number of sessions? Alternatively, should psychological testing examine long-term personality or response change as it has been found to affect success rates? Deschner (1984), Hamberger, and Hastings (1986), as well as Hawkins and Beauvais (1985), all reported that the mental health of the abuser at the end of the program seems to be important to long-range prospects for success. Similarly, future studies of the effect of such rehabilitative programs should assess offenders to determine whether individual characteristics of the offender—such as age, race, ethnic origin, histories of crime, and substance-abuse profile—significantly bear on rates of program success.

Although the two concepts are not the same, in addition to being only a measure of short-term success, program completion might provide a reasonably good indicator of future recidivism. Studies that have assessed the frequency of recurring violence as a measurement of program effectiveness have tended to show far different rates of recidivism for those who complete the program versus those who quit. Among program completers, the reported rates of recidivism have varied considerably across different studies. Hamberger and Hastings (1993) reviewed 28 studies for the effect of treatment programs on batterers. They noted that, depending on whether success is defined as the complete cessation of violence versus reduction in frequency or severity of violence, the rates of recidivism ranged from 4% to 16% to as high as 47%. It also is noteworthy that several studies have not attributed much of an overall effect of treatment on subsequent rates of violence (Taylor, Davis, & Maxwell, 2001). Of course, it is possible that the variability in reported recidivism might be an artifact of several factors, including the studies’ small sample sizes, the varying sampling techniques, the different measures of recidivism (including the time period being measured), and the fact that the people responsible for program implementation wrote much of the evaluative research, clearly presenting potential conflicts of interest. For example, Dutton (1987) freely acknowledged that the subjects in his 1986 study were batterers whose participation and treatment were determined in part by their willingness to participate in the treatment program. The low recidivism rate reported in his study might, therefore, be partially attributable to the self-selection of a group that was likely to be positively affected. Recidivism data in other studies originated in a national survey of violence abatement programs (Pirog-Good
(Stets, 1986) or estimates of recurrence obtained from victims, batterers, and police reports. Thus, the variability in reported recidivism rates might reflect not only the probable success or failure rates of various programs but also the variance in treatment selection criteria and the sources of recidivism data.

Several small-scale studies that compared the recidivism of these two groups, however, have shown differences. Dutton (1986) as well as Hamberger and Hastings (1986) found significantly lower rates of recidivism among program completers compared with studies by Gondolf (1984), Halpern (1984), and Hawkins and Beauvais (1985), in which no truly significant differences were found between those who completed and those who dropped out of treatment programs.

It seems that, until recently, much research in this area has reported the impact of treatment in isolation. This, of course, is merely an abstract of reality. More important is that mandated batterer programs might synergistically affect other aspects of the criminal justice system. For example, court-mandated counseling might have an indirect role in mediating the success of arrest. Dutton and Strachan (1987) found an apparent contradiction in the literature in recidivism after arrest. They reported that studies showing that arrest reduced recidivism used short-term measurements of success, often 6 months, as in Sherman and Berk’s (1984a) MDVE. In their own study, however, they found that recidivism increased considerably, to almost 40%, within 30 months after the arrest, when no subsequent criminal justice action or batterer treatment followed the initial arrest. This was compared with an overall recidivism rate of 4% in the group that received counseling after arrest. In fact, they found that 84% of the wives of arrested and treated men reported no further acts of severe violence directed toward them during the entire 30-month follow-up period in the group in which the offenders were subjected to treatment programs. Consequently, a long-term decrease in recidivism might occur when arrest was paired with subsequent treatment (Dutton, 1986).

Therefore, Dutton’s (1986) research suggested tentatively that although arrest had only a short-term deterrent effect, arrest plus an effective treatment program might have a long-term impact. Similarly, Ford and Regoli’s (1993)
research in Indianapolis found that court-mandated counseling as a condition of either diversion or probation reduced the chance of violence during the 6 months after case settlement (but before completion of counseling). It was no more effective than any other case outcome, however.

Regardless of the controversial impact of BIPs, it seems that they will continue to play a primary role in our judicial response to battering. Currently, legislative mandates are imposed on the judiciary and political realities and a lack of financially viable alternatives exist. Perhaps of greatest significance is that we lack evidence on effective strategies.
When Should Batterer Intervention Programs Be Used?

In light of relatively modest indicators of success, some resources devoted to generalized BIPs might be more effectively targeted for specific groups of offenders, such as first-time offenders as well as their victims. Such programs could include victim counseling, early education, and family-based interventions. All BIPs have certain costs and administrative limitations. Treatment, other than on a group basis, is time-intensive and expensive to an otherwise overloaded system. Meanwhile, research suggests that the most effective programs might require long commitments to therapy because differences in recidivism have been observed between shorter, less-intensive therapies and a 9-month program incorporating mental health and substance abuse treatments for the offender and even assistance to the victims of the original abuse (Gondolf, 1999). Moreover, the costs of BIPs are greatly increased by the large percentage of offenders who do not complete treatment.

Furthermore, the cost of counseling is but one component of this continued case monitoring. Case tracking by probation officers is both necessary and expensive. When an offender loses contact with the probation officer or the prosecutor’s office, it is relatively easy for him to push the limits of a treatment program, gaining little real benefit. For this reason, the costs of counseling indigent offenders far exceed those for voluntary dismissals in which the prosecutor merely agrees to a negotiated plea followed by minimally supervised probation.

Many advocates do not necessarily understand this conflict over scarce resources. It can be argued that more funds are needed and should be provided for shelters and services for battered women rather than counseling for offenders. We recognize this position is morally difficult to refute. After all, the needs of victims of crimes should intuitively take precedence over those of an offender. The unfortunate reality is that shelters realistically can provide only a brief respite from abuse for some women, “harden targets,” and sometimes help the victim make major life changes. If, however, an
offender is not rehabilitated then violence is likely to recur with either the same or another victim. For this reason, allocation of resources to offender counseling, if successful, might prove far more cost effective than shelters or, at the least, a good complement to them.

It also has been suggested that counseling could be more effective if it is part of a split sentence and coupled with incarceration to reinforce the importance of changing behaviors. Although incarcerating abusers might deter others by labeling this behavior as clearly criminal, surrounding abusers with other violent men in a prison environment might increase violent tendencies on their release. Indeed, some researchers have suggested that it might even teach them how to become “nonviolent terrorists” who can commit abuse effectively and legally (Gondolf, 1992), perhaps by stalking or through other forms of harassment. Alternatively, batterers form their own “support groups,” reinforcing each other’s behaviors.

Anecdotal information indicates that incarceration might have these unanticipated effects. For example, we have been told that the Quincy (Massachusetts) Probation Department has had cases in which batterers have continued to violate restraining orders and have harassed their victims from jail by using friends, relatives, or other proxies. In fact, two incarcerated abusers have been indicted in Massachusetts for hiring fellow inmates who were to be released to murder their spouses (Klein, 1994a).

Most evidence does not report that batterer treatment programs work effectively in outcome measurements. There are multiple possibilities to explain these findings. First, these could be the wrong programs. As we noted previously, many of the statutory guidelines for certified programs seem to be based ideologically on a theory of power and control. If that is not the real driving force behind many batterers, then we cannot expect that to be effective as a strategy. Therefore, it might be the curriculum that is being used.

Second, budgetary constraints might vitiate otherwise promising programs. For example, we noted that California has a 52-week program for its requirements. Now, it has implemented a 52-week online program. Although we understand that this is far less costly than a face-to-face initiative, we doubt that an online program can be tailor-made to meet the needs of an
individual offender; it also might be difficult to monitor and impossible to test whether attitudes were changed.

Third, batterer treatment programs need to be examined in the context of the overall judicial response. Both Klein (2009) and Rempel (2009) suggested that the type of program and duration is less important than the fact that the offender is under judicial supervision. In short, monitoring the defendant’s conduct during the program period might be the significant factor. Hence, the program’s real value might be that it provides the ability for the judge and the probation department to check on the offenders more often.
Online Batterer Intervention Program

Clearly, criteria vary for BIPs. Take, for example, states, where batterers can complete their program online in 10-, 26-, or 52-hour classes. Their Web site lists all 50 states and the District of Columbia having jurisdictions where their program has been approved.

http://www.courtorderedclasses.com/howitworks.html

Do you think this is a viable solution for jurisdictions to adopt? What are the advantages and disadvantages of such an approach?
Summary

As we discussed, much attention has been given to providing a victim-oriented focus and to allowing for options other than formal case processing in the criminal justice system. Restorative justice has provided options such as mediation, in which a domestic violence incident is handled privately, not publicly, with a trained mediator. Alternatively, other approaches bring in the community and focus on the need to hold the offender accountable to both the victim and society.

Batterer intervention programs initially were developed as a way of addressing offender treatment needs with an emphasis on changing how they think. However, the focus has now shifted to ensure batterer accountability. Therefore, in some ways, the intended outcome of all these efforts is similar. The question remains, though, whether offender accountability through any of these strategies can ensure victim safety.
Discussion Questions

1. Should all victims be provided with restorative justice options as opposed to traditional criminal justice case processing? What implications would this have for tracking and monitoring offenders who leave the community?

2. Is there more likely to be bias toward either victims or offenders in cases of domestic violence compared with a jurisdiction with detailed protocols and policies in place?

3. Should the criminal justice system invest more money into developing effective treatment programs for batterers, or should the focus merely be on monitoring their behavior? Could more batterers be treated successfully if existing services and programs were expanded and improved?

4. How do you balance money spent on victim services compared with the treatment of offenders?

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13 Domestic Violence, Health, and the Health System Response
Chapter Overview

Abused women use health care more than any other resource, including criminal justice. They may visit a doctor’s office, clinic, or hospital emergency department (ED). Their visit may involve injury, a secondary consequence of abuse such as depression or an unwanted pregnancy, or a problem with no apparent relation to abuse. In every encounter, the health professional can afford female patients the opportunity to identify abuse as a concern and, if identified, can open a window to the full spectrum of their experience, facilitate access to relevant information about their options, help plan for their immediate safety if needed, and incorporate an understanding of abuse into their ongoing care. Simply asking about abuse conveys its importance as a health issue. A successful strategy to manage or prevent abuse is inconceivable without an active role by the full range of medical, health, and mental health practitioners.

This chapter reviews evidence on the significance of domestic violence and coercive control for women’s health and on the health-care response. We identify the physical, mental, and behavioral health consequences of abuse, emphasizing its impact on reproductive health and populations with special needs. Next, we outline the response of the health system to abuse and consider major challenges to reforming this response. These challenges include adapting an all-inclusive definition of partner abuse; distinguishing new from ongoing cases; deciding how best to screen for abuse; understanding what “clinical violence intervention” implies for traditional approaches to patient care; learning to look beyond violence to coercive control; and appreciating the pros and cons of mandated reporting. Meeting these challenges entails complementing the medical paradigm with a public health perspective consistent with rooting the health response in a broader coordinated community response, an approach we term “complex social prevention.”
The Role of Health Service

The criminal justice system in the United States is part of a state bureaucracy and so is accountable to centralized administrative and policy directives. By contrast, the health system in the United States consists of an amalgam of private, nonprofit, and federal institutions that operate in a competitive market. There is no constitutional right to health care in the United States as there is to justice resources. As a result, health services are provided and must be accessed by individuals largely through contractual relationships financed by an eclectic mixture of fee-for-service, work-based insurance, and government funds. What some observers describe as the “dis-organization” of U.S. health care has meant that the health care response to abuse has been much more varied and piecemeal than the response by the legal or criminal justice systems. Despite the sharp reduction in the uninsured population brought about the 2012 Affordable Care Act, significant financial, cultural, and demographic barriers continue to constrain victim access to quality health care, let alone to health services designed for abuse victims.

An early glimpse at the significance of partner abuse for the health system was provided by two surveys in the early 1980s. A Kentucky Harris Poll showed that 17% of abused women had used emergency medical services because of violence and a Texas survey found that 385,595 women in that state had done so (Stark & Flitcraft, 1988; Teske & Parker, 1983). Meanwhile, the Yale Trauma Studies (YTS) conducted at Yale–New Haven Hospital demonstrated that domestic violence was the leading cause of injury for which adult women sought care and a major context for a range of other medical, behavioral, and mental health problems (Stark & Flitcraft, 1988). By 1992, the American Medical Association (AMA Council of Scientific Affairs, 1992) estimated that more than 1.5 million women nationwide sought medical treatment for injuries related to abuse annually. Subsequent research confirmed both the absolute and relative significance of abuse for women’s health, showing that victims of abuse make more visits to health-care providers over their lifetime than non-battered women, have more and longer hospitalizations, and are at greater risk for needing healthcare for a variety of problems than non-victims (Black, 2011).
Estimates of the costs of providing health care to abused women have grown alongside the growing awareness of its significance, escalating from approximately $5.8 billion in 1995 to $8.3 billion in 2003 to more than $10 billion today. These estimates include both the direct costs for medical and mental health services and the indirect costs resulting from productivity lost due to abuse-related morbidity and mortality (Centers for Disease Control and Prevention, 2003; Max, Rice, Finkelstein, Bardwell, & Leadbetter, 2004). One response to abuse-related health costs was that 8 of the 16 largest insurers in the country either denied coverage to battered women or charged them higher rates (Fromson & Durborow, 2001), a practice known as “pink lining.” This form of discrimination was outlawed by the Health Care Reform Act (HCRA) of 2010.

It may seem obvious why victims of violence would require health services in such large numbers. Media portrayals like the graphic video of NFL running back Ray Rice knocking out and then dragging his unconscious fiancée out of an elevator reinforce a widespread association of partner abuse with the types of injuries that would prompt any person to seek emergency care. But equating partner abuse with injurious violence captures only part of its significance for health—and not necessarily the most important part. Serious and even fatal injuries are all too common in abusive relationships. In most cases of abuse, however, episodes of extreme violence are part of the larger pattern of coercion and control described in Chapter 4. The violence in this pattern is marked less by its severity than by its frequency, duration, sexual nature, and cumulative effects on a particular victim. As importantly from a health perspective, in a majority of cases, the effects of the violence are confounded by the consequences of the range of coercive and controlling tactics that complement physical assault. As a result, most health visits by battered women are to primary care rather than emergency medical sites and involve medical, behavioral, mental health, and psychosocial problems secondary to this pattern of coercive control. Indeed, clinicians or health systems that limit intervention to the ER or rely on injury to identify abuse miss the vast majority of battered women in their care and are likely only to identify victims after they have developed a complex clinical profile requiring extensive resources.

Some of what we say about female victims of male partners applies to male
victims of female partner violence as well as to transgender victims and victims coupled with persons who share their gender identity. Although we have extensive survey evidence of female-to-male partner violence, few studies have compared the abuse-related health profiles of male and female victims and fewer still have differentiated health outcomes by the sexual orientation of offenders or victims. Many of these studies find that the modal pattern of violence is bidirectional, though even in these cases there are significant differences in the dynamics and outcomes of the abuse by gender.

Phelan, Hamberger, Hare, and Edwards (2000) compared men and women presenting complaints of injury at a level 1 trauma center for emergency medical services and who reported being in a currently violent or abusive relationship. In this study, men reported significantly higher rates of violence initiation than women did. One hundred percent of the men reported they initiated violence between 50% and 100% of the time. In contrast, fewer than 1 woman in 10 reported initiating violence more than 20% of the time. Even in situations where violence was bidirectional, the women in these relationships were significantly more likely than the men to be injured by partner violence, to be injured more severely, to seek health care, and to experience a range of negative health impacts, including clinically significant levels of depression and PTSD. Based on these findings, the authors concluded that male partner abuse of women is qualitatively different than female partner abuse, not merely different in the degree of violence deployed.

Devising an appropriate health system response is vital to any overall strategy to manage or prevent domestic violence. Moreover, the knowledge base exists to implement such a response. At a minimum, this response would build on the core values of medicine and public health, particularly their emphasis on beneficence and non-malfeasance (to “do no harm”); their willingness to embrace prevention; their capacity to take a nonjudgmental, holistic, and historical approach to health issues; and their distinguished record of addressing problems that most people would prefer to keep under wraps. Understanding partner violence as the context for a range of women’s health problems would significantly improve intervention with all female patients regardless of their demographics. A medical/public health perspective offers a vantage point to understand partner violence that complements and goes beyond the criminal justice framework outlined in
earlier chapters.
Pink Lining

Discrimination risks are real. A woman from rural Minnesota was beaten severely by her ex-husband. After remarrying, she applied for health insurance and was told that she would not be covered for treatment relating to the abuse-related preexisting conditions of depression and neck injury. Studies by the Insurance Commissioners in Pennsylvania and Kansas revealed that 24% of the responding companies used domestic violence as an underwriting criterion when issuing and renewing insurance (Fromson & Durbrow, 2001).
The Need for and Use of Health Services by Battered Women

Two things were clear by the late 1980s: (a) Battered women used health facilities of all types for a range of problems related to abuse; and (b) the health system’s response was woefully inadequate. For example, a study in a southwestern Michigan county found that 81.7% of victimized women identified by police had used the ER with a median of four visits each (Kothari & Rhodes, 2006). A more recent study of 993 abused women also found that 80% had used the ER, most with medical complaints. Although the women averaged just under 3.3 police incident reports each (total = 3.246) and 7 visits to the ER over the 4-year study period, only 28% of the women had been identified as abuse victims, and those largely because they had self-disclosed, were brought in by police, had filed a police complaint that day, or had mental health or substance abuse problems (Kothari et al., 2011). This section reviews the health dimensions of woman battering. The next section examines the health-care response.

Medical research on abuse focused on trauma care initially because it was assumed that battered women would primarily use emergency services for injuries caused by physical or sexual violence. Based on reviews in 1996 and 1998, the CDC reported that 40% to 60% of abused women were injured in the United States (National Center for Injury Prevention and Control, 2003). In a subsequent report, the CDC estimated that domestic violence resulted in approximately 2 million injuries to women and 600,000 injuries to men annually (Centers for Disease Control and Prevention, 2008).
**The Significance of Abuse for Female Trauma**

A conservative estimate is that battered women comprise 30% to 35% of female trauma patients (Boes, 2007). The earliest (and lowest) estimates come from the YTS—NIMH-funded multisite, multitier research conducted in the 1980s and based on reviews of women’s medical records. Analysis of a year’s sample of trauma patients in Yale’s ED revealed the then startling finding that domestic violence was the most common source of injuries for which women sought medical attention. One female trauma patient in five (18.7%) was identified as a battered women. Because battered women used the ED more often than non-battered women, they accounted for 40% of all injuries presented by the sample cohort. At the time, partner abuse was not officially recognized as a diagnosis, let alone as a major source of injury. Nevertheless, abused women presented almost four times as many injuries as auto accident victims (40% vs. 11%), although auto accidents were thought to be the most important cause of adult injury. As the availability of shelters and other services made it ethically appropriate to ask patients directly about their experience, researchers reported considerably higher prevalence rates. For instance, 54.2% of female patients disclosed a history of abuse in a multihospital study in Colorado (Abbott, Johnson, Kozial-McLain, & Lowenstein, 1995).

Most abused women have suffered one or more episodes of severe violence, including strangulation (commonly misnamed “choking”), burning, torture, and the use of weapons. In a British survey of 500 shelter residents, 70% had been choked or strangled at least once, 60% had been beaten in their sleep, 24% had been cut or stabbed at least once, almost 60% had been forced to have sex against their will, 26.5% had been beaten unconscious, and 10% had been tied up. Because of these assaults, 38% of the women reported permanent damage (Rees, Agnew-Davies, & Barkham, 2006). In a national survey conducted by the CDC, 10% of the women who identified themselves as abused reported they had been choked more than 11 times and another 5% reported they were choked more than 50 times (Black et al., 2011). An indication of the potential benefits that might accrue because of intervention with women injured by abusive partners was that 41% of women killed by abusive partners had used the health system for abuse-related injury in the
Partner violence is an important cause of injury at each point in women’s life cycle, accounting for 34% of the injuries to young women ages 16 to 18 years, for instance, as well as 18% of the injuries presented by women 60 years and older (McLeer & Anwar, 1989). Teens and older women often fall between the cracks of existing programs. Protective services for women who are abused in the context of age-related disability (elder abuse) are often seen as inappropriate and patronizing by the older battered woman who is capable of living independently, for instance, while going to a shelter may mean dropping out of school or leaving a supportive family network for teens. In response to evidence like this, some health systems have adopted a life-cycle approach to intervention, tailoring different identification and triage protocols for adolescent, adult, and elderly patient groups.
The Importance of Primary Care

Contrary to the popular association of partner abuse with emergent problems, the proportions of abused women among primary care patients is as high or higher than in the ED. In one primary care site, 21.4% of the 1,952 women surveyed had been physically or sexually abused by a male partner (Gin, Rucker, Frayne, Cygan, & Hubbell, 1991). Meanwhile, 38.8% of the women in a Midwestern community practice setting reported they had been abused (Hamberger, Saunders, & Harvey, 1986). Finally, 55.1% of 1,443 women seeking medical care in two university-associated family practice clinics in Columbia, South Carolina, had experienced some type of intimate partner violence in a current, most recent, or past intimate relationship (Coker, Smith, McKeown, & King, 2000). While 77.3% of the abused patients at the South Carolina family clinics experienced physical or sexual violence, 22.7% suffered the consequence of nonphysical abuse (Coker et al., 2000).
The Minor Nature of the Injuries Caused by Abuse

Another popular misconception is that serious injury is the most common outcome of partner violence. The vast majority of partner assaults involve pushing, shoving, grabbing, holding, shaking, arm twisting, hair pulling, slapping, choking, punching, kicking, and beating. While these acts can certainly cause serious harm, as when someone falls down the stairs as a result of being pushed, they do not generally result in medically significant injuries. Even among the battered women seen at Yale’s surgical emergency service, 9% had no injury at all and the largest proportion of injuries (58%) involved “contusions, abrasions, or blunt trauma,” “lacerations,” and “sprains and strains.” Only 2% of these injuries required hospitalization or major medical care, a rate that was no higher than among all other emergency service patients. Even when fractures or dislocations (9%), human bites (3%), and rapes (2%) were included, the data still showed that almost 90% of the injuries women presented would be classified as minor (Stark & Flitcraft, 1996). Ninety-two percent of the women in a community sample who had been assaulted at least once by a partner in the previous six months had sustained only cuts, scrapes, and bruises (though 11% had suffered broken bones and fractures; Sutherland, Bybee, & Sullivan, 2002). Even in the military, where the presence of weapons might lead us to expect the most severe assaults, only 7% of substantiated cases are serious enough to require more than one medical visit (Caliber Associates, 2002). The NCVS records incidents of abuse that respondents consider crimes. Nevertheless, between 1993 and 2004, fewer than 20% of abuse victims required medical treatment (Catalono, 2005). Among the abused women identified by a random population survey conducted by Harris Interactive for the Commonwealth Fund, no woman reported that she had been shot, stabbed, choked, or beaten up (Commonwealth Fund, 1999). This data is summarized in Figure 13.1.

Figure 13.1
It would be a serious mistake to assume that abuse is minor simply because most domestic violence is noninjurious. In fact, the hallmarks of domestic violence are its frequency, duration, sexual nature, and cumulative effects rather than its severity.
The Markers of Partner Violence in the Health System

In contrast to legal definitions of domestic violence as a discrete assault, health practitioners confront the consequences of abuse as a continuing course of conduct in which repeated physical assaults are combined with a host of other oppressive tactics. From this vantage, abuse more closely resembles a chronic health problem like diabetes or HIV than emergent problems such as a heart attack or the flu. The health problems presented by battered women are the cumulative outcome of all the abuse that has preceded the visit and only rarely of a single, isolated incident.

From the standpoint of the health system, the hallmarks of domestic violence are the frequency of the violence, the overlap of physical with sexual coercion, the duration of abuse, and its cumulative effects on victims’ physical, mental, behavioral, and psychosocial health.
The Frequency of Abusive Assaults

It has been well known for decades that about a third of all offenders use force several times a week, so-called serial abuse, and many do so on a daily basis. Responding to the most recent CDC population study, the abused women reported experiencing the following types of assault between 11 and 50 times or >50 times: choked (10%; 5%); kicked (18%; 7%); “hit with a fist or an object” (19%; 10%); “beaten” (21%; 18%); and “slapped, pushed, or shoved” (22%; 21%; Black et al., 2011). In the shelter sample from the United Kingdom mentioned previously, the women reported they were “shook or roughly handled” (58%); pushed, grabbed, shoved, or held (65%); slapped, smacked, or had their arm twisted (55.2%); and kicked, bitten, or punched (46.6%) “often” or “all the time.” Individual women are experiencing the cumulative effect of these assaults.
Ongoing Violence: Female Victims in the United States

The frequency of abusive assault is reflected in the disproportionate use of emergency health resources for domestic violence victims. At Yale’s inner-city hospital, non-battered women averaged 1.9 injury visits to the emergency medical service as adults. By contrast, abused women averaged 5.7 injury visits and almost one in five had presented to the emergency room 11 or more times with complaints of injury. Conversely, the YTS found that 80% of the adult women who had visited Yale’s emergency room three or more times had been battered (Stark & Flitcraft, 1996). In a study of ED utilization by battered women in a southwestern Michigan county, almost all the victims identified by police utilized the ED (87%) over the 3-year study period with a median of 4 visits each (Kothari & Rhodes, 2006; Rhodes et al., 2011).
The Duration of Abuse

The frequency of assaults by partners takes its significance for health service use from the duration of abusive relationships. From the perspective of the health system, partner abuse has a low spontaneous cure rate. Some of the adult medical records reviewed in the YTS covered 40 years or more. Nevertheless, if a woman in the Yale sample had ever made a hospital visit related to partner abuse as an adult, there was a 72% chance she had presented at least one injury related to abuse in the last 5 years, the marker used to indicate that abuse might be a current concern. The average time span between the first abuse-related presentation to the hospital and the most recent was 7.3 years, which researchers called the “adult trauma history,” a key window through which clinicians can assess abuse. Campbell and Soeken (1999) estimated that abusive relationships in their population-based sample lasted 5.5 years on average. Combining estimates of the frequency of abusive assaults with their average duration highlights a dramatic reality: that a significant proportion of victims have suffered dozens, and many have suffered hundreds, of assaults.
The Sexual Nature of Partner Violence and Coercion

Debate continues about the utility of viewing partner abuse through the lens of gender identity and sexual inequality. From the standpoint of the health system, however, the sexual nature of woman battering is reflected in both the physical nature of the injuries inflicted and in the frequency with which health visits by battered women are prompted by sexual coercion, including but by no means limited to rapes.

Most accident victims suffer injuries to their peripheries—their hands, head, and feet, for example. By contrast, the YTS reported that battered women were 13 times more likely than non-battered women to be injured in the breast, chest, face, and abdomen, physical sites that are identified with female sexuality.

The significance of partner abuse as a context for rape is well established by studies of both rape victims and battered women.

It is estimated that 14% to 25% of women in the general population experience intimate partner sexual assaults (McFarlane & Malecha, 2005). The YTS found that partners comprised 35% of the assailants in all rapes reported to the hospital and half of the assailants in cases where the victim was older than 30 years (Stark & Flitcraft, 1996). Fifty-one percent of the women who reported being raped to the CDC survey identified a present or former partner as the offender (Black et al., 2011).

A recent literature review concluded that between 43% and 55% of abused women are also sexually assaulted by their partner (Wingood, DiClemente, & Raj, 2000). Battered women using emergency shelter and domestic violence services indicate that between one third and one half have been sexually assaulted by their partners (Campbell, Sullivan, & Davidson, 1995; Bergen, 1996). In one well-designed study, 37.6% of female primary care patients were identified as victims of partner violence. Almost half of these abused women (18.1% of the total) also were sexually assaulted (Coker at al., 2000). Similarly, a study of rural battered women found that half had been raped by
their partners (Websdale, 1998). A distinguishing characteristic of partner rapes is that they tend to be repeated. In a large sample of women in shelter, 27% reported they had been forced to have sex against their will often or “all the time.” The occurrence of sexual assault in abuse cases is a significant risk factor for a subsequent homicide. The Georgia Domestic Violence Fatality Review identified sexual violence in 23% of the femicide cases examined between 2004 and 2008 (Georgia Commission, 2009).
The Continuum of Sexual Coercion

Sexual assault in abusive relationships is typically part of a pattern of sexual coercion. Twenty-five to 30% of women who obtained protection orders reported that they had been subjected to a wide range of sexual abuse, exploitation, and assault (Logan & Cole, 2011). The most commonly reported forms of sexual coercion are sexual inspection; forced pregnancy (sometimes involving denial or sabotage of birth control); coerced sex with children, other family members, or strangers; sex trafficking; the use of pornography; and what may be termed “rape as routine,” where women comply because they are afraid. In a study of men in a batterer intervention program, 33% of those who sexually assaulted their female partners did so when the women were asleep (Bergen & Bukovec, 2006). Male abuse victims also report sexual coercion by male and female partners, though in far smaller numbers than women (Black et al., 2011).

Whether or not sexual coercion consists of criminal acts, its co-occurrence with domestic violence is significantly more traumatic than either violence or sexual assault alone and provides the context for a range of physical and mental health complaints (Richie, 1996). The shame associated with sexual coercion can be a formidable barrier to disclosure and even if acknowledged at an initial interview (e.g., in response to questions such as “Has anyone made you do something of which you are ashamed?”) need not be explored until trust is established. The battered rape victim may feel uncomfortable with aspects of stranger rape hospital protocols that involve eliciting support from significant others or may approach the rape trauma apart from the larger context of coercion and control.

Donna Barnes, age 34, shot her husband Nick while he slept, called police to report the crime, then returned to the bedroom to retrieve the gun. Donna insisted she’d been beaten almost daily for five years. Apart from swollen fingers and some bruising on her legs, police had no evidence to support her claim. Indeed, they wondered, if assault had been so common why hadn’t she called police or gone to the hospital? One medical visit involved a broken thumb, but Donna claimed this occurred when she had accidentally slammed the car door on her own hand. Fortunately for her defense, Donna had kept a diary in which she recorded more than 300 incidents of being assaulted. These assaults usually occurred just before bedtime.
and typically involved punching, kicking, and dragging her by the hair. Her fingers were swollen from protecting her head. Although none of the assaults had been life-threatening, their cumulative effect was to make Donna feel like a hostage in her own home. She returned to get the gun because she believed her husband could come after her even after he was dead. The belief that an abusive partner is omnipotent is common among battered women.
Sex as Routine

Shortly after they married, Donna was talking on the phone to Nick’s uncle and laughed at one of his jokes. Nick quietly took the phone, hung it up and then punched Donna, telling her that her laughing meant she was flirting. He then demanded sex. When she demurred, saying she was not feeling well, he tied her hands behind her back and “had his way” with her. She never said no to Nick again when he wanted sex.
The Secondary Consequences of Abuse

After the onset of abuse, battered women are at an increased risk for a range of medical, behavioral, and mental health problems that distinguish them from non-battered women as well as from other classes of assault victims, including male and female victims of female partner abuse. Most battered women do not develop these problems, but the proportions who do are sufficient to make partner abuse a major cause—and in the cases of female alcohol abuse, attempted suicides, and child abuse, the major cause—of these problems in the health system. The prevalence of these secondary problems largely accounts for the comparably high rates of health-care utilization by battered women and the fact that the annual costs of their care are 19% higher than for women without a history of abuse (Rivara et al., 2007).
Medical Problems

Battered women have an overall rate of physical health problems that is 60% higher than the rate for non-abused women (Campbell, 2002). Between 14% and 20% of these general medical problems are clearly related to assault or prior injury. These presentations include headaches from head trauma; dysphagia from being strangled; traumatic brain injury; joint, abdominal, or breast pain from assaults; and a range of problems linked to sexual assault. In comparison with non-abused women, meanwhile, abused women have a 50% to 70% increase in gynecological problems (such as STDs or urinary tract infections), central nervous system problems such as headaches or fainting, problems related to chronic stress (such as appetite loss), and viral infections (such as flu) as well as of HIV (Campbell et al., 2002).

The association between partner abuse and increased risk for HIV has been identified in multiple studies here and abroad (Coker, 2007; Wu, El-Bassel, Witte, Gilbert, & Chang, 2003). Women in abusive relationships are more than three times as likely to have HIV infection as women who are not suffering abuse (Sareen, Pagura, & Grant, 2009). In addition, 55.3% of American women with HIV/AIDS are abused, more than twice the national rate (Coker, 2007). Women with HIV who report recent trauma are more than four times more likely to fail their HIV treatment and almost four times more likely to engage in risky sexual behavior (Machtinger, Haberer, Wilson, & Weiss, 2012). As a consequence, effectively addressing trauma in STD/HIV/AIDS treatment has the potential to enhance both recruitment and retention of battered women.

Battered women also seek help for a range of medical problems that reflect the chronic stress associated with ongoing abuse rather than the acute effects of abuse itself. These include functional gastrointestinal disorders, digestive problems, nutritional deficiencies, or central nervous system disorders. Up to 53% of female patients visiting pain clinics report physical or sexual abuse. Although many of these visits are clearly related to past and current injuries, battered women also are twice as likely as non-abused women to report chronic pain unrelated to injury, or “spontaneous” pain (Haber & Roos, 1985). They are also at greater risk for viral infections such as colds or flu.
(Campbell et al., 2002). Not surprisingly, battered women are far more likely than non-abused women to rate their general health as fair or poor (Kramer, Lorenzon, & Mueller, 2004).
Behavioral Problems

The YTS demonstrated that the behavioral and psychosocial consequences of abuse are as important as its physical consequences. In a control comparison, abused women were 5 times more likely than non-abused women to attempt suicide, 15 times more likely to abuse alcohol, 9 times more likely to abuse drugs, 6 times more likely to report fear of child abuse, and 3 times more likely to be diagnosed as depressed or psychotic (Stark & Flitcraft, 1996). Indeed, one abused patient in five attempted suicide at least once, and many made multiple attempts, often on the same day or in close proximity to a hospital visit related to abuse and with the medicine they had been prescribed at their visit. An analysis of 16 published longitudinal studies involving more than 36,000 participants found that intimate partner violence increased the likelihood of suicide attempts as well as doubled depression among women (Devries et al., 2013). Binge drinking is also associated with victimization. A large California survey found that more than half of the victims subjected to recent violence reported engaging in binge drinking during the prior year, significantly higher rates than non-victims (Zahnd, 2011).

So common were secondary problems among abused women in the YTS that battering emerged as the major overall cause or context for female suicide attempts, child abuse, and alcohol abuse (Stark & Flitcraft, 1996). Importantly, with the exception of alcohol abuse, the incidence of these problems among battered women only became disproportionate against the background of ongoing abuse, indicating that battering rather than a preexisting vulnerability or addiction was their context, if not always their proximate cause. Battered women are also at sharply elevated risk for homelessness (Browne & Bassuk, 1997; Muelleman, Lenaghan, & Pakesier, 1998; Stark & Flitcraft, 1996). Once abused women develop these problems, they became more vulnerable to further coercion and control.
Mental Health Problems

Adapting to and surviving within abusive relationships can exact significant mental health costs. Research has failed to identify a particular problem or personality profile that makes certain women “violence prone.” However, after the onset of abuse, battered women report more symptoms and are diagnosed with psychiatric problems with greater frequency than non-abused women (Nicolaidis & Touhouliotis, 2006). The CDC estimates that mental health services are provided to 26.4% of victims of partner violence. Forty-eight percent of the abused women in a large random sample said they had needed help with mental health issues in the past 12 months (Weinbaum et al., 2010).

Abuse significantly increases a woman’s risk of developing PTSD, depression, anxiety disorders, hopelessness, psychosexual dysfunction, and obsessive compulsive disorder, perhaps by as much as 500% (Dutton et al., 2006; Golding, 1999; Follingstad, Brennan, Hause, Polek, & Rutledge, 1991). One abused woman in 10 identified in the YTS suffered a psychotic break. Other common psychiatric problems presented by abused women include panic attacks, sleep disturbances, and agoraphobia (Dutton et al., 2006).
Battered Woman Syndrome

One form of cognitive distortion widely thought to result from abuse is battered woman’s syndrome (BWS), which is a type of depression induced by repeated life-threatening violence. In a series of influential publications, psychologist Lenore Walker (1979) argued that victims experienced a “cycle of violence” consisting of a buildup of tension, an explosion of violence, and a honeymoon phase in which the abuser placated his victim with apologies, gifts, and the like. Women who stayed through at least two cycles developed learned helplessness; concluded that escape or turning to outside help was useless, even when it was available; and focused on survival instead. BWS seemingly explained two paradoxes that are important to health: the duration of abusive relationships (“why does she stay?”) and the reason why, if abuse is so common, case reports were so rare.

BWS has been discredited as a general account of battering and its effects (Dutton, 1996). Separations are common in abusive relationships. In response to supportive questioning, most victims are frank and accurate reporters (Dutton, 1996). Meanwhile, the scope of controlling behaviors explains the durability of abusive relationships more accurately than psychological dependence (Stark, 2007). Finally, the dynamics in abusive relationships is typically ongoing rather than cyclical. Nonetheless, BWS affects an estimated 14% of abused women and is one explanation of why some women may be reluctant to disclose.
Post-Traumatic Stress Disorder

PTSD is another common outcome of partner violence. A meta-analysis across multiple samples of battered women, including those in hospital EDs and psychiatric settings, found a weighted mean prevalence of 48% for depression and 64% for PTSD (Golding, 1999). The NISVS found 22.3% of victimized women reported PTSD symptoms over their lifetime as did 4.7% of abused men (Black et al., 2011). Women who have been sexually assaulted or stalked as well as physically abused are at the highest risk for PTSD, a combination of behaviors that describes the experience of 37% of the abused women in the general population (Black et al. 2011).

The classic precondition for PTSD is exposure to an event that induces “intense fear, helplessness, or horror” (American Psychiatric Association, 2000). In partner abuse, the trauma is usually more diffuse, more prolonged, and less tangible than in the conventional model. Recognizing that the traditional model failed to capture “the protean symptomatic manifestations of prolonged, repeated trauma” associated with abuse, psychiatrist Judith Herman (1992, p.119) identified a pattern she called “complex PTSD” and applied it to victims of rape, incest, and partner assault. Complex PTSD is characterized by hyperarousal (chronic alertness), intrusion (flashbacks, floods of emotion, hidden reenactments), and constriction, “a state of detached calm... when events continue to register in awareness but are disconnected from their ordinary meanings” (Herman, 1992, p. 45). These symptoms are linked to a protracted depression not unlike that described by Walker as BWS. Several studies confirm that many battered women suffer from the symptoms of complex PTSD (as described by Herman) or classic PTSD (as outlined in the DSM-IV), particularly if they have been sexually and physically assaulted. Other studies suggest a higher than normal prevalence of psychosexual dysfunction, major depression, generalized anxiety disorder, and obsessive compulsive disorders among battered women, all of which are consistent with a PTSD framework (Dutton et al., 2006).
Explaining the Secondary Health Problems Associated With Partner Abuse

The profile of health problems exhibited by battered women is unique, distinguishing their experience from the experience of victims of stranger assault or of men assaulted by female partners. Abused women are five times more likely to require medical care than abused men (7.9% vs. 1.6%) as well as to experience symptoms of PTSD (22.3% vs. 4.7%; Coker et al., 2002; Catalano, 2006). With the exception of high blood pressure, abused women are at also at significantly greater risk than abused men for a broad spectrum of adverse physical, mental, and behavioral health outcomes (Black, 2011; Black et al. 2011). The distinctive health profile presented by battered women appears to reflect the unique nature of male partner abuse rather than personality factors or family history that might predispose certain women to enter abusive relationships. Male partner violence is much more frequent than female partner violence, for instance, and far more likely to be accompanied by sexual violence and stalking. Fifty-three percent of men arrested for domestic violence, but only 3% of women, have more than three similar police reports, for instance (Hester, 2013a). Meanwhile, the NISVS found that 37% of the abused women in the survey reported being raped or stalked as well as assaulted (Black et al., 2011). The cumulative effects of this abuse include high levels of fear and stress-related health problems as well as behavioral health problems such as substance abuse, which reflect victim attempts to self-medicate the effects of coercion as well as to numb anxiety, hyperarousal, and other symptoms of PTSD (Hein & Hein, 1998).

The nonviolent tactics that complement coercion in a majority of abusive relationships are another major reason why woman battering has distinctive health effects. Forty-seven percent of the women responding to the NISVS reported they had been subjected to psychological aggression, including such tactics as not being allowed to socialize with friends or to leave the house, having their money taken, and having their time and movements monitored. Combined with violence and intimidation, these and similar tactics designed to isolate, degrade, exploit, and regulate victims comprise coercive control, the pattern described in Chapter 4. Control may extend to constraints on
resources vital to health, such as medicines, food, personal hygiene supplies, and access to health providers. By depriving women of autonomy, liberty, and basic rights and resources, coercive control elicits an experience of entrapment that can make victims feel like hostages even when they are physically separated from the abusive partner. A study of 600 women aged 15 to 24 who were patients at a reproductive health center in New York found that two thirds experienced one or more episodes of controlling behavior. The types of controlling behavior included the male partner: (a) insisting on knowing the woman’s location at all times (45.9%); (b) being angry if the woman spoke to another man (40.8%); (c) being suspicious of infidelity (40.5%); (d) attempting to keep the partner from seeing friends (26.5%); (e) ignoring or treating his partner indifferently (24.7%); (f) restricting contact with her family (6.3%); and (g) expecting his partner to ask permission before seeking health care (3.7%; Catallozzi, Simon, Davidson, Breitbart, & Rickert, 2011). Because control tactics deprive women of the means to escape abuse or effectively resist it, the level of control in a relationship is an important predictor of future risk, including a risk that the victim will be seriously or fatally injured.

The health consequences of partner abuse often outlast the battering. Studies have found that half of the women who experienced PTSD remained symptomatic even after they had been out of a violent relationship for 6 to 9 years (Woods, 2000). However, most victims do not experience these consequences. Thus, while abused women were three times as likely as non-victims to describe their mental health as “poor” to the NISVS, only 3.4% overall gave this assessment (Black et al. 2011). Meanwhile, many symptoms (such as depression or hypervigilance) may resolve once safety is restored or, as with substance abuse, be more responsive to treatment.
Stockholm Syndrome

Laura was charged with embezzling more than $350,000 from the company where she kept the books, although she had no criminal history and had been valedictorian of her class at Vassar College. Laura claimed she stole the money to prove her love for her boyfriend, Tony. After Tony was killed in a motorcycle accident, Laura made a suicidal gesture and was discharged from the hospital with a diagnosis of obsessive compulsive disorder. Laura continued to steal small sums, seemingly disproving her claim of innocence. When the forensic social worker hired by the defense asked Laura what she did that was “obsessive,” she described numerous rituals, including color coding her clothes, vacuuming daily “till you can see the lines,” and measuring each dish to precisely fit spaces in the frig. When she was asked when these behaviors began, Laura produced The List, a set of rules prepared by her boyfriend that itemized his expectations room-to-room, including how she cleaned, cooked, dressed, and so on. Tony rewarded Laura with sex or time out with her friends when she complied with the rules, but beat or humiliated her when she was “bad.” Over time, Laura came to believe that pleasing Tony was the only way to stay safe and that his reality was the only one that counted, an example of Stockholm Syndrome. Because completing the rituals was the only way she knew to keep safe (and her only source of self-esteem), she continued the rituals after his death, including small thefts he had demanded.
Populations at Special Risk
Pregnant Women and Reproductive Coercion

Battering has myriad and dramatic effects on reproductive health, particularly among adolescents and young women. What is termed reproductive coercion or reproductive control ranges from physical and sexual assaults during pregnancy to demanding unprotected sex, sabotaging birth control, threatening a partner if she has or does not have an abortion, or engaging in high-risk sexual behaviors. A California study of abused 15- to 20-year-old women found that a quarter reported that their male partners were actively trying to get them pregnant against their will, for example, by manipulating or refusing condom use (Miller, Jordan, Levenson, & Silverman, 2010). The NISVS (Black et al., 2011) found that 8.6% of women reported having had an intimate partner who tried to get them pregnant by not wanting to or refusing to use a condom. A common aim of forcing an unwanted pregnancy is to increase a partner’s dependence by forestalling education, employment, or other sources of independence. Reproductive coercion is also the context for much of the aforementioned prevalence of STDS and HIV among abused women (Decker et al., 2009). The proportion of abuse victims who seek abortion is higher than in the general female population and ranges from 20% in Canada (Fisher et al., 2005) to 31.4% in the United States (Evins & Chescheir, 1996) to 35.1% in England (Keeling, Birch, & Green, 2004).

Population-based estimates of the prevalence of physical abuse among pregnant women differ markedly from estimates based on hospital samples. Based on data from 15 participating states, the CDC’s Pregnancy Risk Assessment Monitoring System (PRAMS) found rates of violence ranging from 2.4% to 6.6% (Lipscomb, 2000). By contrast, starting with the YTS, a number of studies have shown that between 21% and 78% of women using hospital obstetrical services are in abusive relationships and that abuse is the major cause of injury during pregnancy (Stark & Flitcraft, 1996; Datner, Wiebe, Brensinger, & Nelson, 2007). Women who are abused while pregnant have 30 times the risk for clinical pregnancy trauma and 5 times the risk for experiencing placental abruption compared with women who did not report domestic violence (Leone et al., 2010). Abuse has been identified in 45% of the homicides and 54% of suicides from pregnancy to a year after birth, dwarfing other causes of perinatal mortality (Palladino, Singh, Campbell,
Flynn, & Gold, 2011). Battered pregnant women are younger and less educated than their non-abused counterparts, are less likely to be married, and are significantly more likely to have trichomoniasis, to report depressive symptoms, to report high levels of psychosocial stress, and to abuse substances.

Evidence on how pregnancy affects the onset, escalation, or de-escalation of partner violence is inconclusive. However, studies agree that if women are abused before becoming pregnant, the abuse is more likely than not to continue during pregnancy as well as after the birth (Saltzman, Johnson, Gilbert, & Goodwin, 2003). In addition to its significance as a source of injury and fatality, abuse during pregnancy is associated with adverse pregnancy outcomes such as preterm birth and having a low-birth-weight baby; higher rates of maternal morbidity such as low weight gain and anemia; depression and other psychological problems; and delayed entry into prenatal care (Amaro, Fried, Cabral, & Zuckerman, 1990; Parker, McFarlane, Soeken, & Torres, 1993). A number of studies have also shown a strong connection between partner abuse and post-partum depression (e.g., Woolhouse, Gartland, Hegarty, Donath, & Brown, 2011).
Women With Disabilities

Conclusions about abuse among persons with disabilities are notoriously suspect. Persons with disabilities are often excluded from research for a variety of reasons, including the presumption that they are incapable of intimate relationships. Studies that purport to capture their experience may fail to differentiate vulnerability by the type of disability or to include questions pertaining to the types of intimidation and control to which persons with disabilities are particularly vulnerable. A confounding issue is the extent to which partners, helping professionals, and even some victims rationalize violent and controlling behavior as protective or as otherwise necessary for “her own good.”

Disabled women are many times more likely than disabled men to experience partner abuse (Rand & Harrell, 2009). However, evidence is inconclusive about whether they also face a higher risk of being physically abused than nondisabled women. The NCVS conducted by the Justice Department found that physical abuse was as common among disabled as among nondisabled women (27.3% vs. 24.1%; Harrell, 2011), though disabled women were twice as likely to report being raped or sexually assaulted. Similarly, the NVAWS found no evidence that disability increases one’s risk of intimate partner violence (Tjaden & Thoennes, 2000). By contrast, drawing on much larger samples of women as well as of disabled women, the 2006 Behavioral Risk Factor Surveillance System Survey (BRFSS) reached the opposite conclusion, reporting that the lifetime prevalence of physical abuse was considerably higher among women with disabilities than nondisabled women (37.3% vs. 20.6%) and that disabled women were twice as likely to report being threatened with violence (28.5% vs. 15.4% of women without a disability); hit, slapped, pushed, kicked, or physically hurt (30.6% vs. 15.7%); and to experience sexual coercion by an intimate partner (19.7% vs. 8.2%). The BFRSS also found strong evidence that women with disabilities who are abused have significantly more health problems than non-abused women with disabilities, reporting that the victims were 35% less likely to consider their health as good to excellent and 58% more likely to report an unmet health care need owing to costs than their disabled counterparts not experiencing partner abuse (Barrett, O’Day, Roche, & Carlson, 2009).
Similarly, a meta-analysis of 26 prior studies that included some 21,500 people with a range of physical and mental disabilities from seven countries (Australia, Canada, New Zealand, Taiwan, the United Kingdom, United States, and South Africa) found that disabled adults are 1.5 times more likely to be a victim of intimate partner violence, sexual assault, or other physical violence than those without a disability. In particular, those with mental illness are nearly four times more likely to be victimized, with some studies concluding that 40% of women with mental health problems were abused (Armour, Wolf, Mitra, & Brieding, 2008). There is also some evidence that women who are hearing impaired are twice as likely to be abused as women without hearing impairments and suffer elevated rates of psychological aggression (Abused Deaf Women’s Advocacy Service, 1997). Interestingly, the General Social Survey of Statistics Canada (GSS) in 1999 found that disabled and nondisabled women reported similar rates of abuse in the previous year, but much higher rates and much more severe violence during the previous five years. (Brownridge, 2006).
Maria and “Perspecticide”

Domestic violence and coercive control may also cause a loss of physical and cognitive functions.

Maria’s husband Thomas was arrested and charged with being part of a drug ring dubbed “the Pizza Connection” because it operated out of local pizza parlors. After the arrest, Maria received monthly deliveries of cash in paper bags at their Long Island home. Several months later, Maria was arrested. Local police and the FBI seized her home, which was sold at auction, and she was charged with crimes related to her allowing her home to be used for crime. She was also charged with tax fraud because she had signed returns claiming a tiny proportion of the income reflected in their yacht, her fur coats, and their expensive home and cars. At trial, a domestic violence expert testified that Maria suffered from “perspecticide,” a condition in which victims of abuse or torture lose the ability to “know what they know.” Because of her husband’s 25-year history of physical, sexual, economic, and psychological abuse and the danger of even thinking of confronting her husband, let alone actually confronting him, about his law-breaking, Maria was unable to think for herself or to make the most basic logical connections. Indeed, it took two years of psychiatric care after her acquittal for Maria to regain the ability to tell time.
Defining Woman Battering in the Health Setting

The different aims of health and criminal justice and the longitudinal and multifaceted health consequences of partner abuse have led the health and justice systems to define and measure the problem in very different ways.

Because of its emphasis on discrete assaults, the criminal justice system generally ignores the elements of partner abuse that are key to its health outcomes—namely its frequency, duration, sexual nature, and cumulative effects. Many facets of coercive control that have devastating health consequences are either not criminal—such as taking a partner’s medications, timing her coming and going, or setting rules for when and how she cooks, makes love, feeds the children, or contacts outside professionals—or are criminal only when committed against a stranger, such as taking a partner’s money or using a GPS to track her movements. Thus, the working definition of domestic violence in the health system must be far broader in scope than the criminal justice definition and must consider partner abuse as historical and multidimensional rather than as limited to discrete episodes of violence.

The contrasting definitions used by the criminal justice and health-care systems also reflect the very different consequences of mistakenly identifying someone as a victim in the two systems. Criminal justice adapts narrow definitions of crimes like abuse to maximize the likelihood that only “true positives” will be sanctioned, even if this means leaving many offenders outside the definition’s scope (“false negatives”).

Since the aims of the health-care system are ameliorative rather than retributive and because the legal status of acts or the relational status of the parties are irrelevant to health consequences, clinical assessments of abuse must be all-inclusive and designed to identify as many victims of domestic violence or coercive control (“true positives”) as possible, even if this means questioning or offering services to many patients for whom abuse is not a current concern (“true negatives”). Therefore, the most effective operational approach to identification in health settings involves an inclusive notion of coercion and control, regardless of marital or living status, sexual orientation, the severity of injury, or whether the presentation involves injury, medical,
behavioral, or psychological problems, or simply fear. Since the clinician’s primary concern is future risk, the important distinction is between an anonymous assault, where ongoing problems are unlikely, and coercion and control by a partner.
Measuring Partner Abuse: Prevalence and Incidence

The historical, multidimensional, all-inclusive, and ameliorative definition that informs the health perspective on partner abuse also provides a unique, treatment- and prevention-oriented approach to measurement. Most crimes are narrowly circumscribed in time and space and so are rightly counted as discrete acts, even if the particular offender is well-known to police. From this perspective, the number of new cases, what is called “incidence” in epidemiology, is virtually identical to the total number of cases, or “prevalence,” and so the two terms are used interchangeably. If the crime rate drops, so does the burden of crime on the community.

Incidence and prevalence are also interchangeable for diseases like the flu, where the sentinel event is over quickly, much like a mugging. However, a large number of health problems are either chronic or last for a considerable period, like alcohol abuse. In this instance, the total burden on the community, or the prevalence (P) of a problem (discussed in Chapter 2), is calculated by multiplying its incidence (I) by its average duration (D) and is expressed in the simple formula $P = I \times D$. Note that a problem can continue to drain significant resources if it is long-lasting even if we reduce the number of new cases significantly, as has been the case with HIV/AIDS. Distinguishing incidence, duration, and prevalence is vital to determining whether we can expect to make the greatest impact on a problem from primary prevention (keeping new cases from developing), secondary prevention (ending ongoing cases), or tertiary prevention (shortening the duration or severity of a case).

We saw previously that researchers approximated the average duration of abusive relationships as between 5.5 and 7.3 years, making abuse more like a chronic than an acute health problem like the flu. This is why, in our discussion below, we emphasize health reforms that replace an acute-care model of intervention with a model that situates the management of abuse in the context of a patient’s ongoing care. Meanwhile, the YTS estimated that the “institutional prevalence” of abuse among female trauma patients was
approximately 15%. These were cases in which women had experienced at least one abuse-related visit in the past 5 years. When these values were plugged into the formula, Stark (2007) estimated the annual incidence (I) of domestic violence among female trauma patients was between 2% and 3%. This meant that domestic violence was a current concern for 15 of the 19 of every 100 female trauma patients who had “ever” been battered and that it was “new” for only 3 of these women, illustrating a very low spontaneous cure rate. Put differently, the fact that 79 to 86 of every 100 battered women in the hospital caseload are in long-standing abusive relationships suggests that effective early intervention (“secondary prevention”) could reduce the overall health burden associated with partner abuse by as much as 85%, freeing up considerable resources for other health needs, including primary prevention.

Even the broadest definition of abuse is unlikely to substantially improve the health response unless it is embedded in a strategy of professional education that helps providers appreciate how the knowledge of abuse informs the victim’s diagnosis, intervention, and prognosis for recovery, including the likelihood that she will suffer a similar problem in the future and can comply with both treatment and follow-up care.
Medical Neglect

Domestic violence was virtually invisible to the health system when the first shelters opened. There is no reference to partner violence in a 1985 survey of Injury in America (Committee on Trauma Research, 1985) conducted under the auspices of the National Academy of Medicine and the National Research Council. Reported rates of accurate identification in abuse cases ranged from 1 in 15 in a rural clinic in North Carolina to 1 in 20 in the YTS (Hilberman & Munson, 1977/78; Stark & Flitcraft, 1996). At Yale, only 1 injury in 40 caused by abuse was linked to partner violence and these notations were mostly fortuitous. Clinicians would report unreflectively that a woman had been “beat up by boyfriend” or “kicked by foot” at one visit and then had “fallen at bank” at the next. Physicians found ways not to identify abuse even when they said it was their responsibility to do so. A study of four Philadelphia emergency rooms identified a propensity for physicians to discredit victims who disclosed domestic violence even after they had been trained to respond appropriately (Kurz & Stark, 1988). As late as 1991, only 20% of emergency departments in Massachusetts had a written protocol in place to identify domestic violence, and 58% reported that they identified five or fewer battered women a month, which represents a tiny fraction of research estimates (Isaac & Sanchez, 1994).

Some research suggested that the clinical response to abuse actually increased a woman’s entrapment in the abusive relationship. After failing to identify partner violence, clinicians treated a woman’s injuries symptomatically, which did little to address her underlying predicament. As abuse continued and she returned to the hospital, other problems began to appear on her medical record alongside injury—nonspecific pain, headaches, or somatic complaints, for instance. Typically, these problems were treated with sleep medications and antianxiety drugs; these medications were used subsequently by many in suicidal gestures or “cries for help.” Sometimes, women’s repeated help-seeking was mistaken for malingering. In these instances, physicians vented their frustration by applying pseudo-psychiatric labels, writing that the abuse victims were “frequent visitors,” hypochondriacs, or “hysterics.” The effect of applying these labels was to communicate to other clinicians that they should not waste valuable time on these women, which
isolated them further from vital resources. This reinforced the same message the abusive partner was giving the victimized patient: She was the problem, not him. Since the pills were given to her, clearly she was the crazy one. Her partner also had told her this was true. Without proper medical assistance, many women attempted to self-medicate using alcohol or drugs to relieve the stress in the relationship. Now, a doctor or nurse might recognize that she was “beaten by boyfriend,” but once a woman appeared with “alcohol on breath” or a similar issue, her behavioral adaptations were taken as the primary cause of any abuse-related injury rather than as the consequence of domestic violence. Thus, women were referred for psychiatric or behavioral treatment, often with their abusive partner as an identified caretaker. Given these realities, it was not surprising that women rated medicine the least effective of all interventions (Bowker & Maurer, 1987).
Reforming the Health System

As is true for reform in the societal response to abuse generally, so in health as well has reform been driven by a combination of grassroots activism, legislative initiatives, and changes in standards of practice (in this instance, those set by the professional associations to which health providers belong or by the associations that license hospitals and review their accreditation). Still, nothing we say in the following sections mitigates the influence of local markets, administrative decisions, and the ability to pay on the health system response to abuse. Despite trends toward more centralized ownership and administration of specialized medical practices, physicians—the critical decision makers at points of service—are still largely self-employed and, therefore, are not directly accountable for the quality of care provided by hospitals or the costs of care. Most mental health providers also are private practitioners with similar limits on accountability to central policy directives and cost restrictions.

The earliest medical responses to domestic violence relied on individual, hospital-based initiatives by nurses and social workers. In 1977, building on the success of hospital–community collaborations in establishing rape crisis teams, the Ambulatory Nursing Department of the Brigham and Women’s Hospital in Boston formed a multidisciplinary committee to develop a therapeutic intervention for abuse victims. The intervention at Brigham, like a parallel program at Harborview Hospital in Seattle, relied on a social service trauma team composed initially of volunteer social workers who met weekly with nursing staff. Although these largely volunteer efforts proved difficult to sustain, during the next decade, clinician-advocates, who often worked closely with shelter or other women’s groups in their communities, introduced freestanding domestic violence services at hospitals in Chicago, San Francisco, Philadelphia, Minneapolis, and many other cities.

Initial reform efforts emphasized developing domestic violence policies and protocols within hospitals and medical departments, primarily in emergency services, providing guidelines for practitioners at these sites and training health practitioners to respond more appropriately. In 1986, under its Family Violence Prevention and Response Act, Connecticut established the
Domestic Violence Training Project at the University of Connecticut’s Health Center, which was one of the first publicly funded projects established to train health professionals in domestic violence intervention. Other states hosted similar projects, including Minnesota, Pennsylvania, Alabama, Colorado, New Jersey, and Wisconsin. In 1990, through its Office of Domestic Violence Prevention, New York became the first state to require that licensed hospitals establish protocols and training programs to identify and treat victims of domestic violence. The New York office also placed domestic violence advocates in all New York City hospitals. In 1994, Florida passed legislation requiring 1 hour of instruction on domestic violence as a condition of licensing and recertification for health providers. Shortly afterward, California mandated that hospitals and clinics screen all patients for domestic violence and required health personnel to report individual cases to authorities. In the wake of these changes, the San Francisco–based Family Violence Prevent Fund (renamed Futures without Violence or FUTURES) and the Pennsylvania Coalition Against Domestic Violence selected six hospitals in California and six in Pennsylvania to test a new domestic violence resource manual for providers. Each hospital formed multidisciplinary teams (including a domestic violence advocate) and was given technical assistance to implement a comprehensive response. With funding from the Commonwealth Fund, the Domestic Violence Training Project (DVTP) mounted a similar initiative in Connecticut’s 11 federally qualified community health centers.

As the knowledge base about the significance of abuse developed, local initiatives with hospitals were supplemented by attempts to mobilize the public health system and private practitioners. An unprecedented Surgeon General’s Workshop on Violence and Public Health was convened by C. Everett Koop in 1985. This was followed by regional conferences on the same theme, as well as by a conference convened in Washington, DC, by the American Medical Association (AMA) and cosponsored by 50 medical, nursing, legal, and social service organizations. Working with the CDC’s National Center for Injury Prevention, Dr. Koop identified the unique importance of a health-care response. He wrote:

Identifying violence as a public health issue is a relatively new
idea. Traditionally, when confronted by the circumstances of violence, the health professions have deferred to the criminal justice system.... Today, the professions of medicine, nursing, and health-related social services must come forward and recognize violence as their issue. (Koop, 1991, p. v)

The workshop also emphasized the economic and social costs of violence and focused specifically on violence against women and children.

To the extent that private practitioners in the United States have responded to domestic violence, they have done so under the auspices of their professional associations. After a series of studies in Texas demonstrated that battering was a problem for many pregnant women, the American College of Nurse Midwives and the American College of Obstetricians and Gynecologists mounted national campaigns to educate their members. In 1991, the AMA followed suit, developing and disseminating diagnostic and treatment guidelines on child abuse and neglect, sexual abuse, domestic violence, as well as elder abuse and neglect. By the end of the 1990s, virtually every organization representing health professionals in the United States had identified domestic violence as a priority, some moved to action by advocacy groups within their profession. For instance, the American Nursing Association was pressured to adapt domestic violence as an issue by a newly formed National Nursing Network on Violence Against Women.

Many additional professional health organizations also took initiatives, including representatives for army medics, emergency medical personnel, psychiatrists and psychologists, dentists, pediatricians, and surgeons working with traumatic brain injury. Under the leadership of the AMA, a National Coalition of Physicians Against Family Violence was formed with institutional membership from more than 75 major medical organizations. The AMA’s initiatives also emboldened state medical societies and groups in Colorado, Connecticut, Ohio, Maryland, and several other states to distribute diagnostic, reporting, and intervention guidelines to their membership. Illustrating these initiatives was a Physicians’ Campaign Against Family Violence launched with a special issue on domestic violence by the Maryland Medical Journal. With seed funding from the state medical society, the Maryland program produced training materials, a physicians’ manual, and
patient information brochures, and the program stimulated legislation to develop onsite victim advocacy programs at four diverse hospitals.

In 1992, the AMA Council on Ethical and Judicial Affairs suggested that domestic violence intervention be rooted in the principles of beneficence and non-malfeasance. In the same year, the Joint Commission on the Accreditation of Health Care Organizations (JCAHO) required emergency and ambulatory care services to develop domestic violence protocols. In 1996, the standards were upgraded to include objective criteria to identify, assess, and refer victims of abuse. The JCAHO standards provided a significant boost to training. McFarlane and her colleagues (McFarlane, Christoffel, Bateman, Miller, & Bullock, 1991) found that the implementation of a program for health professionals in a Texas obstetrical service resulted in a statistically significant gain in knowledge of domestic violence. Of those who completed training, 86% stated they intended to assess for signs of abuse among pregnant women. More importantly, at the 6-month follow-up, approximately 75% of the participating health service centers were assessing pregnant patients for signs of battering. The combination of community outreach, public education, and health professional training was linked to a noted increase in calls to information centers by battered women who had been referred by a health provider. When nurse interviews replaced reliance on patient self-reports, identification of domestic violence increased 20%. Other studies reported as much as a 600% increase in identification after an initial training of health providers (McLeer & Anwar, 1989). In part, these gains reflected the sorry state of awareness when training began. Without an ongoing institutional commitment to provide resources of clinical intervention with domestic violence victims, the initial gains from training were hard to sustain.

Medical education was another arena that was vital to reforming the health system response. By 1993, 101 of the 126 US medical schools responding to a survey had incorporated material on domestic violence into required course material (Alpert, Tonkin, Seeherman, & Holtz, 1998). Other critical pieces of the health response included (a) major commitments to health research in rape and domestic violence by the NIMH; (b) the establishment of regional Centers for Injury Prevention and Control with funding from the CDC to conduct translational research on violence prevention, including domestic
violence prevention; (c) major funding commitments to domestic violence research and health interventions by private foundations such as the Commonwealth Fund and the Hilton Foundation; and (d) the designation of the San Francisco FUND (now called FUTURES) as a national center to disseminate information on domestic violence–related health issues under VAWA in 1994. Although the CDC had traditionally limited its role to surveillance, reporting, and epidemic control, in 1996, it launched a program to support Coordinated Community Responses to Prevent Intimate Partner Violence in several communities. Health-care institutions played a vital role in these collaborations.

For fiscal year 2000, $5.9 million was appropriated to support 10 projects administered by the CDC. In 2005, the reauthorized VAWA specifically targeted health professionals for support. VAWA recognized that,

Because almost all women see a health-care provider at least once a year, the health-care system is uniquely positioned to proactively reach out to women who are or have been victims of domestic or sexual violence. Health-care providers, if trained and educated, can find safety long before she can turn to a shelter or call the police. (National Task Force, 2005, p. 5)

Title V of the Act sought to strengthen the health system’s response with programs to train and educate health-care professionals about domestic and sexual violence, promote family violence screening for patients, and study the health ramifications of partner abuse.

Improvements in the health response to partner abuse over the last decade have mainly resulted from the dissemination and normalization of earlier initiatives in professional education, training, and patient inquiry. For example, it is standard practice in thousands of health facilities for patients to be asked some variation of “Are you safe at home?” or “Is someone hurting you or controlling what you do?” at all points of service. Another example is the Domestic Violence Health Care Partnership (DVHCP) in California. Operated through a partnership between FUTURES and the Blue Shield of California Foundation, DVHCP funds 19 teams comprising local domestic
violence organizations and health facilities to develop policy and clinical responses to domestic and sexual violence and to help advocates connect survivors with health services. Although primarily concerned with improving the criminal justice response, particularly to underserved populations such as immigrants and Native Americans, the latest reauthorization of VAWA (2013–2014) provided special support for medical and nursing examinations in sexual assault cases and funding through CDC, DOJ, HHS, and the Department of Education for research on best practices to combat and reduce domestic violence and to encourage “a comprehensive approach that focuses on youth, children exposed to violence, and men as leaders and influencers of social norms (SMART Prevention grants).”

The omnipresence of abuse victims across the spectrum of health services highlights the importance of rooting intervention in primary care. Primary care is predicated on longitudinal responsibility for patients regardless of the presence or absence of specific diseases, and the integration of physical, psychological, and social aspects of health into a holistic understanding of a patient’s needs. Apart from the specific issues raised for health care by abuse, we should remember that utilization by battered women is shaped by the same factors that shape utilization of health services generally, including local demographics and the physical, financial, and cultural accessibility of health care.

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In 2000, a joint task force headed by the US Attorney General and the Secretary of Health, Education, and Welfare issued an Agenda for the Nation on Violence Against Women. Among the 15 areas of focus, the health-care system was prominent. A 10-point summary of the Health Care Systems section of the Agenda is outlined as follows:

1. Conduct public health campaigns
2. Establish national task force on health and mental health care systems’ response to sexual assault
3. Educate all health-care providers on violence against women
4. Create protocol and documentation guidelines for health-care facilities and disseminate widely
5. Protect victim health records
6. Ensure that mandatory reporting requirements protect the safety and health status of adult victims
7. Create incentives for providers to respond to domestic violence
8. Create oversight and accreditation requirements for domestic violence and sexual assault care
9. Establish health-care outcomes measures
10. Dedicate increased federal, state, and local funds to improving the health- and mental health–care systems’ response to violence against women
National Health Resource Center on Domestic Violence

Created by the VAWA in 1994 and operated under the auspices of the San Francisco–based FUTURES, The National Health Resource Center on Domestic Violence (The Center) is funded to improve health care’s response to domestic violence.
The Center offers:

- Personalized, expert technical assistance via email, fax, phone, postal mail, and face-to-face at professional conferences and meetings around the nation. Contact us at health@futureswithoutviolence.org or call 415-678-5500.
- An online toolkit for health-care providers and DV advocates to prepare a clinical practice to address domestic and sexual violence, including screening instruments, sample scripts for providers, and patient and provider educational resources.
- A free e-Bulletin highlighting innovative and emerging practices in addition to well-documented and rigorously evaluated interventions.
- A free webinar series with expert presenters and cutting edge topics.
- A biennial National Conference on Health and Domestic Violence—a scientific meeting at which health, medical, and domestic violence experts and leaders explore the latest health research and programmatic responses to domestic violence.
- Online access to the Health Material Index.
The Major Challenge Ahead: Screening and Clinical Violence Intervention

The interrelated components of reforming hospitals and other health institutions include routine questioning about abuse, triage to patient-specific services if requested, in house champions to oversee the response, and ongoing provider trainings that address the importance of looking beyond violence, providing information regardless of observed risk, culturally sensitive and nonjudgmental support, addressing patient safety and documentation. With funding from the Commonwealth Fund, the DVTP completed a demonstration project that showed how a “training-the-trainer” strategy could implement this model with or without outside technical assistance from advocacy groups at Connecticut’s 11 federally qualified community health centers (Stark, 2010). One of the most successful comprehensive programs is Project Connect, a collaboration initiative operated by 11 Grantees and administered by FUTURES that has trained health providers to assess for and respond to domestic and sexual violence in more than 80 clinical settings. An evaluation by researchers at the University of Pittsburgh suggest that Project Connect reduces the risks for unplanned pregnancy, poor health outcomes, and further abuse.
Barriers to Identification

Despite extensive and often well-funded efforts to incorporate domestic violence into the professional education and training of health providers, widespread resistance remains to making the identification and management of partner abuse and its consequences—what we term “clinical violence intervention”—a part of routine patient care. One result is that the proportion of true positives who are appropriately cared for has lagged far behind investments in reforming the health response to abuse.

The limited progress in identification is not hard to understand. Some abused women are too frightened or too ashamed to admit their partner is hurting them. Moreover, many clinicians are reticent to ask about or confront abuse for the same reasons police were traditionally arrest-averse in domestic violence cases: They believe relationship violence is a private matter that falls outside their purview, that asking about relationship violence will open a Pandora’s Box, and that it is pointless to confront abuse because they can do little to stop it.

These explanations are unsatisfactory for several reasons. First, most abused women report they would welcome inquiries about abuse from clinicians and are forthright when asked in a confidential setting (Caralis & Musialowski, 1997). Second, although issues of patient confidentiality must be handled delicately, physicians and nurses frequently elicit accurate information about other personal matters such as sexual activity or parenting practices. Finally, physicians routinely screen for problems for which no effective therapies exist.

Another explanation for low rates of identification highlights the discomfort physicians and public health practitioners feel about intervening in abuse. Some clinicians believe intervention to help battered women means discounting the competing rights of husbands or involves them inappropriately in the politics of family life. Research confirms that abused women may not seek health care or disclose their abuse when they encounter providers who appear “uninterested, uncaring, or uncomfortable” about domestic violence (Campbell, Pliska, Taylor, & Sheridan, 1994). A recent
study among women seeking healthcare in UK primary care surgeries who had experienced physical and sexual abuse from a partner or ex-partner in the previous year found they wanted their doctors to ask them about partner abuse and refer them to help, but not demand they leave their abusers before they are ready (Malpass, Sales, Howell, Johnson, & Agnes-Davies, 2011). Identification rates remain low where questions about abuse are posed in a perfunctory way with little sensitivity to the context or risk involved in disclosure or no information is provided about what can be done if the patient reports abuse (O’Campo, Kirst, Tsamis, Chambers, & Ahmad, 2011).

The implied involvement with the criminal justice system or child protective services also makes some clinicians uneasy about clinical violence intervention. Nursing, social work, public health, and the allied health professions embrace more holistic concepts of health but are no less wedded to stereotypes that attribute blame to victimized individuals and preclude public advocacy where the roots of problems lie in politically charged issues such as sexual inequality.

Other obstacles to change are the status structure of medicine, its traditional male bias, its commitment to a narrow disease paradigm that minimizes so-called social problems, and the belief that partner abuse is such an ingrained facet of poverty that nothing can be done. Even when victims have financial access to health services, capitation arrangements and pressure for primary care providers to serve as gatekeepers can aggravate concern that asking about abuse will occupy more clinical time than these cases merit. Other challenges involve the absence of strong federal leadership in primary care or public health and the large number of families without adequate health coverage even after recent expansions of coverage under the Affordable Care Act. Taken together, it is easy to explain why a health problem that affects 20% or more of the adult female population has elicited a medical response that is uneven at best, even from those practitioners specializing in injury.
Screening

Health advocates hoped to sidestep resistance to identification by individual clinicians by making screening for partner abuse an official part of patient care. Routine screening has been endorsed by many associations of health professionals such as the AMA and American Nursing Association, as well as by JCAHO. Moreover, it seems an eminently sensible approach given the high prevalence of abuse, its significance for a range of health problems, the reluctance of doctors to identify the problem on their own, evidence that early and effective intervention could lead to dramatic cost savings, and the low probability of harm caused by screening.

Although it may seem surprising, proposals for routine, universal patient questioning about domestic violence continue to excite controversy. Organizations such as the US Preventive Services Task Force, the UK National Screening Committee, the WHO, and the Canadian Task Force on Preventive Health Care have either withheld support for such recommendations or opposed them. The reasons given for their opposition range from the claim that domestic violence is not a disease per se to the fact that its risk factors are complex. However, the key criticisms are that there is a paucity of evidence that screening tools are accurate, that their application improves health outcomes for abused women, or that the services to which identified victims are referred have been proved effective.

Since doing nothing about abuse violates the ethical imperative to inform all patients about the risks and available resources, most studies have compared screening to other types of intervention, such as questioning based on risk profiles or simply providing all patients with information about abuse. Another approach has been to assess health and service utilization before and after questioning about abuse. A 2012 review of 15 studies undertaken by the US Preventive Series Task Force that evaluated the accuracy of screening found that (a) screening instruments designed for health-care settings can accurately identify female abuse victims; (b) screening women for abuse can reduce violence and improve health outcomes (noting that there are important limitations in effectiveness studies); and (c) screening had minimal adverse effects on women, although some women experienced “discomfort, loss of
privacy, emotional distress, and concerns about further abuse” (Nelson, Bougatsos, & Blazina, 2012). By contrast, another survey of existing studies concluded that (a) although routine screening greatly increased identification, improvements waned with time; (b) asking one question was as beneficial as asking many; and (c) there was no evidence that improved identification led to better outcomes for victims (Ramsay, Richardson, Carter, Davidson, & Feder, 2002). One of the few randomized studies available reported that victims whose positive screen results were communicated to their physicians had no better outcomes than women who were simply given a referral card (MacMillan et al., 2009). Unfortunately, evidence is rarely provided in these studies about whether physicians actually used the information they got from the screen or how they did so. Moreover, the retention rate in the randomized study was too low to support its general conclusion: that many of those identified as abused were already aware of and using services and a debatable statistical method was used that neutralized the reduction in harms that were found. One major and unanticipated effect of the screen was that more than four times as many abuse victims who were questioned discussed violence with their physicians than abuse victims who were not screened (44% vs. 10%). If supported by other research, this finding suggests that routine questioning is a sound basis for the ongoing care of abused patients. None of these studies measured outcomes linked to health costs such as whether victims who were referred for support were more or less likely than those not questioned or referred to reduce their overall use of health services.

Universal screening presents a shift in clinical practice from the more familiar professional norm of targeted screening, which involves asking only those individuals perceived by clinicians as high risk, the approach favored by many critics of routine inquiry, including the WHO. However, abuse is the context for so broad a range of health problems that the list of risk factors is virtually identical to women’s major complaints, particularly at sites serving poor or disadvantaged populations, making it far easier and more cost effective to take a generic rather than a risk-based approach to questioning. Moreover, an approach that relies on risk factors is unlikely to pick up early onset abuse or cases in which nonviolent coercive control tactics are the major means of oppression or those characterized by frequent but low-level violence.
If the weight of evidence supports the introduction of a universal screen for partner abuse, opponents of screening have raised two important issues: (a) the appropriate measure of success, and (b) the limits of a screening protocol that is not complemented by sensitive case management, referral, and accountability.

Many female patients are comforted when their abuse is acknowledged, some are newly made aware of service options, and some will see questioning about abuse as opening a door through which they can escape. In general, however, given the low spontaneous cure rate of partner abuse, the complex problem profile it elicits in a significant minority of victims, the comprehensive nature of the oppression involved (particularly in cases of coercive control), and the limited efficacy of available interventions in ending abuse, it seems extremely unlikely that routine inquiry will result in major changes in women’s short-term health status, let alone end abuse. Clinicians routinely question patients about a family history of heart problems or other diseases as well as about a range of behaviors such as smoking or sexual activity. These questions often have no immediate benefit for patients or, as is the case with asking about smoking, have not been shown to lead to beneficial outcomes. The principal function of these questions is to broaden the frame within which clinicians understand a patient’s complaints, risks, and test results. Similarly, knowledge of abuse bears on how clinicians interpret and respond to a myriad of problems secondary to abuse, as well as to patient behaviors within the medical context—such as frequent visits, missed appointments, or reluctance to discuss the source of injury—to which they might otherwise apply stigmatizing labels. Thus, measuring how screening affects patient care is as important as assessing its impact on domestic violence. Domestic violence screening is a form of patient and clinician education; this fact is illustrated by the dramatic increase in physician–patient discussions about abuse in the Canadian study. It also provides an institutional data set to help administrators allocate scarce resources and a baseline against which to judge the efficacy of intervention. Perhaps more importantly, although significant harm reduction might not result from hospital screening, compelling evidence suggests that not asking about or responding to domestic violence leaves victimized women at risk and elicits inappropriate and often harmful responses to the secondary effects of abuse from medical care.
Critics make a convincing case that routine inquiry in itself may function as a form of disguised betrayal unless it is embedded in a comprehensive program of clinical violence intervention. A recent review of major studies concluded that screening can be “very effective and more patients can be helped” if the program has institutional and senior administrative support, questions are standardized, patients are questioned privately, and the identification of partner abuse prompts services or referrals (O’Campo, Kirst, Tsamis, Chambers, & Ahmad, 2011).

Illustrating this approach, the San Francisco–based FUTURES developed and helped establish screening guidelines in diverse settings as part of a National Health Initiative demonstration project. Among several dozen other initiatives by state medical societies, hospitals, and local nonprofits, two stand out as exemplary—Woman Kind in Minnesota and DOVE, which is known as Developing Options for Violence Emergencies, in Akron, Ohio. Successful screening programs had links to such support services as mental health care, safe shelters or transitional housing, health care, employment assistance, and legal services (O’Campo et al., 2011). The provision of support services is another important outcome measure in screening research.

Complementing generic screening at primary and emergency care sites are programs that add questions, education modules, and safety planning about partner violence to protocols to prevent behavioral problems associated with abuse. For instance, based on evidence about the importance of partner abuse as a context for female suicide attempts, Kaiser Permanente of Northern California, an HMO with more than 3 million members and 20 medical centers, has added questions about partner violence to a new program of suicide prevention for patients who are not involved in mental health clinics (Sederer, 2011).

Who should do the questioning when, where, and with what questions are other issues in screening. Physician-oriented educational seminars do not seem to improve identification rates significantly, even when the annual physical is the setting selected for questioning (Soglin, Bauchat, Soglin, & Martin, 2009). By contrast, when nurses ask patients about abuse at check-in, the documentation of lifetime abuse improves substantially, although current abuse is often not reported. In a Canadian study, Thurston and colleagues
(2009) found that 39% of all patients were screened on average and that the screening rate had risen to 52% during the last month of the 1-year study. Importantly, 16% of those screened acknowledged abuse, which is approximately the expected rate. In part, the improvement over time was a result of increasing comfort among nurses with questioning. A large-scale study found that patients preferred written and online questionnaires to questioning from doctors or nurses. While patients provided more information on the self-administered questionnaires, however, there were no differences in the overall prevalence of abuse reported (MacMillan et al., 2006). Another alternative is the audio-based questionnaire. If they are interviewed, however, women express a preference for a female screener of their own race and for screeners who are in their age range, although age does not seem to concern older patients (Thackeray, Stelzner, Downs, & Miller, 2007). Only 7.9% say they would be angry or offended if they were questioned by their health-care provider about intimate partner violence. Within particular services, screening can help identify high-risk subgroups. For instance, in the pediatric setting where screening is readily accepted, mothers who miss their well-child appointments have been identified as at a risk for abuse (Phelan, 2007). However, victimized middle-class mothers might overuse well-baby services, reflecting the demands of a controlling partner.

Recent work on screening suggests that questioning patients only about physical violence might exclude many victims of coercive control, with approximately one in four women who present with the effects of being abused having never been physically assaulted (Lischick, 2009). Few screening tools contain specific questions about these broader dimensions of abuse and the few that have been tested in a health setting seem to screen out non-abused women more effectively than they identify victims. Asking women general questions about whether they feel “safe at home,” for instance, does not help identify women who experience low levels of physical violence at home. (Zweig, Schlichter, & Bur, 2002).
Ten Steps to Eliciting Accurate Information of Partner Abuse: What Female Abuse Victims Tell Us

1. Provider is non-judgemental
2. Some type of protection is available
3. Injuries and other forms of abuse are documented
4. There is an immediate response
5. The complexity of the situation is acknowledged
6. They feel they control the encounter
7. Options are provided (but not dictated)
8. Disclosure is discretionary
9. Questioning occurs at each visit
10. There is an open-door policy that makes help available as needed
Mandatory Reporting

Another challenge is whether health providers should be required to report in abuse cases. Hoping to use reporting requirements to improve accountability and induce hospitals to invest in training, Connecticut and Minnesota required their hospitals to compile monthly statistics on their census of battered women. Connecticut and Minnesota quickly abandoned these requirements, however, the former because reported statistics were embarrassingly low and the latter because of the implication that reporting implied a state obligation to protect victims. US states mandate that clinicians report child abuse as well as injuries caused by gun shots, stabbing, or other violence to police. California, Colorado, and four other states specifically extend this mandate to include partner violence while Oklahoma, New Hampshire, and Pennsylvania specifically exempt clinicians from reporting such injuries. Supporters of mandated reporting believe they facilitate prosecution of batterers, encourage clinicians to identify abuse, and improve data collection. Opponents argue that such policies reduce patient autonomy, compromise patient confidentiality, can increase women’s danger, and can lead to a reluctance on the part of some victims to discuss abuse with their clinicians. Interestingly, no increase in medical reports of domestic violence followed the introduction of California’s mandated reporting requirement, possibly because neither clinical identification nor compliance are standardized or monitored. Current mandated reporting requirements foster the mistaken equation of partner abuse with severe injury and increase the reluctance of some clinicians to ask about abuse. After a review of existing practices for FUTURES, Ariella Hyman (1997) concluded, “the implications of mandatory reporting for patient health and safety as well as ethical concerns raised by such a policy argue against its general application” (p. 11).
Clinical Violence Intervention

Whatever kept individual clinicians or hospitals from responding appropriately to battered women in the past, experience suggests that health providers are willing to take violence as their issue when required behavioral changes are incremental and consistent with existing values, practices, and skills. The three major aims of clinical violence intervention are to: (a) convey the importance of partner abuse as a health issue to all patients; (b) incorporate an understanding of partner abuse into treatment and patient management strategies; and, (c) through patient education and referral, prevent the progression of partner abuse by restoring a woman’s sense of access to and control over her material resources, social relationships, and physical environment. This process is referred to as empowerment.

The introduction of a brief screen into the basic interview with all female patients avoids the problem of relying on severe injury before identifying abuse. In one primary care setting, when a single question, “At any time has a partner ever hit you, kicked you, or otherwise hurt you?” was added to a self-administered health history form, domestic violence identification increased from 0% (with discretionary inquiry alone) to 11.6% (Freund, Bak, & Blackhall, 1996). Adding questions that tap elements of coercive control as well as physical or sexual violence helps identify victims of coercive control, some of whom may not have been physically assaulted. Such questions might ask whether someone is “controlling what you do,” “stalking you,” “doing things that make you afraid,” “taking your money” or “making you feel like a servant or slave.” After identification, a confidential assessment of service needs can progress from validating a woman’s concern to taking a careful history of adult trauma. In addition to getting at the history of abuse-related violence, the trauma history extends to the dynamics in the relationship that increase a woman’s vulnerability to injury and other problems such as patterns of control, isolation, degradation, exploitation, and intimidation. It would also include a review of medical, behavioral, or mental health problems that might be associated with abuse, and consideration of risk to children in the home. The assumption throughout is that that observed behavioral or health effects of abuse are the cumulative result all that has come before as well as of the current situation and a legitimate focus for
ongoing patient management.

The strategy of supportive empowerment, which emphasizes expanding a woman’s options and facilitating individual choices, contrasts markedly with the protective service approach taken to abused children or victims of elder abuse, as well as with the strategies used to resolve family conflicts such as parenting education or couples’ counseling. Supportive empowerment guides the health provider to safety planning with as opposed to for the victim, proceeding from how she has managed so far to what she views as the next step. Common interventions available involve shelter or other emergency housing, legal services, police involvement, treatment for substance abuse, ongoing physical therapy, job counseling, continuing education, and welfare or other emergency assistance. The overall strategy of managing the abuse as well as planning for safety should be re-evaluated at each visit.

As assessment tools are developed to help clinicians distinguish new from ongoing cases of partner abuse, it will be possible to evaluate which approaches to clinical management are most helpful. For instance, one study showed that three counseling sessions with pregnant and postpartum women led to greater reductions and violence exposure and improvements in overall maternal health than simply providing victims with a card identifying local services (Parker, McFarlane, Soeken, Silva, & Reel, 1999; McFarlane, Soeken, Reel, Parker, & Silva, 2007). Even more impressive results have been reported for home-visitation programs that incorporate a domestic violence component. Thus, a Hawaiian study of more than 600 new mothers found those who received weekly in-home visits from counselors after giving birth were less likely to report being physically abused by current or former intimates compared to mothers who did not have home visits. The mothers trusted the counselors and the relationship provided social support and decreased isolation (Bair-Merritt et al., 2010). While a significant reduction in violence persisted beyond the termination of the home visits, there was no comparable reduction in verbal or other forms of nonviolent abuse, possibly because strategies for dealing with coercive control have yet to be developed. Similarly, there is some evidence that coordinating or integrating substance abuse treatment with referrals to BIPs reduces partner violence more significantly than standalone or serial referrals to these services (Stuart, 2005).
At the institutional level, clinical violence intervention builds on two principles: mainstreaming, or making clinical violence intervention part of routine care, and normalization, or building on the skills and patient education techniques clinicians successfully employ in other medical or behavioral health areas.

We have long understood that changing one facet of the system’s response to domestic violence without changing others does little to help victims of partner violence and might even make things worse. An outstanding issue in moving the health response forward is how to broaden the traditional perspective of health care to recognize the strengths of parallel systems with alternative and even contradictory perspectives while maintaining its core values and commitments. In practical terms, this issue is addressed through collaboration with shelters, police, and other community groups in a coordinated community response.
Summary

This chapter has reviewed the health consequences of domestic violence as well as the history and status of the health-care response. In contrast to the criminal justice system, which recognized domestic violence early on even if it minimized its significance, the health-care system failed to identify the problem. Early research on the health consequences of abuse emphasized its importance as a source of female injury. However, it gradually became clear that abused women suffered disproportionate rates of a range of medical, mental health, and behavioral problems in addition to injury and that these problems typically emerged in the context of frequent, but generally low-level, violence combined with other tactics designed to isolate, intimidate, and control a partner. A major challenge today is how to expand the medical response to domestic violence to incorporate the dynamics and consequences of coercive control.

From early interventions mounted by volunteer teams of nurses and doctors in the hospital emergency room, the health response expanded to include virtually every major organization of medical, nursing, and public health professionals; the incorporation of domestic violence into the education and training of health professionals; and the development of protocols to identify, assess, and refer victims of partner abuse in hundreds of hospitals and other health-care organizations. These reforms have been supported by federal laws such as VAWA, state policies, initiatives by state and national professional organizations of health-care providers, and technical assistance from nonprofits such as FUTURES.

Despite these reforms, the health system faces many challenges. These include how to look beyond violence by implementing all-inclusive definitions of partner abuse that extend to coercive control; how to normalize and mainstream screening for partner abuse in ways that lead to demonstrable improvements in patient care; how to discriminate new from ongoing cases of partner abuse and adapt patient management strategies accordingly; and how to hold all providers accountable for considering women’s safety and autonomy at home and in relationships as part of their well-being. Understanding what it means to treat patients in the context of violence—
clinical violence intervention—remains elusive.

Reforming the health response requires that we come to grips with what it means to treat health problems in the context of partner violence by incorporating clinical violence education into the education and training of health professionals. Screening tools and intervention protocols must be put in place that reflect practice shown to be efficacious. However, as with policing, reforming the health response involves much more than merely mandating that health providers change their behavior. It extends to confronting an institutional culture that has been shaped by many of the same sexist beliefs about women held by society generally, as well as a practice paradigm (in this case the medical model) that views societal problems through the narrow prism of their biomedical, behavioral, and mental health manifestations, making it hard to address root causes. Although the health system has much to learn from partnering with criminal justice and community-based services, it also has much to teach, particularly about what it means to take a holistic and all-inclusive approach to a problem such as domestic violence.
Discussion Questions

1. Describe the health needs of battered women.
2. Why is injury a poor marker of abuse? Which markers are more appropriate?
3. Compare the appropriate definition of partner abuse in a health setting with the legal and criminal justice definitions of domestic violence.
4. Why is screening for domestic violence not sufficient, in itself, to improve patient care?
5. How should the effectiveness of routine inquiry about partner abuse be measured?
6. What does it mean to “normalize” and “mainstream” clinical violence intervention?

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Domestic Violence, Children, and the Institutional Response
Chapter Overview

This chapter turns from adult victims and offenders to the children in these households and the response to these children and their parents by the child welfare system (CPS) and the family court, the two major institutions in our society responsible for child protection. While police involvement in these cases is not discussed, few experiences touch officers more deeply than observing children in homes where abuse has occurred.

The bases for this chapter are two considerable bodies of research: empirical research on child exposure and descriptive work critical of the institutional response to so-called dual-victim families. The first and by far larger body of work shows that children are co-victims in a substantial proportion of domestic violence cases and documents the short-term and even long-term harms that may result. We review new evidence that bears on the effects of childhood exposure from the long-running Adverse Childhood Experiences (ACE) study and from neuroscience. Much of the early work on child exposure was flawed methodologically; exaggerated the emergent nature of the harms caused by exposure; ignored protective and resiliency factors; and failed to address the pathways to harm in these cases, implicitly blaming the non-offending mother for her child’s predicament rather than the offending partner. We review the literature on the dynamics surrounding child maltreatment in these cases; the risk, developmental, and resiliency factors that shape child outcomes; the capacity of battered women to “mother through domestic violence,” and the pathways to child harm in abuse cases.

The second body of work we review highlights the gender, race, and class biases that blinded CPS and the family court to the realities of domestic violence and coercive control and that often led to responses (such as foster placement or the assignment of child custody to abusive fathers) that were frankly punitive and often dangerous rather than ameliorative or protective. To capture the standpoint of protective mothers and fathers in these cases, we draw on the “Three Planets” model of the juvenile, family, and criminal courts as developed by Hester (2009) and describe the “battered mother’s dilemma” created when victims and their advocates attempt to negotiate for their own and their children’s safety in this complex universe of contradictory
requirements and procedures. We end with a discussion of the policy, institutional, and program reforms designed to incorporate knowledge of domestic violence, coercive control, and their effects on children into more effective responses.
What About the Children?

As part of the YTS (described in Chapter 13), Evan Stark, a coauthor of this text, and Anne Flitcraft reported that fully 45% of the mothers of abused or neglected children “darted” by pediatricians at Yale–New Haven Hospital were being battered; that the same men who were abusing the mothers also bore primary responsibility for harming the children; and that, even when the level of injury to the child was the same, clinicians were far more likely to refer the children of battered mothers to child protective services (CPS) than the abused children of non-battered mothers (Stark & Flitcraft, 1988). These findings suggested that domestic violence might be the most common context for child maltreatment and challenged a common myth that child abuse in domestic violence cases was part of a chain reaction: man beats wife, wife beats child, and child kicks dog. At the time, domestic violence received even less official recognition by CPS than it did in the health system. The Yale research also touched on three themes that would prove crucial to subsequent research: (a) the significance of domestic violence for children’s well-being; (b) the establishment of the pathways to harm in these cases; (c) and the design of evidence-based interventions that fixed accountability on perpetrators instead of non-offending mothers.

In the last three decades, several thousand research monographs, reports, and books have explored every conceivable aspect of children’s experience of domestic violence, including its effects on their physical, psychological, cognitive, and social well-being. Oddly, however, estimates of the number of children who are abused, exposed, or otherwise victimized by domestic violence by adults remain wildly discrepant. Population surveys, CPS data, studies at service sites, and reports from abused mothers have yielded estimates that children are victimized in anywhere from 6.5% to 82% of domestic violence cases and that the number of children affected in the United States is between 3.3 million and 10 million (O’Keefe & Lebovics, 1998; Rosenbaum & O’Leary, 1981; Straus & Gelles, 1990). Estimates of the proportion of cases in which domestic violence is the context for child abuse also vary widely. For example, domestic violence is reported to be the context of between 19% and 60% of the cases in which child abuse or neglect is identified by the child welfare system (Edleson & Beeman, 2000; Hangen,
These different estimates reflect another troubling reality, the failure to reach consensus on a single definition of domestic violence or child maltreatment, or which undesirable outcomes should be considered “harms” attributed to domestic violence and managed therapeutically or otherwise.

Nothing we say in this chapter is meant to deny two obvious truths: all children in homes where a parent is abused are exposed to some degree and all children so exposed are harmed to some extent. Having acknowledged these realities—which we document below—what then? Are these harms sufficiently widespread and serious to justify a generic intervention comparable with mandatory arrest policies, for instance? A review of the literature in this area concluded “living with the abuse of their mother is... a form of emotional abuse” (Holt, Buckley & Whelan, 2008). In the absence of physical abuse or neglect, should exposing children to domestic violence be defined as a form of child abuse with all that this implies for institutional intrusion in family life? Should child welfare or the juvenile or family court continue to privilege child protection even if this means leaving an adult victim to fend for herself? Or, conversely, if the harms associated with child exposure are found to be no different than the outcomes of the death of a parent, a divorce, or other adverse childhood experiences that rarely prompt outside intervention, can we afford to assume that abused women remain good and protective parents? Are there any circumstances in which a mother whose autonomy has been quashed by coercive control or domestic violence should be held legally responsible for harms to her child caused by her abusive partner? What criteria should family courts apply to custody or visitation when they have evidence that a parent has abused a partner physically or otherwise? Should these criteria change when the abuse has caused the non-offending mother to develop cognitive, behavioral, or psychological problems that may compromise her parenting? This chapter will provide a factual basis for debating these questions.

Even the lowest estimates of how frequently children are harmed by domestic violence suggest that the challenge facing those responsible for protecting or caring for children is formidable. Like the police response, the initial response by the child welfare and the family court systems to the news about domestic violence was denial. During the ensuing decades, these systems
have generally acknowledged that domestic violence puts children at risk and have devised policies and programs designed to make special protections available for dual-victim families. Today, most child welfare systems provide domestic violence training for their staff. The same is true of judges who sit in family matters in many states. Have these reforms been effective, and if not, why?

The first section of this chapter provides a broad overview of the nature and consequences of children’s exposure to domestic violence. Early studies in this area documented the overlap between domestic violence and child abuse, highlighting the risk that children could be injured deliberately or inadvertently during a domestic dispute as well as the consequences of witnessing the abuse of a primary parent. Since this work was published, a large body of research has described children’s experiences of parental violence as multifaceted, identified many scenarios in which child abuse and domestic violence occur together, and assessed the short- and long-term effects of domestic violence exposure on children’s well-being. As our knowledge base has expanded, the focus on witnessing violence has been supplemented by an emphasis on exposure, which is a broader term that encompasses the myriad ways in which children experience partner abuse. In addition to a child’s visual and auditory perception of domestic violence, exposure includes children’s intervention to protect a victimized parent, suffering physical abuse at the hands of a victim as well as of an offender, and being enlisted by an offending partner in the coercion or control of a partner. Children often become co-offenders as well as pawns in the extension of coercive control during a postseparation legal fight. They also are harmed as a secondary consequence of harm to their primary parent or because an offending parent has been removed from the family because of an arrest or a protective order, for instance. Much of the research on how children experience domestic violence comes from psychology. We have tried to make this work accessible to students with little background in psychology.

We close the first section by discussing new directions for research. The expansion of our understanding of partner abuse has raised a concern that researchers also need to assess how children are affected by exposure to forms of coercion and control other than physical assault. Meanwhile, the
emphasis on child victimization has now been complemented by interest in resiliency factors in children, how batterer intervention and other counseling programs for offenders can be extended to include education about fathering and research on the capacity for female victims to mother through domestic violence despite harm to themselves (Hester, 2004). There is a consensus that all children in homes where domestic violence occurs are affected to some extent, even when their parents believe they are not. These effects extend to children who are too young to verbalize their experience. Evidence from neuroscience about how the developing brain is affected by exposure is described, though we remain skeptical about some of the conclusions drawn from this work. No matter how benign providers may believe their services are, all interventions change family dynamics, often in unanticipated ways and often in ways that do more harm than good. So, it is important to weigh the relative benefits of dramatic interventions such as the removal of children to foster care against their risks (such as the trauma associated with removal or abuse in foster care) as well as against the risks of nonintervention or interventions that support victims and their children as a unit. Key considerations here are a child’s resiliency and a victim’s capacity to mother through domestic violence, which are two issues that have received only limited attention from researchers. Whether to help child victims of domestic violence is not the question. The issue is how to do so without doing more harm than good.

Part II considers the response to domestic violence by the child welfare system. Interestingly, more than a century ago, the agencies responsible for children’s welfare approached domestic violence, child abuse, and child sexual abuse as part of a single constellation of illegitimate power exercised by men (Gordon, 2002). These so-called brutes often were arrested or otherwise removed from their families, and their wives and children were given public or charitable support. In the decades between the end of World War I and the establishment of statewide child protection services in the 1960s, domestic violence and child sexual abuse had largely disappeared from the reform agenda. During this period, child abuse and neglect was redefined as a result of environmental stressors such as poverty, behavioral problems (such as alcohol or drug abuse), and deficits in parenting. The appropriate response was deemed to involve service rather than criminal justice intervention. Mothers were the targets of these services rather than the
abusive fathers or father-surrogates. By the late 1960s, the proportion of child welfare cases involving neglect surpassed those involving physical or sexual abuse, and interventions consisted of some combination of individualized counseling and support for parenting (such as parenting classes), with foster placement as a frequently used second option. Except for the small proportion of cases in which sexual abuse is the identified problem, men still remain largely invisible in the child protection system, with many jurisdictions continuing to classify cases in the mother’s name even if she is deceased. Starting in the 1980s, however, the advocacy movement challenged the federally mandated child protection agencies to change their purview once again to include the risks posed to women and children by abusive men in the home.

Part III deals with the family court response in disputed custody cases; the exposure of children to domestic violence has become a major source of controversy in this area. In most divorces that involve children, including those precipitated by abuse, couples arrive at custodial arrangements by either agreement or default. Partner violence is a factor in anywhere from one third to one half of the cases in which custody is disputed (Stark, 2002). Based on evidence that domestic violence perpetrators pose an ongoing risk to their former partners and children even after separation or divorce, advocates have pressured family courts to limit access by abusive parents to their former wives or children.

The state is the plaintiff in criminal cases, and justice is sought by assessing the guilt or innocence of an accused party. However, in custody cases, justice issues resolved through fact finding are secondary to the mandate to identify and support a child’s best interest. The prevailing conceit in these proceedings is that children are best served when their access to both parents is preserved to the maximum extent feasible. Indeed, 17 states plus the District of Columbia have statutory presumptions that favor joint custody (Bartlett, 1999). Given this mandate, it is not surprising that family courts regard claims of domestic violence with skepticism.

Domestic violence training for child welfare and family court personnel is now ubiquitous, and in most states and hundreds of communities, these systems have officially acknowledged domestic violence and many have
devised specialized protocols or programs to respond to dual-victim families. Courts in most states are required at least to consider domestic violence as a factor in custodial assignment, and some state courts presume domestic violence victims will receive custody unless they are shown to be unfit. But have the prospects for victims and their children substantially improved as a result of these reforms?

The last section of the chapter describes the “battered mother’s dilemma” created when the criminal court, family court, and child welfare proceedings send conflicting and even diametrically opposed messages about what must be done to preserve safety. An example of this is when child welfare threatens that a victim might lose her children if she allows her abusive partner access, while the family court orders her to provide him access under the threat of contempt. So often do the responses to domestic violence of the various judicial venues differ or conflict that one observer has described these systems as separate “planets” (Hester, 2009).
Domestic Violence and Children’s Well-Being

The most widely researched and publicized effects of domestic violence for children involve its association with child abuse, child sexual abuse, and the psychological trauma of witnessing the abuse of a primary parent. The effects of exposure can also be profound and long lasting even when children are not assaulted and do not witness the abuse directly. Los Angeles’ Dodgers’ manager Joe Torre and his siblings were never assaulted by their father and never actually saw him beat their mother, but they overheard his rages throughout their childhood. On the Web site of Safe-at-Home (http://www.JoeTorre.org), the foundation that Torre started to help children exposed to domestic violence, he describes how just seeing his father’s car in front of his house filled him with fear, made him a “very nervous child,” and caused him to hide at a friend’s house rather than return home after school.

Domestic violence harms children in three ways. First, children are harmed directly, as an immediate consequence of an assault on them or their primary parent. Second, children suffer indirectly, as a secondary consequence of exposure to adult partner abuse or because of its effects on or consequences for caretakers. Last, because of modeling or a related form of learning, children may adopt the negative behaviors to which they have been exposed.
Child Abuse

Early research revealed a significant overlap between domestic violence and child maltreatment. Whether we start with battered mothers or with samples of children darter for abuse or neglect, domestic violence might be the most common context for child abuse and neglect. Stark and Flitcraft (1996) reviewed the medical records of all mothers whose children had been darter for suspicion of child abuse or neglect at Yale–New Haven Hospital during a single year. Forty-five percent of the mothers in the sample had a documented history of being battered. Compared to the children of non-battered mothers, the children of battered mothers were more likely to have been abused physically (rather than neglected) and to have been abused by their father or a father substitute, who was typically the same man who was abusing the mother. Indeed, whereas the battered mothers were more likely than the non-battered mothers to be responsible for a child’s abuse, abusive fathers or father substitutes were three times more likely to have abused the children than in cases where domestic violence against the mother was not identified. A replication of this study at Boston City Hospital’s pediatric department reported that the mother was battered in almost 60% of the cases (McKibben, Devos, & Newberger, 1989). Since this early work, more than 30 well-designed studies using a conservative definition of child abuse showed a robust link between physical and sexual child abuse and domestic violence, with a median co-occurrence of 41% and a range of 30% to 60% (Appel & Holden, 1998; Fantuzzo & Mohr, 1999; McCloskey, Figueredo, & Koss, 1995). Equally important is the link between woman battering and sexual abuse.

In addition to being abused, children are frequently harmed during an assault on a mother, either inadvertently (while she is holding an infant for instance) or when they try to intervene. One large, multicity study found that children were involved directly in adult domestic violence incidents from 9% to 27% of the time (depending on the city) and that younger children were disproportionately represented in households where domestic assaults occurred (Fantuzzo, Boruch, Beriama, Atkins, & Marcus, 1997). The dynamics in these cases often involve children trying to referee, rescue their mother, deflect attention to themselves or otherwise distract the abuser,
protect younger siblings, or call for outside help. Crenshaw (1991) reported that 63% of all young men between the ages of 11 and 20 years who are imprisoned for homicide have killed their mothers’ batterers.

The seriousness of injury involved in these cases cannot be determined with certainty. In Connecticut, according to a report by the Connecticut Department of Public Safety (1999), children are identified as “involved” in approximately 17.6% of the incidents in which police were called to a domestic violence scene, but offenders were charged with risk of injury to children in 441 of 15,060 incidents (slightly less than 3%). By contrast, a study of child welfare cases involving domestic violence in New York City found that 12.7% of the women suffered medically significant injuries and an identical percentage of children suffered injury as well (Mitchell-Herzfeld, 2000). Because domestic violence in a relationship often involves dozens and sometimes hundreds of assaultive incidents, we can conservatively estimate that children are physically injured in between 25% and 30% of domestic violence cases. Estimates based on interviews with women in shelters are considerably higher.
Child Sexual Abuse

The overlap between domestic violence and incest or child sexual abuse also is widely documented. A male batterer is approximately four to six times more likely than a non-batterer to abuse his children sexually. Conversely, incestuous fathers are more likely than other fathers to abuse their wives (Paveza, 1988). Truesdell, McNeil, and Deschner (1986) reported that 73% of the mothers of incest victims had been physically abused, which is approximately the same proportion as is found for fathers who physically abuse their children. In a historical study of the records of the Massachusetts Society for the Prevention of Cruelty to Children, Linda Gordon (2002) reported that 38% of the incest victims were the daughters of mothers who also had been abused. When researchers reviewed the medical charts of 570 children of battered mothers, they found that almost all (93%) had been exposed to domestic violence and that 41% had been physically abused, almost all by the same man who was abusing their mother. Eleven percent also had been sexually abused (Avery, Hutchinson, & Whitaker, 2002).
Witnessing

Much of the research on children’s response to domestic violence focuses on the psychological, behavioral, and cognitive harms caused by witnessing parental assault (Margolin, 1998). In an analysis of information from interviews using the ACE questionnaire (excerpted later in this section) with 26,229 adults in five states, the CDC estimated that children had witnessed domestic violence in 16.3% of US households, a figure acknowledged to be conservative (Centers for Disease Control and Prevention, 2011). The NatSCEV, a nationally representative telephone survey of the victimization experiences of 4,549 youth aged 0–17, created by the Office of Juvenile Justice and Delinquency Prevention conducted between January and May 2008, reported that almost as many children were exposed to psychological violence between parents as physical violence during the sample year (5.7% vs. 6.6%) and during their short lifetimes (16% vs. 17.9%). Witnessing accounted for 65% to 86% of all exposure. Men, mainly fathers and then non-cohabitating boyfriends, were the identified perpetrators in 78% of the intimate partner violence incidents with the percent of male perpetrators increasing with the level of violence (Hamby, Finkelhor, Turner, & Ormrod, 2011). Court statistics reveal that children were present in 36% of the violent incidents that were charged in state courts in 16 large urban counties in 2002. Of these children, 60% specifically witnessed the violence (Smith & Farole, 2009).

It must be assumed that any child in a home where abuse occurs has witnessed the use of coercion and control tactics, particularly when we consider the repeated and ongoing nature of violence and control in these relationships. Although 70% of abused women report their children had witnessed their father’s violent behavior, adults dramatically underreport children’s exposure. As Jaffe, Wolfe, and Wilson (1990) found, children often provide detailed recollections of events they were not supposed to have witnessed. Supporting this finding, O’Brien, John, Margolin, and Erel (1994) found that 78% of the children in a community sample reported observing violence by fathers against their mothers when at least one parent reported that no violence occurred or that their children had not viewed such events.
Most children who are exposed to domestic violence do not suffer significant long-term harm as a result. Still, children who witness domestic violence have a considerably higher risk of experiencing difficulties than those who are not exposed. These difficulties can be grouped into the two major categories associated with recent exposure: (a) behavioral and emotional functioning and (b) cognitive functioning and attitudes. Children who witness domestic violence exhibit more aggressive and antisocial behaviors (externalized behaviors) as well as fearful and inhibited behaviors (internalized behaviors) when compared with nonexposed children (Fantuzzo et al., 1991; Hughes, Parkinson, & Vargo, 1989). Exposed children also show lower social competence than other children (Adamson & Thompson, 1998) and show higher than average anxiety, depression, trauma symptoms, and temperament problems compared with children who were not exposed to violence at home (Maker, Kemmelmeier, & Peterson, 1998). These are many of the same reactions classically identified with physical or sexual abuse. Indeed, some research suggests witnessing is more harmful than child abuse, particularly for younger children, because the anxiety associated with harm to a protective parent or fear of the unknown can be even more damaging than physical harm. Other problems identified with witnessing include low self-esteem, social withdrawal, and depression; lower cognitive functioning (and poor school performance), lower verbal and quantitative skills, and limited problem-solving skills; poor peer, sibling, and social relationships; lack of conflict resolution skills; conduct disorders, generally high levels of behavioral problems, disobedience, and psychopathology; impaired social problem skills; trauma-related symptoms; and belief in rigid gender stereotypes (Fantuzzo & Mohr, 1999; Stark, 2009).

The relationship of the child to the violent adult influences how a child is affected by witnessing abuse. A study of 80 shelter-resident mothers and 80 of their children revealed that an abusive man’s relationship to a child directly affects the child’s well-being without being mediated by the mother’s level of mental health (Sullivan, Juras, Bybee, Nguyen, & Allen, 2000). Violence perpetrated by a biological father or stepfather has a greater impact on a child than the violence of non-father figures (e.g., partners or ex-partners who played a minimal role in the child’s life). Researchers believe “there may be something especially painful in the experience of witnessing one’s own father abuse one’s mother” (p. 598).
Some research indicates that the effects of witnessing domestic violence differ depending on whether the exposed child is male or female. Whereas increased aggression and behavioral problems have been identified among exposed children regardless of sex, the general belief is that exposed females are more likely to experience low self-esteem and turn aggression inward and that boys are more likely to act out their aggression and to exhibit reduced social competence; depression and anxiety; and feelings of helplessness, powerlessness, fragmentation, and anger. A study of 116 mother–child dyads found that pre-school girls were significantly more likely than boys to blame themselves for the abuse (Miller, Howell, & Graham-Bermann, 2012). Mazza and Reynolds (1999) found that school-aged boys’ PTSD symptoms were related to depression and self-esteem, whereas girls’ symptoms were not. Impact may vary with the age of a child’s exposure. Exposure to intimate partner violence can have a notable impact on very young children.
Developmental Age: Special Risks to Infants and Preschool Children

All children repeatedly exposed to parental abuse are likely to exhibit emotional insecurity as characterized by (a) high levels of emotional reactivity; (b) regulation of exposure to parental conflict including both active avoidance and attempts at intervention; and (c) negative or hostile representations of interparental relationships. However, there is a growing consensus among researchers that children’s responses to partner violence are developmentally specific and that the psychological and behavioral risks associated with exposure are mediated by the age-specific developmental tasks that are delayed, disrupted, or distorted.

The highest rates of domestic violence are reported by women between the ages of 20 and 35 years. So it is not surprising to find that younger children are represented disproportionately in households where domestic assaults occurred (Fantuzzo et al., 1997). Researchers believe that the stress-induced fear associated with witnessing violence is sufficient in itself to evoke psychological and behavioral problems in children in these age groups, largely because of separation fears. The healthy development of preschool-aged and young children requires a sense of security in a continuous bond with a caretaking parent who exercises reasonable control over the child’s immediate universe, including control over the boundaries separating the caretaking relationship from the outside world. Because many abusive partners violate the psychological, physical, and social boundaries of the primary caretaker, younger children exposed to domestic violence often experience their immediate universe as unpredictable and unsafe. This can generate a frightening sense of the world, which they might project outward onto others (producing nightmares for instance) or internalize in the form of low self-esteem.

The main mechanism of trauma to infants is the threat violence poses to their emotional security. The emotional security hypothesis suggests that differential exposure of children to the severity of the abuse will moderate the effect of maternal trauma on infant trauma. Thus, although an infant’s
temperament might modify the effects of exposure at lower levels of violence, severe violence seems to override any modifying effects of temperament. Descriptions of infants exposed to domestic violence note problem behavior that is consistent with trauma symptoms such as eating problems, sleep disturbances, lack of normal responsiveness to adults, mood disturbances, and problems interacting with peers and adults. Several clinical studies have reported that exposed infants have poor health, poor sleeping habits, are highly irritable, and exhibit high rates of screaming and crying. Osofsky and Scheeringa (1997) examined the case records of infants exposed to various traumatic events, including abusive violence. Threat to a caregiver, compared with other traumas, was most likely to result in specific symptoms such as hyperarousal, fear, and aggression; more severe symptoms; and the diagnosis of PTSD. In one study of infants exposed to domestic violence (Bogat, DeJonghe, Levendosky, Davidson, & von Eye, 2005), nearly half (44%) displayed at least one trauma symptom in the 2 weeks after an episode, and the number of episodes to which a child was exposed was directly correlated with the total number of infant trauma symptoms.

A recent study found that childhood exposure to parental abuse, especially before two years of age, was associated with a seven-point drop in a child’s IQ (Enlow, Egeland, Blood, Wright, & Wright, 2012). Another study demonstrated that children exposed to parental abuse before age 3 suffered no behavior problems at first but by the time they entered school at age 5 they had become overly aggressive. The researcher labeled this a “sleeper effect” of exposure (Holmes, 2013).

Because preschool children think in egocentric ways, they are more prone than children at other ages to attribute violence to something they did. Physical independence (such as learning to dress themselves) is another developmental task specific to preschool-aged children. The instability associated with exposure to violence has been found to inhibit the development of physical independence and to elicit regressive behavior. Preschool- and school-aged children are frightened and sometimes terrified by witnessing abuse. They tend to express their insecurity through clinging, crying, nervousness, and a constant vigilance over where their mothers are. They may also display a range of somatic problems (including insomnia and other sleep disorders), eating disorders, bed wetting, ulcers, and chronic
colds. Exposed preschool children have been found to be more likely to suffer from a failure to thrive, developmental delays, and socialization deficits. A recent meta-analysis suggested that effect sizes for trauma symptoms in preschool children occurring as a result of exposure to domestic violence were greater than those for other forms of internalizing behaviors (Spilsbury et al., 2007). Another study reported a strong association between abuse of their mother and disproportionate rates of a number of behavioral problems among the children at 42 months, including hyperactivity and emotional and conduct problems.

Even though children who experience domestic violence in their homes are at high risk for physical injury and psychological or behavioral problems, it cannot be assumed that most exposed children suffer long-term or severe consequences. As Crooks, Jaffe, and Bala (2010) emphasized, whether serious problems will develop depends on the resilience of a particular child, the available support system, the child’s developmental age, and the nature and extent of abuse to which children are exposed, with the probability of harm increasing sharply if abuse is chronic.

Even if they do not exhibit behavioral or cognitive difficulties, children who live with abuse are actively engaged: They interpret, predict, and assess their roles in causing fights; worry about the consequences; engage in problem solving; and take measures to protect themselves, their siblings, and their primary parent physically and emotionally. Intervening to protect an abused mother is a common source of physical harm to children as well as of guilt, when their intervention fails. Psychological defenses might be at work even when children seem unresponsive. For example, Peled (1993, p. 122, as cited in Edleson, 1999) offered this chilling account: “I wouldn’t say anything. I would just sit there. Watch it. . . . I was just, felt like I was just sitting there, listening to a TV show or something. . . . It’s like you just sit there to watch it, like a tapestry, you sit there.”
Adverse Childhood Experiences: Domestic Violence and the Developing Brain

One of the more intriguing claims is that exposure to domestic violence is responsible for a range of physical, mental, and behavioral health problems in children because of its effect on the developing brain. Most recently, this claim has combined evidence from neuroscience regarding the “biologic embedding of stress” with findings from the ACE study (Schafran, 2014). In the ACE study, researchers administered a questionnaire (excerpted later in this section) identifying 10 adverse experiences—including child abuse, child sexual abuse, witnessing domestic violence, and parental alcoholism—to 17,337 adult members of the Kaiser-Permanente HMO. The scores (0–10) were then correlated with a range of health outcomes. Researchers found a consistent dose–response relationship between the number of adverse childhood events reported and a wide range of poor physical, behavioral, and mental health outcomes ranging from attention deficits, depression, and aggression in adolescence to premature death due to several causes (Anda et al., 2006).

Designed to assess the health significance of adverse familial events in childhood, the ACE study had a number of methodological limits. The sample questioned consisted of largely white, middle-class volunteers; the questions on exposure to partner abuse only asked about physical violence; the questions probed a very limited set of proximate familial stressors; and it was unclear how the effects of exposure to violence were separated from the known physiological effects on children of poor nutrition or parental alcoholism. Despite these limits, neuroscientists (and some domestic violence advocates) have explained the ACE results by pointing to brain scans and other evidence that illustrates the plasticity of the infant brain, the way it soaks up adverse events in the environment (like domestic violence), and how exposure to these stressors (including living in an unsafe environment) creates a persistent state of low-level fear and elicits adaptive responses in infants and young children similar to those observed in persons suffering PTSD (Perry, 2001). While we welcome the recognition that exposure to chronic, low-level partner abuse can have harm children perhaps even more
dramatically than exposure to acutely violent events, we await further support for the links identified before endorsing these findings. In the meantime, we would caution against publicizing these preliminary conclusions, as some have done, to court personnel responsible for custodial decisions.

The ACE score attributes one point for each category of exposure to child abuse and neglect included in the study. Add up the points for a score of 0 to 10. The higher the score, the greater the exposure, and therefore the greater the risk of negative consequences.
Finding Your ACE Score

While you were growing up, during your first 18 years of life:

1. Did a parent or other adult in the household often or very often . . .

   Swear at you, insult you, put you down, or humiliate you?
   
or
   Act in a way that made you afraid that you might be physically hurt?
   
   Yes No If yes enter 1 ________

2. Did a parent or other adult in the household often or very often . . .

   Push, grab, slap, or throw something at you?
   
or
   Ever hit you so hard that you had marks or were injured?
   
   Yes No If yes enter 1 ________

3. Did an adult or person at least 5 years older than you ever . . .

   Touch or fondle you or have you touch their body in a sexual way?
   
or
   Attempt or actually have oral, anal, or vaginal intercourse with you?
   
   Yes No If yes enter 1 ________

4. Did you often or very often feel that . . .

   No one in your family loved you or thought you were important or special?
   
or
   Your family didn’t look out for each other, feel close to each other, or support each other?
   
   Yes No If yes enter 1 ________

5. Did you often or very often feel that . . .

   You didn’t have enough to eat, had to wear dirty clothes, and had no one to protect you?
Your parents were too drunk or high to take care of you or take you to the doctor if you needed it?

Yes No If yes enter 1 ________

6. Were your parents ever separated or divorced?

Yes No If yes enter 1 ________

7. Was your mother or stepmother:

Often or very often pushed, grabbed, slapped, or had something thrown at her?

or

Sometimes, often, or very often kicked, bitten, hit with a fist, or hit with something hard?

or

Ever repeatedly hit at least a few minutes or threatened with a gun or knife?

Yes No If yes enter 1 ________

8. Did you live with anyone who was a problem drinker or alcoholic or who used street drugs?

Yes No If yes enter 1 ________

9. Was a household member depressed or mentally ill, or did a household member attempt suicide?

Yes No If yes enter 1 ________

10. Did a household member go to prison?

Yes No If yes enter 1 ________

Now add up your “Yes” answers: ________
Indirect Effects of Exposure to Domestic Violence on Children

Children also might be harmed as an indirect consequence of how abuse affects the parent–child relationship; how it affects the health, mental health, or behavior of one or both of their parents; or because the offending parent might enlist them in the abuse.

Separation

Virtually every child exposed to domestic violence experiences separation from a primary parent for at least some period during the course of abuse, and frequent separations are commonplace. Because few current interventions are particularly effective in ending abuse, a large proportion of victims use repeated temporary separations as a tactic to secure short-term safety for themselves or their children or to negotiate for a reduction in violence. For children, the risk of separation trauma is acute when a primary parent is killed, disabled, deported, or incarcerated as the result of abuse, or when a child is placed in foster care. Attempted suicide, depression, substance abuse, and many other physical, behavioral, or psychosocial health problems caused by abuse can also lead to periods of separation. But perhaps the most damaging facet of abuse in this respect is the more diffuse fear of separation occasioned by the chaos and unpredictability that typifies homes where abuse is chronic. Here again, the harms resulting from separation are developmentally specific. Younger children, for whom bonding and continuity of caretaking are most important, experience the highest levels of trauma. This is illustrated by the fact that young children who accompany mothers during a shelter stay often refuse to leave their side, following them even to the toilet, for instance. They may also experience the world of the shelter as far more alien than do their mothers, particularly if they have managed the fear of separation at home by hiding in a familiar place or surrounding themselves with familiar objects. Older children also might experience high levels of separation fear or guilt and often will find excuses to miss school or skip socializing rather than abandon a primary parent.
Diminished Capacity for Caretaking

Many of the same medical, behavioral, or psychological problems experienced by victims as a consequence of abuse also can compromise their capacity for caretaking. A vicious cycle often is initiated: a victimized parent may self-medicate the stress caused by abuse with alcohol or drugs, reducing her capacity to meet her children’s basic needs for food, clothing, or medical care and increasing the feelings of anxiety and failure she associates with drinking. Furthermore, parenting might be compromised if a victimized mother is chronically fearful or if the abusive partner constrains her access to money, transportation, the phone, or other resources vital to caretaking. Abuse has a major impact on the victim’s income, earning capacity, and employability, all of which are critical factors to children’s support. In a randomized sample of low-income women, Susan Lloyd (1997) from the Joint Center for Poverty Research in Chicago found that those who had been physically abused, threatened, or harassed by a male partner in the 12 months prior to the study had lower employment rates and lower income, and they were more likely than non-abused women in the sample to exhibit depression, anxiety, anger, and other problems that affect their labor market experience over time.

There is general agreement that the effects of abuse on the mother, and particularly whether she exhibits symptoms of trauma or depression, for instance, might be important predictors of whether infants exhibit trauma symptoms. Depression is believed to affect maternal caretaking behaviors by contributing to reduced attention and interest in the child, including not assisting the child in emotional regulation. There is also evidence that maternal depression and trauma symptoms in the mother are related directly to the severity of the abuse to which she is subjected. Sabotage of birth control, which is a frequent facet of coercive control, can also lead to unwanted pregnancies and births, which overwhelm a mother’s caretaking abilities.

Changes in Parenting

Perhaps the most dramatic changes in the relationship between a victimized
mother and her children involve attempts by the offender to regulate how she parents. Although the man who is abusing his partner is the primary cause of child abuse in abusive relationships, battered mothers are slightly more likely to abuse their children than non-battered mothers. Maternal abuse has complex roots in the context of domestic violence. Offenders might coerce a partner into using forms of discipline that she knows are inappropriate; for example, an abuser may tell his partner that if she does not “properly” punish her child, he will do worse. Or, he might demand she enforce rules about noise in the house or other conditions that are unrealistic given the ages or disposition of the children. In each case, the “or else” proviso creates a dilemma for his partner, either to act in ways contrary to her nature or to risk harm to herself or the children. As the children mature, many will recognize that their mother selected what she believed to be the safest option, even when she hurt them; this behavior is an example of what Stark and Flitcraft (1996) termed “control in the context of no control.”

An abused mother might change her parenting style in response to her abuser’s parenting style. For example, she might become too permissive in response to the authoritarian parenting of an abuser because she is trying to keep children from annoying the abuser, or because she believes the children have been through so much; she might make age-inappropriate or unreasonable demands on children in order to placate the abuser or because she is constrained from meeting her needs for affection in more appropriate ways; or she might assume the demanding parts of parenting while he gets the fun parts.

Conversely, when an abusive partner insults a mother’s intelligence or judgment, or undermines her parental authority in other ways such as failing to support or openly mocking her attempts at discipline, she might conclude that nonviolent forms of discipline are no longer effective. Because the children might not be aware of the level of threats and violence to which their mother is responding, they might mistake her compliance or dependence on the abusive parent as weakness, devalue or feel shame about their mother for “letting” herself be abused, or simply disregard her rules because they observe she is powerless to enforce them. A study of 95 battered mothers indicated that abusive partners undermined these mothers’ authority with their children, making effective parenting more difficult. In the context of
coercive control, some children also come to view their mother as a legitimate target of abuse. Finally, children might be angry at a mother for failing to protect them, to evict the abuser, or to comfort them when they are distressed. In some of these cases, children become parentified, assuming caretaking roles for their mother or other siblings that are inappropriate for their age. Many abused children identify with the aggressor and become alienated from their mother to protect themselves either by an alliance with the stronger parent or as a magical way to protect their mothers.

Changes in the Victimized Parent

Coercion and control of their mother also might induce less-tangible changes in the non-offending parent that affect children. For example, a victimized woman might come to believe she is an inadequate parent because she has been portrayed by the abuser consistently as an unfit mother or as the cause of children’s deficits. In several cases in which Stark has been involved, abusive fathers insulted the mother in front of the children or forced her to do embarrassing things while they watched (Stark, 2007). These situations might involve the offender timing her performance of routine activities (such as cleaning, dressing, or using the toilet), forcing public apologies, or even admissions that she is responsible for provoking her husband.

Mothering Through Domestic Violence

Early research in the field tended to overemphasize harms to children and the maternal deficits induced by abuse. There is a growing tendency to complement the emphasis on child victimization by interest in (a) resiliency factors in children, (b) how batterer intervention and other counseling programs for offenders can be extended to include education about fathering, and (c) research on the capacity for female victims to mother through domestic violence despite harm to themselves (Radford & Hester, 2006).

Despite these dynamics, there is little truth to the belief that mothers typically become more abusive to their children in response to their own abuse. A study of battered women in shelters by Sullivan and colleagues (2000) concluded that mothers’ experience of physical and emotional abuse had no
direct impact on their level of parenting stress or use of discipline with their children. Both by their own and their children’s reports, most mothers in this study were emotionally available to their children (98%), continued to value parenting (91%), and provided appropriate supervision and discipline (91%), typically using timeouts, grounding, and taking away privileges. Seventy-three percent of the battered mothers in this study reported spanking or slapping their children. Yet only 59% of the children reported ever being spanked or slapped. Although the proportion of battered mothers who employ corporal punishment might seem relatively high, it is actually smaller than the comparable proportion among American parents generally (Stark, 2002). Perhaps the most telling findings are that children of battered mothers in battered women’s shelters reported relatively high and stable scores on their self-concept across time and exhibited overall adjustment that fell within the normal range.

**Perpetrator’s Use of the Child as a Tool**

Perpetrators of domestic violence also use children to extend their control over the child’s mother, a pattern called “child abuse as tangential spouse abuse” (Stark, 2002). Thirty-six percent of the women in an English study and 44% of 207 battered women in a US study reported that their partners threatened to hurt the children or to report them for abuse (Rees et al., 2006; Tolman, 1989). This pattern often is prominent during a separation or after divorce, when the perpetrator might no longer have direct access to his victim, and it is a common dynamic in custody disputes, when children might be used as spies, as proxies for an abuser’s anger or manipulation, or as pawns in the endless extension of court battles. This phenomenon is known as “litigation abuse.” A child’s compliance in continued parental control might be elicited directly by threats to hurt the child, a pet, or their mother or, passively, by an offender’s threat to hurt or kill himself, or his “forgetting” to provide basic safety or medical care for the child.

**Offender Interference in a Victim’s Parenting**

A common control tactic involves interference with a woman’s parenting. In a study that is quickly becoming seminal to our understanding of abuse,
Bancroft and Silverman (2002) argued that men who batter systematically undermine and interfere with their partner’s parenting and that this interference often extends into the postseparation period. Other researchers found that battered mothers were more likely than non-battered mothers to alter their parenting practices in the presence of their partner, largely to appease him and to avoid abuse. Recent work also has looked at how nonviolent forms of coercion and control might harm children as well as exposure to physical violence (Stark, 2009).

**Modeling**

Modeling involves the extent to which children internalize or otherwise learn the values, attitudes, and behaviors of the significant others in their lives, particularly parents, and replicate them as adults. This process is known as “intergenerational transmission.” It is widely believed that modeling is a major cause of adult domestic violence, that children exposed to parental violence become violent adults, and that most perpetrators of domestic violence were abused or exposed to abuse as children. There is some truth to these claims. According to the NFVS, children exposed to the severest forms of parental violence—involving knives or guns, for instance—are many times more likely than nonexposed children to become violent adults. However, because only a tiny proportion of children are exposed to such severe violence, it is impossible to generalize from this evidence the risks faced by children in the general population. In fact, most exposed children (more than 70%) do not become violent adults (Kaufman & Zigler, 1987). Just as importantly, most abusive partners (between 80% and 90%) have neither been abused as children nor been exposed to violent adults (Stark, 2002).

Even if the crudest formulation of intergenerational transmission theory is a myth, modeling nonetheless plays a significant role in how exposure to parental abuse affects childhood development. For one thing, the proportion of exposed children who become abusive adults, which is reportedly 20% to 30%, is much greater than the proportion of children from nonviolent homes who become violent as adults; modeling parental violence is only one of many possible causes of this transmission. In addition, batterers influence children’s values and belief systems in several ways. Even if they do not use violence with their partners, children might learn that it is an acceptable
means of getting their way; that it is justified because it is “provoked” or rationalized as the result of alcohol or because “she deserved it.” They develop rigid beliefs about gender roles, come to think that the degradation or domination of women is acceptable, believe abusers do not suffer consequences for their actions, believe that violence is a legitimate response to frustration or anger, or conclude that women are weak, incompetent, or stupid, or conversely, that men need to be violent to retain or regain control. Abuse victims also might communicate attitudes and values that contribute to increasing children’s willingness to accept violence. Some abused mothers believe her partner’s excuses for abuse and reinforce them with her children. In many instances, mothers tell children abuse is her own fault and that she must change or improve her behavior. In other instances, because of the coercive control, mothers communicate their responsibility or guilt about the effects of abuse on children, excuse abuse because they think it is caused by alcohol use or the stress her partner faces at work, believe and teach that the abuse of women is culturally or religiously appropriate, or believe that men and boys should have more privileges and power in the family.

Evidence is mixed about whether modeling has different effects based on a child’s gender. Boys raised in families with domestic violence are likely to overidentify with the batterer and to exhibit a greater degree of aggressiveness and bullying with their peers. Girls raised in families with domestic violence are likely to have self-image problems and to confuse love with violence, and they might not believe men can have a nonviolent, respectful relationship with them. In situations where girls have been the objects of violence or sexual abuse as well as their mothers, they might mimic their mother’s reaction to violence (playing “the good little girl,” e.g., or becoming violent themselves with partners); identify with the aggressive parent (by scolding or yelling at their mother or her surrogate); or try to relieve their anxiety about impending violence by acting in ways calculated to elicit a violent or disciplinary parental response. There also is a growing literature suggesting that girls exposed to domestic violence are more likely to be victimized as adults, particularly if they also are sexually abused, possibly because abusive partners look “familiar,” even if they find violence repellent. Girls who are exposed to parental domestic violence also might be more tolerant of violence in partners, more likely to define themselves as caretakers who can fix violent men, and therefore are more likely to stay in
an abusive relationship and more likely to be violent themselves.
The Limits of the Research and Future Direction

There are many problems with the research on how domestic violence affects children. Early work in this field relied on vague definitions of child abuse, on small or unrepresentative samples such as mothers in shelters, on population surveys with no confirmation of a parent’s report, or on outcomes based on psychological tests rather than on evidence of behavioral or psychological malfunction. As we have observed, children often report having witnessed or been aware of parental abuse even when the parents deny such awareness. Little effort was made to distinguish the effects of different types of exposure or to differentiate the harms caused by witnessing alone from those presented by children who had been sexually or physically abused also. Several studies have shown that children’s risks increase with the number of domestic violence incidents to which they are exposed and have compared exposed children with children from nonviolent homes. But only a few studies have considered the factors that mediate whether and how exposed children are harmed such as their developmental age, resilience, or available supports. Similarly, few studies have differentiated children according to characteristics of the abuse to which they have been exposed, including its nature, severity, duration, and its consequence for a primary parent—what might be termed the “dose” to which they are responding. Generally, research suggests resilient children are less affected by witnessing partner abuse when they have a positive and supportive caregiver–child relationship, competent parenting (structured and warm), and positive caregiver mental health, or the child had an easy or engaging temperament and higher cognitive ability (Grych, Jouriles, Swank, McDonald, & Norwood, 2000). Even the broad term “exposure” fails to capture the nuanced repertoire children develop to intervene, stop, or protect themselves from being harms by exposure to abuse. The NatSCEV reported that most children are not passive observers of parental abuse. Almost half yelled to try to stop the abuse (49.9%) or tried to get away from it (43.9%). Another quarter (23.6%) called for help (Hamby, 2009). Even very young children (between 1 and 2.5 years) may attempt to actively intervene in conflicts and abuse (Crowell & Burgess, 1996). These findings parallel those found in clinical reports (Edleson, Shin, & Armendariz, 2008). Future research should help differentiate which protective tactics work best for which children and
for what types of abuse. Such information could be crucial in safety planning with abuse victims as well as their children.
Putting Exposure in Context

Perhaps the most serious challenge to researchers is to differentiate the effects of exposure to parental abuse from how children are affected by other adverse, traumatic, or violent events. Depending on how violence is defined, most children in the United States are exposed to violence in some form annually, and many are exposed to multiple adverse events. The NatSCEV conducted between January and May 2008 measured the past-year and lifetime exposure of children 17 years and younger to various forms of victimization, including child maltreatment, conventional crimes, school and peer violence, and community and family violence (Finkelhor, Turner, Ormrod, Hamby, & Kracke, 2009). More than 60% of the children had been exposed in some form. Importantly, compared with the 9.8% of children who had been exposed to adult partner violence, almost half (46.3%) had been physically assaulted during the year, and more than 1 in 10 had been injured in an assault, with the risk of having been injured rising as children age. Multiple victimizations also were common; 38.7% of children reported two or more direct victimizations in the previous year, and more than 1 in 10 experienced five or more direct victimizations.

Furthermore, older children were more likely to witness violence at school or in the community than in the family. Indeed, exposure to family or intimate partner violence was found to be a significant risk factor only among infants (where it was third in importance) and in early adolescence (where it was fifth in importance). Moreover, since multiple exposures are typical, children only exposed to partner violence at home might differ from typical children in other respects as well.

Another important limit of current research is its almost exclusive focus on physical abuse. Stark (2007) estimated that between 60% and 80% of the women who seek outside assistance from shelters, police, or courts are experiencing a broader pattern of abuse rather than physical or emotional abuse alone. Variously referred to as intimate terrorism (Johnson, 1995, 2008), psychological maltreatment (Tolman, 1989), and coercive control (Stark, 2007), in this pattern, a history of physical or sexual assaults is accompanied typically by a combination of tactics to intimidate, humiliate,
exploit, isolate, and control a partner. In a typical case of coercive control, violence involves frequent, even routine, but generally minor assaults (such as pushes, slaps, shoves, or grabbing), often accompanied by coerced sex. Intimidation tactics can run the gamut from blatant threats through various forms of surveillance to more subtle tactics whose significance is only understood by the victim. Isolation tactics involve attempts to cut off the victim (and often children as well) from family, friends, helping professionals, and other sources of support and assistance. Control tactics also encompass a broad spectrum from constraints on a victim’s access to basic necessities (such as money, food, or transportation) to the micromanagement of a victim’s daily routines of cooking, dressing, toileting, cleaning, and so on.

The coercive control model of abuse, described in detail in Chapter 4, suggests that domestic violence more closely resembles a chronic rather than an acute stressor such as assault and that its effects are cumulative and include harms to autonomy, decisional discretion, personhood, and basic rights (such as the right to speak or go and come freely) and liberties. Although the unique effects of coercive control on children have not been studied, given the prevalence of coercive control in partner abuse cases, it is clear that many harms attributed to physical violence alone are actually elicited by exposure to a combination of abusive tactics among which violence (because it often is low level) might not always be the most important. Even though children can be traumatized by witnessing a severe assault, their more typical experience is prolonged exposure to repeated, but minor, assaults and to the combination of violence, intimidation, isolation, and control. This type of multifaceted exposure causes psychological, behavioral, and cognitive harms that are not adequately encompassed by traditional trauma models and are unlikely to be ameliorated by interventions designed to relieve acute, incident-specific stress. Moreover, the more diffuse pattern of coercive control might elicit less-tangible signals of distress in children than are associated with exposure to violence. Witnessing harms to liberty and autonomy might affect a child’s political as well as their gender identity and might extend to basic aspects of how they experience personhood.
The Child Welfare System

Next to policing and the legal system, the child protection or child welfare system has the greatest influence on domestic violence victims, particularly among the low-income, immigrant, and minority women and children who comprise most of its clientele. Women typically access child welfare services along the quasi-judicial continuum that extends from an initial complaint of abuse or neglect through the termination of parental rights. The proportion of child welfare cases in which battering is a background factor ranges from 16% to 60% (Stark, 2002). As we discussed previously, the highest percentages have been identified by reviewing the medical records of mothers whose children were darted for abuse or neglect in the pediatric setting. Estimates generated from the child welfare system are a function of whether the local child welfare agency has a screening tool in place, whether the organization supports intervention, and whether the host community perceives it as responsive to its safety concerns. An initial record review revealed that, during a 7-month period, approximately 32% of CPS cases in Massachusetts involved domestic violence. Yet, when caseworkers included a stated goal of protecting adult victims, the proportion of cases in which domestic violence was revealed increased by almost one third (48.2%; Hangen, 1994). Even the lowest estimates of its prevalence indicate that domestic violence often is more an issue in child protection cases than is substance abuse, homelessness, mental illness, or other comparable problems to which considerable resources are devoted.

Despite its importance for children’s well-being, domestic violence was officially invisible to the child welfare system when the shelter movement began. Shelters were not adequately equipped to respond to the frequent harms to children in these cases.

In her study of the Massachusetts Society for the Prevention of Cruelty to Children, the historian Linda Gordon (2002) showed that domestic violence was a commonly recognized problem more than a century ago, when child welfare was still largely a function of private charitable organizations. Working closely with police, the preferred response of early 20th-century child savers was to arrest or otherwise remove the abusive men from the
home and provide support for the mother and child. By the 1920s, the focus had shifted from brutal men to prescriptive parenting for inadequate or neglectful mothers, and domestic violence (and child sexual abuse) had largely disappeared as an issue as it had from the social science literature more generally. Following the recognition in the 1960s that deliberate and sometimes fatal assault by parents was a common source of childhood injury or fatality in the pediatric setting, the states passed mandated child abuse reporting laws directed largely at health-care providers. The federal Child Abuse Prevention and Treatment Act (P.L. 93-247) was passed in 1974, providing federal funding for wide-ranging federal and state child maltreatment research and services. Although child protection became an official state function, the orientation that had dominated private casework remained largely unchanged. CPS continued to focus on mothers almost exclusively—with many states classifying all cases in the mother’s name even after she was deceased—and offered a limited range of services and supports for parenting. Behind the rationale of intervening to stem neglect, the child welfare system greatly expanded the scope of family problems in which it intervened to include substance abuse, homelessness, and many other conditions associated with poverty. The result of expanding its client base without a corresponding broadening of available services was the resort to foster care for families whose primary needs were for housing, health care, employment, or income supports.

The child welfare response to domestic violence contrasted markedly with the response of the shelter system. Approximately 2 million children in the United States accompany their mothers during a shelter stay annually. Shelter advocates typically took an empowerment approach to victimized women that emphasized their capacity to make independent decisions, even when these decisions appeared mistaken. This approach clashed with the philosophy of child welfare at many points. Advocates emphasized a mother’s needs as a woman, for instance, based on the belief that only through her own safety and empowerment can she protect her children or parent effectively. This approach was anathema to a system whose public mission was child safety and that, in the eyes of the advocates, treated abused women solely as transmission belts to the problems of their children.

By the late 1970s, compelling evidence indicated that children were
frequently harmed in the context of domestic violence. In response, and as part of their attempt to win public support for victim services, advocates stepped up local pressure on the child welfare system to respond. The leaders of CPS were reluctant to tackle domestic violence, however, lest it open a political Pandora’s Box or jeopardize federal funding for children’s services. Moreover, policymakers in child welfare also feared that assuming responsibility for adult-to-adult violence would reverse a long-standing trend for child welfare to define its role in terms of support and service rather than policing.

With the passage of VAWA in 1994 and other federal and state legislation providing funds for domestic violence intervention, many state and local child welfare agencies acknowledged the risks domestic violence posed to children and increased efforts to train their staff to assess clients for the problem. The initial CPS response was far from what the advocates had envisioned, however. With New York State as the leader, many state child welfare agencies joined with family courts to charge non-offending abused mothers with “neglect” for “engaging in domestic violence” and removed their children to foster care. An important finding from the YTS was that for any given claim of abuse or neglect, the children of battered women were significantly more likely than the children of non-abused mothers to be placed in foster care than other children (Stark & Flitcraft, 1996). In a review of CPS records in Hennepin County, Minnesota, Edleson and Beeman (2000) reported that cases in which domestic violence was identified were twice as likely as cases in which it was not identified to be “opened” (45.6% compared with 24.4%), and half as likely to be “closed” (20.3% versus 38.5%) after investigation. Although physical child abuse, sexual abuse, or a specific form of neglect was identified in some of these cases, in more than a third (34.2%) of cases, the mother was cited for “failure to protect.” Perhaps more telling is that domestic violence was involved in three of every four cases in which “failure to protect” was identified.

Ms. Nicholson

Citing the punitive response to victims of abuse, the child welfare system was publicly challenged by a landmark class action law suit against New York City’s Child Protection Agency, the Administration for Children’s Services
(ACS). In 1999, Sharwline Nicholson was assaulted by her husband in her apartment in New York City and sustained a broken arm (see box insert). Although this was the first incident of domestic violence, and her son was in school and her daughter was asleep in another room, caseworkers removed the children and charged Ms. Nicholson with neglect for “engaging in domestic violence.” Many other mothers stepped forward with similar experience. In removing the children in these cases, ACS had failed to show that the children had actually witnessed any abuse, let alone that they had suffered harm as a result. After months of evidentiary hearings, Federal Court Judge Jack Weinstein certified the case as a class action and found that the evidence to date, including testimony from scores of witnesses and hundreds of documents, lent substantial support to the claims of battered mothers and their children that their constitutional rights had been violated (Nicholson v. Williams, 2001). He also issued an injunction outlining procedures and policies for the agency to follow in child welfare cases involving domestic violence, and in 2004, the New York Court of Appeals unanimously held that a mother’s inability to protect a child from witnessing abuse does not constitute neglect, and therefore, it cannot be the sole basis for removal. An important aspect of the rulings concerned the need for CPS to weigh the harm to children of exposure to domestic violence against the psychological harm to the child that could be created by the removal itself, and only in the rarest of instances should this decision be made without judicial approval. Richard Gelles, a widely recognized authority on domestic violence and child abuse, was among the experts who testified that the harms of placement might be greater than the abuse itself. This echoed the early findings of psychologist James Kent and his colleagues (cited in Gelles & Straus, 1988, p. 173), which showed that physically abused children who remained with their parents continued to be at risk for abuse but did not exhibit the same psychological deficits exhibited by the children placed in a series of foster homes.

Temporary removal might sometimes be appropriate in domestic violence cases when children have been harmed or interventions to remove offenders and protect the victimized mother and child have failed. But the trauma to children removed from homes where their mother is being abused can be particularly harsh because domestic violence has already made the bond to the primary caretaker fragile. Abused mothers whose children are removed often blame themselves for the placement and experience powerful feelings
of guilt and self-loathing that can leave lasting scars. However, children who are removed might become more fearful and guilt-ridden than they were previously and blame themselves for their inability to protect their mothers.

Interestingly, although battered women are at an elevated risk compared with non-battered women for a range of medical, behavioral, and psychosocial problems, within the multiproblem CPS caseload, they are actually less likely than other mothers to have a history of substance use, mental illness, or childhood experiences characterized by sexual abuse of violence (Stark & Flitcraft, 1996). This conclusion is further illustrated by a study of CPS cases in New York City, in which non-battered mothers were almost 100% more likely than battered mothers to be identified with abusing drugs (19.4% vs. 11.3%) or both alcohol and drugs (2.0% vs. 1.4%). By contrast, 84.5% of the domestic violence victims had no mental health problems (Mitchell-Herzfeld, 2000). When we combine evidence of their parenting capacity with data on the relatively low rate of psychological or behavioral problems among battered mothers, it becomes clear that battered mothers enter the CPS caseload largely, if not exclusively, because of their partner’s abusive behavior. This evidence indicates that they can be approached as partners who need enhanced advocacy to support their capacity for independent decision making about their own and their children’s safety.

Fortunately, a growing number of CPS agencies are partnered with battered women’s groups to provide a range of community-based intervention programs for dual-victim families, offering a credible alternative to placement as the first response. Numerous states now include a domestic violence assessment in their investigative procedures and special cautions against revictimizing women in the ways that were publicized by the Nicholson case. One such pioneering effort was AWAKE at Boston Children’s Hospital; this program was designed to provide domestic violence advocacy for battered mothers in the pediatric setting. Following the model developed by Massachusetts, CPS agencies in several jurisdictions now employ domestic violence advocates for consultation to caseworkers who are unsure how to respond to abuse. Other innovative programs include running parallel support groups for mothers and children, a special service track for dual-victim families, and the integration of counseling for batterers to include information about fathering. These programs vary in their design and
emphases but typically combine advocacy on behalf of the mother and children with independent safety planning for all family members placed at risk. This approach was pioneered by AWAKE at Children’s Hospital in Boston.

Sharwline Nicolson first became a victim of domestic violence one winter afternoon while Destinee, her infant daughter, was asleep and her son Kendall was in school. The father of her infant daughter, Claude Barnett, lived in South Carolina and made monthly visits up to Brooklyn to see the children. On January 27, 1999, during one of Mr. Barnett’s visits, Ms. Nicholson ended the relationship. Mr. Barnett had never previously threatened or assaulted Ms. Nicholson. While throwing objects throughout the house, he kicked, beat, and severely assaulted Sharwline, leaving her with a broken arm. With her head bleeding profusely from the attack, Ms. Nicholson called 911. She also made arrangements for a neighbor to care for her children while she was in the hospital. After learning she would stay at the hospital overnight, she gave officers the names of relatives who could care for the children in her absence. The next day, an Administration of Children’s Services (ACS) worker called Ms. Nicholson at the hospital and informed her that the agency had taken custody of her children the night before. ACS claimed that the children were at “imminent risk if they remained in the care of Ms. Nicholson because she was not, at that time, able to protect herself nor her children because Mr. Barnett had viciously beaten her.” ACS also filed charges of neglect against Ms. Nicholson for “engage[ing] in acts of domestic violence” in the presence of their child. On February 4, 1999, Family Court ordered that Ms. Nicholson’s children be returned to her, but Ms. Nicholson continued to be listed on the state’s records as a neglectful parent.
The Family Court Response
Domestic Violence in Custody Cases

Domestic violence is an issue in as many as half of all divorces in which custody is disputed. This translates into approximately 50,000 cases annually in the United States, affecting more than 100,000 children. In about half of these cases—between 15% and 25% of all disputed cases—there is substantiating evidence of physical abuse, such as a prior arrest for domestic violence, a criminal court finding, or court order (Kernic, Monary-Ernsdorff, Koespell, & Holt, 2005). In the rest, abuse claims are presented through the testimony of an alleged victim that can be confirmed by expert testimony of a domestic violence specialist or a mental health evaluator appointed by the court.

Mothers receive primary custody either by agreement or by default in most divorce cases. But where custody is disputed, the prevailing sentiment favors shared or joint custody. The preference for joint custody is justified by the belief that children benefit psychologically if contact with both parents is maintained after divorce. The research on this point is more equivocal than popular lore suggests, however, and it shows that supportive contact with one parent is usually sufficient for children to thrive and that the harms to children who are exposed to continued parent conflict or violence after a separation or divorce outweigh any benefits from ongoing contact (Radford & Hester, 2006). But shared custody also is favored as a matter of equity, with a strong body of legal opinion supporting parental rights. Given this preference and since disputed custody cases involve high levels of parental conflict by definition, the family court must determine whether the level of conflict presented justifies setting the default preference aside.

Nowhere are the prospects for future contact by both parents more in doubt than where one or both parties allege violence or other forms of abuse. No other problem encountered by family judges or evaluators is comparable with battering in its prevalence, duration, scope, dynamics, effect on personhood, or significance for the health of everyone involved, particularly the children. The fact that national legislation on domestic violence is titled the “Violence Against Women Act” illustrates how widespread is the belief that domestic violence is a gendered crime from which women and children particularly
require institutional protection. Although this belief is widely accepted in policy circles, the criminal justice system, law, medicine, and social services, it remains highly controversial in the civil arena and particularly in the family court. Here, the tenet remains strong that the private sphere of family life should be generally immune from the principles of formal justice that govern criminal law. As a result, domestic violence claims have formal standing in custody disputes only when they can be linked explicitly to a child’s best interest or attached to monetary claims for damages. Resistance to a gendered analysis of abuse in family court and the tenacity with which decision makers in this arena cling to arguments long rejected in criminal court also reflect the financial stakes at risk in family proceedings. Furthermore, the families who typically engage in custodial disputes are relatively privileged both economically and politically compared with the men and women charged in criminal court or involved in child welfare proceedings.

Despite the frequency with which domestic violence is raised in disputed custody cases, the judges, lawyers, evaluators, and advocates who work with families remain sharply divided about the appropriate response, as do the litigants. Horrific stories are commonplace of women who have lost custody to abusive partners or been punished, even jailed, for disobeying court orders to provide unsupervised visitation to these men. Based on interviews with female custodial litigants in Massachusetts, the Battered Women’s Testimony Project at the Wellesley Center for Women documented a pattern of discrimination, mistreatment, and arbitrary or biased rulings they framed as human rights violations (Slote, 2002). These findings were replicated by the Arizona Coalition Against Domestic Violence (Post, 2003). Responding to publicity about the failure of state courts to respond appropriately in domestic violence cases, Republican Congresswoman Connie Morella proposed and Congress passed House Concurrent Resolution 172 in 1990 recommending that state courts give presumptive custody to victims of domestic violence. Some variation of this recommendation has been adapted by all but two states. Although the language of these statutes is gender neutral, it is widely understood that their primary beneficiaries would be battered women.

Fathers also tell dramatic stories about being unjustly accused of physical or child sexual abuse by their wives and exiled by the family court to a lifetime of alienation from their children. Building on these stories, father’s rights
groups and their supporters use their Web sites to insist that husbands, not wives, are the real victims of bias, to discount documented injustice to mothers, and to attack feminists, protective mothers, and their supporters. These groups claim that statutes favoring presumptive custody for victims have exacerbated the prevailing anti-male bias in the family court and have allowed women to gain advantage in custody disputes by (falsely) asserting they have been abused and thereby alienating the children against fathers (Dutton, 2005).

Some who oppose a greater emphasis on domestic violence in family court acknowledge that exposure to abuse harms children but insist that the type of violence observed in custody disputes is less serious than the abuse found in other service settings, such as shelters or criminal courts. Instead, they insist, much of this violence is new rather than long standing, and it reflects separation-engendered violence or postdivorce trauma elicited by the tension surrounding divorce (Johnston & Campbell, 1993). Despite claims to the contrary, there is no evidence that the abuse reported in custody disputes is different or less harmful to children than in the cases that come to criminal court or other service settings (Stark, 2009). Researchers have identified three factors that increase a woman’s risk of severe or fatal violence ninefold: for instance, separation, the presence of a weapon, and the existence of high levels of control (Glass, Manganello, & Campbell, 2004). Other commonly cited risk factors include threats to children, sexual abuse, violations of court orders, and financial exploitation. Since disputed custody cases involve separation and children by definition and since a high proportion of these cases include claims of monetary and other forms of control alongside allegations of abusers, there is good reason to suspect that, if anything, the types of abuse in the custodial setting are more dangerous than abuse observed in other service settings, not less so. Even when violence is reported for the first time during a divorce proceeding, this is as often because the victim was too fearful of reprisal to report abuse earlier as it is because violence only began after the break up.
The Significance of Custody Decisions for Victims and Children

The importance of custody and alimony decisions in domestic violence cases is indicated by the frequency with which child contact is a context for reassault during the postseparation period (Shalansky, Ericksen, & Henderson, 1999). Leighton (1989) reported that one quarter of the 235 Canadian women he interviewed had been threatened or assaulted during child visitations. As many as one third of violations of court orders occur during child visitation exchanges (McMahon & Pence, 1995), and multiple violations are commonplace. Studies of so-called high-conflict marriages and divorces indicate that children continually exposed to abusive encounters between parents in shared custody arrangements or in noncustodial visits have more behavioral problems in childhood and early adulthood than children in sole custodial arrangements (Hetherington & Stanley-Hagan, 1999). When abuse continues through contact, children who had been initially enthusiastic about visitation become anxious and depressed (Radford & Hester, 2006).

In deciding which arrangements are in the best interests of children, family courts have become increasingly reliant on forms of therapeutic jurisprudence in which court-appointed psychological evaluators use a variety of psychological tests and interview techniques to determine the relative parenting capacities of the contending adults. Complementing the parenting evaluation is the appointment of a law guardian to decipher and represent the child’s best interests. Typically, the law guardian follows the lead of the evaluator and both are assumed to be neutral with respect to the disputants.

A major difficulty with applying therapeutic jurisprudence in abuse cases is that domestic violence is typically an instrumental behavioral pattern rather than an expression of underlying psychological problems. There is neither a single psychological profile associated with abusive behavior or victimization nor a single test that can definitively identify its occurrence. As we discussed in the chapter on health, domestic violence has predictable physical and mental health consequences for victims and children and psychological
evaluators can be trained to recognize these consequences as well as the
typical forms of violence and control in abusive relationships. However, most
victims do not suffer these consequences and abuse may be long-standing,
multifaceted, and serious even in the absence of these consequences.
Moreover, since domestic violence is a crime, perpetrators of abuse have a
strong self-interest in concealment, much as they do in cases of sexual abuse.
This means that false denials are far more common in these cases than false
allegations. The typical court-appointed evaluator or law guardian is
unprepared by training or experience to confront, let alone to penetrate, the
wall of fabrication and victim blaming constructed by offenders.

The difficulties with using standard therapeutic jurisprudence are magnified
in cases where physical abuse has been minimal or frequent but low level;
where a victim has not reported the abuse until the couple are separated or a
divorce action is initiated; and where the main dynamics of abuse involved
tactics to intimidate, isolate, and control a victim rather than simply to hurt
her or the children physically. Identifying the consequences of abuse by
assessing children is more difficult still since the normal defense mechanisms
children use to ward off the anxieties elicited by witnessing abuse often are
exacerbated in the context of a custody fight, particularly when the abusive
parent uses the children to extend their control into the period of separation.
This pattern is known as child abuse and tangential spouse abuse. In cases of
coercive control, where children present with problems in socializing and
independence as well as present with levels of fearfulness that seem to have
no objective correlate in physical abuse, evaluators and law guardians often
conclude that the children’s fears are exaggerated and might even be
instigated by a vindictive wife, a pattern known as parental alienation
syndrome (PAS). Although the American Psychological Association and
other professional organizations have questioned the validity of PAS as a
scientific assessment, it has become a common stratagem to defend against
allegations of abuse. To place these outcomes in their proper context requires
a more sophisticated understanding of abuse than is likely to be present in the
evaluation setting. Recognizing this, some custody courts insist that claims of
domestic violence be assessed by evaluators with specific expertise or
experience in this area rather than by traditional psychologists.

Another difficulty faced by those who work on behalf of children in these
cases is the frequency with which they express a preference for the parent who poses a threat to their safety or deny witnessing abuse despite compelling evidence that they have. Explanations for a child’s apparent closeness to an abusive parent range from identification with the aggressor and Stockholm Syndrome (where a victim seeks the protection of and protects the person who has hurt them) to the child’s belief that he or she can magically protect the victimized parent by placating an abusive father, perhaps in response to his threats to hurt himself if he loses custody or his plaints about abandonment or even threats of suicide. Children might deny abuse or express a preference for an abusive father simply because they share their mother’s fear. Too great a focus on the child’s wishes in these cases can prevent judges, evaluators, and children’s attorneys from explicating the dynamics of parental abuse and how it shapes a child’s expressed feelings or perceptions.
The Family Court Response

Given its prevalence and potential significance of domestic violence for children, routine assessment for abuse in disputed custody cases is a prerequisite for any reasonable determination of equity and a child’s best interest. Once abuse is identified, the critical questions are which particular power dynamics are at work in a case, the ways in which these dynamics jeopardize the physical and psychosocial integrity of partners and their children, and how to protect all family members during separation and after divorce.

After the passage of the Morella resolution, all but two states changed their custody laws to favor abuse victims either by giving them the presumption of custody, instituting a rebuttable presumption against joint custody; banning sole custody or unsupervised visitation for perpetrators; or identifying abuse as an important factor that judges have to consider. The National Council of Juvenile and Family Court Judges has promoted the rebuttable presumption approach through its Green Book initiative. There is growing evidence that this legislation has not affected actual judicial decision making in abuse cases, however, particularly relative to changes in the institutional response in other arenas. For example, sole physical custody was given more often to fathers than to mothers in states where statutes favoring joint custody or friendly parent (FP) statutes competed with statutes denying custody to perpetrators of abuse (Morrill, Dai, Dunn, Sung, & Smith, 2005). In New York, fathers were more likely to receive visitation when the mother had a protection order than when she did not (Rosen & O’Sullivan, 2005).

At best, family courts remain deeply ambivalent about the changing normative response to abuse. With marked exceptions, most family courts continue to interpret partner violence as different only in degree, but not in kind, from other types of animosities and family problems that bring disputants in custody litigation to court. The most relevant fact for our current purpose is that in a disturbing proportion of cases, abusive partners continue to be given primary or shared custody and to be allowed unrestricted access to protective mothers and children. Moreover, even where abuse is well documented, it rarely surfaces as a major determinant of case outcomes.
When asked, psychologists, mediators, and other professionals charged with evaluation in family court claim that they assess for domestic violence and make specialized referrals or protective recommendations when appropriate (Bow & Boxer, 2003). Studies of their actual practice suggest otherwise. Like the study in New York, research in Kentucky found that domestic violence was not only overlooked by evaluators as a general rule but also that it played no role in recommendations even when it was mentioned in the report (Horvath, Logan, & Walker, 2002). Moreover, studies in both Kentucky and California found that couples in which domestic violence was a factor were as likely as those without such allegations to be steered into mediation and that mediators held joint sessions in nearly half of the cases where domestic violence was substantiated in an independent interview, even though this was against the regulations (Hirst, 2002). In San Diego, mediators failed to recognize domestic violence in 57% of abuse cases. Perhaps more importantly, revealing domestic violence was found actually to be detrimental to outcomes for victimized mothers. In fact, mediators who said they were aware of abuse were less likely to recommend supervised exchanges than those who were not aware (Johnston, Lee, Olesen, & Walters, 2005).

Research in Seattle illuminates the current status of decision making in abuse cases. Kernic and her colleagues (2005) studied all couples with minor children petitioning for dissolution of marriage in the target year and merged the marital dissolution files with police and criminal court files. Then, they compared the outcomes for mothers with a documented history of abuse (as well as those with allegations of abuse in the dissolution file) with those without this history. Of the cases with a documented history of abuse, more than three quarters had either no mention of domestic violence in the marital dissolution file (48%) or only unsubstantiated allegations (29%). In other words, the court was made aware of abuse in less than one case in four where it could be documented. After adjusting for a range of potential confounders (such as allegations that the mother had used violence), mothers with a history of abuse were no more likely than the non-abused mothers to be granted child custody. Fathers whose abuse was substantiated in both criminal and family court files were significantly more likely to be denied child visitation and assigned to relevant services than comparison fathers. This outcome is consistent with recommended best practices. But most abusive fathers (83%) had no such restrictions. The outcomes in cases that
involved fathers with a documented history of abuse but whose abusive history was not included in the dissolution file and those with a documented history whose abuse was included only as an allegation by their wives were no different than the outcomes for non-abusive fathers. This last finding is particularly disturbing because the low level of violence typical of domestic violence and coercive control rarely prompts an arrest or protection order.

The Seattle study found no support for the claim frequently made by opponents of a gendered approach to domestic violence that fathers are being disproportionately denied visitation when their wives allege abuse. No special restrictions were being placed on visitation even in most cases where there was documented evidence of abuse. Some judges who possessed information about abuse were more likely to take protective action. This suggests that better communication between criminal and family proceedings might improve the response as would proper investigation of abuse allegations by evaluators. Still, the fact that most judges failed to respond to documented abuse points toward a systemic constraint on appropriate decision making in custody cases involving domestic violence that is not likely to be remedied by training alone.
The Three Planet Model

British scholar Marianne Hester (2004) has dramatized the different and often contradictory assumptions that criminal and family courts bring to bear in domestic violence cases by referring to them as “separate planets.” In criminal court, a woman who presents evidence of abuse is considered a strong and cooperative witness. But if she presses these same claims in family court, she risks being identified as vindictive or uncooperative with “friendly parent” assumptions. The criminal court addresses equity concerns by using its authority to redress the imbalance of power exploited through abuse; in family court, abusive fathers are assumed to have an equity interest in custody. The perpetrator of domestic violence might be renamed by an evaluating psychologist as “the good-enough father.” No-contact orders are commonplace in domestic violence proceedings, but they are extremely rare in custody cases, even in the face of evidence that is identical to the evidence provided to the criminal court. To the contrary, even victims who hold a no-contact order from another court might be held in contempt in family court if they fail to provide access to an abusive dad. At best, family courts can help couples set aside long-standing grievances for the sake of the children. At worst, the normative emphasis on cooperation leads court professionals to misread partner abuse as a form of “high conflict,” rationalize unworkable proposals for contact, and then turn on victims when these plans fail.
The Battered Mother’s Dilemma

The battered mother’s dilemma refers to the choices an abusive partner forces a mother to make between her own interests, including her physical safety, and the safety or interests of her children. Victimized mothers report that their abusive partners threaten to take the children or to report them to CPS in 64% of cases and do so “often or all the time” in 40% of cases (Rees et al., 2006; Tolman, 1989). A particular incident can bring this dilemma into sharp focus, as when a woman realizes that she might be hurt or killed if she attempts to protect her child from her partner’s abuse. In custody disputes, common examples involve abusive husbands who threaten extended custody battles unless the wife abandons all claims for financial support or threaten her with physical harm if she pursues custody. Typically, however, the battered mother’s dilemma describes an ongoing facet of abusive relationships where the victimized caretaker is forced repeatedly to choose between taking some action she believes is wrong (such as using inappropriate forms of corporal punishment with her child), being hurt herself, or standing by while the batterer hurts the child.

A related pattern involves child abuse as tangential spouse abuse, when offenders extend their coercive and controlling tactics to the children either because a victimized mother is no longer available or has stopped responding to threats and violence. In these instances, child abuse, child intimidation, and other harms to children cannot be separated from the coercion and control of their primary parent.

Institutional intervention often can reinforce these patterns. With respect to child welfare, for instance, current CPS practice can aggravate a mother’s dilemma. Women realize that if they do not report domestic violence, then they and their children might be seriously hurt or even killed. But if they do report, then they might be charged with neglect or “failure to protect,” and they can lose their children as a result. This practice was challenged in the Nicholson case. The same dilemma is reinforced when the family court fails to recognize the external constraints to which a caretaker is responding. This happens, for instance, when instead of providing appropriate protections for an abused mother, a court threatens to shift primary custody to an abusive
partner if she fails to facilitate his access to their child. In both instances, risk is enhanced whichever option she selects. In both instances, deciding to report (or in the case of a custody dispute to persist in claiming abuse) puts her at risk of losing her child. If she does not report (or insist the court protect her children), she and the children might be seriously hurt. Women also can be paralyzed by these dilemmas and might place themselves at extreme risk by taking steps to protect their children directly, fail to intervene when an abuser hurts their children, or hurt or scapegoat their children themselves.
The Future of Child Welfare and the Family Court Response

Three decades of advocacy, professional education, and legal reform have greatly enhanced the response of hospitals, police, child welfare, the criminal court, and other services to battered women and their children. However, the child welfare and custody court systems remain outside this process to some extent. Despite the landmark ruling in Nicholson v. Williams, advocates continue to identify instances in which agencies cite battered mothers for neglect and remove their children to foster care, thereby revictimizing abused women. As illustrated by the research described in this chapter, in family court (even when a documented history of abuse from the criminal court makes it into the family file) this information is only deemed relevant to custodial assignment in a small proportion of cases. One consequence is that, despite state legislation to the contrary, abusive husbands are given sole custody, joint custody, or unsupervised access to children in a disturbing number of cases, leaving hundreds of thousands at risk.

Well-designed research in New York and California suggests something more: that victims and their children might actually fare worse in the family court when abuse is identified than if mothers remain silent about domestic violence. This is a dramatic example of the battered mother’s dilemma. Stories abound of abused mothers who have been forced to provide access to perpetrators, have been given pseudopsychiatric labels because of their aggressive attempts to protect their children, have had severe constraints placed on their own access, have been ordered to participate in supervised visitation, and have been denied access altogether or even jailed for their reluctance to cooperate.

In sum, although domestic violence is the most common cause and context of child abuse and the most prevalent and most serious threat to children in disputed cases, the child welfare system and family courts generally fail to recognize its significance and might even respond punitively to battered mothers. This remains true even when state policies explicitly direct judges or child welfare agencies to provide recognition, protection, and support to
victims.

One explanation for these responses is structural. The family court and child welfare agencies occupy unique niches in the legal system because of their substantive concerns with personal life and character, their informal evidentiary procedures, and their decision-making processes that lack the sort of accountability to formal law, public scrutiny, and empirical validation that characterizes other legal, medical, or criminal justice institutions. To some extent, this reflects their functions, which are to protect children identified as at risk for immediate harm in the one instance and to reconcile the conflicting needs and wishes of particular individuals with children’s best interests in the other. In both instances, a governing assumption is that protecting children might require measures that clash with formal principles of justice or equity.

Another explanation for the inappropriate response by the child welfare system and family court is paradigmatic. With respect to CPS, the prevailing conceit is that child protection requires intervention largely with the mothers assumed to bear default responsibility for child rearing. Since mothers are considered largely in their role as conveyor belts to the problems of their children rather than as women with needs of their own, the occurrence of domestic violence is perceived as a failure in child protection rather than as an occasion to support dual victims against a malevolent other. In family court, the emphasis on coparenting implies that fathers have an inalienable right to contact if they choose to exercise it. In the family court, therapeutic jurisprudence recasts the same man who appears as a perpetrator in criminal court as a good-enough father, rationalizes this interpretation as in the child’s best interest, and reframes women who persist in seeking protective interventions as uncooperative or worse, punishing them for vindictively alienating their children from their fathers and giving these fathers primary custody. A third explanation reflects the socioeconomic and political context in which decisions are made in child welfare proceedings and the family court. The disadvantaged status disproportionately occupied by most clients of child welfare allows for a range of quasi-judicial policies that would probably not stand the light of public scrutiny, let alone be tolerated by the caseworkers who implement them. Conversely, the relatively privileged status of those engaged in custody disputes constrains decisions in custody cases to follow the dollar—in this instance, by dismissing or disregarding
allegations of criminal domestic violence in favor of parental rights.
Summary

This chapter has provided an overview of how a child’s well-being is affected by exposure to domestic violence and the response by the child welfare system and the family court, two major institutions charged with evaluating children’s risk and ensuring that their best interests are protected.

Early work in the field described the overlap of domestic violence and child abuse without identifying the dynamics in these situations; early research focused largely on witnessing as the major form of exposure, and results often were generalized from small, unrepresentative samples. More recent work has captured the nuanced and multifaceted nature of children’s experience of domestic violence and has begun to link their risk to the type of abuse involved, the nature and duration of exposure, their developmental age, and perhaps most importantly, their resilience and the capacity of victimized women to mother through domestic violence. As we develop a broader appreciation of the range of tactics deployed in abusive relationships, researchers need to follow suit, considering the harms to children of being exposed to forms of coercion and control other than physical assault.

Considering the response to domestic violence by the child welfare and family court systems raises an important challenge: whether and how to intervene without aggravating the battered mother’s dilemma, which is the predicament posed when a victimized mother has to choose between protecting herself and keeping her children safe. Interestingly, over time, the focus of child welfare in cases involving domestic violence shifted from targeting abusive fathers to deficits in maternal parenting. This emphasis often led local child protection agencies to charge abused women with neglect and to remove their children to foster care. The challenge to this practice of revictimization by advocacy groups culminated in the Nicholson case, in which a federal court ruled that it was unconstitutional. The hope was that child protection would extend its purview to the safety of all family members, to partner with rather than to patronize abuse victims, and to serve as a liaison with criminal justice as part of enhanced advocacy.

Like child welfare, the family court often reinforces the dilemma faced by
battered mothers, in this instance whether to press the issue of domestic violence and risk seeming uncooperative or being labeled an “alienator,” or to conceal it and risk an ongoing threat to themselves and their children. Congress, several states, and the national organization representing family court judges have moved the consideration of domestic violence to the center of custodial decision making. This has yet to change the outcomes in custodial disputes, however, largely because of conflicting mandates favoring shared parenting and a widespread but unsubstantiated belief that a significant proportion of women are using claims of abuse as a sword against men rather than as a shield. Indeed, family courts seem to do little to protect children even in cases with hard evidence of a history of domestic violence. So discrepant are the responses by child welfare, the family court, and the criminal justice system to abuse that they have been described as separate planets. Moving forward means reconciling conflicting approaches in ways that appropriately address the needs of victimized women and children for safety and autonomy.
Discussion Questions

1. Based on the information in this chapter, do you think the exposure of children to domestic violence should be considered a form of child abuse?
2. Should domestic violence be considered a factor when a family court determines which custodial or visitation arrangements are in the children’s best interests?
3. What are the relative advantages and disadvantages of limiting the discussion of how children are affected by domestic violence to witnessing?
4. Describe and give at least one example of the battered mother’s dilemma. What steps might CPS or the family court take to prevent putting domestic violence victims in this situation?
5. Describe three critical challenges you believe should be addressed by researchers interested in the effects of domestic violence on children.

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15 Conclusion Toward the Prevention of Domestic Violence: Challenges and Opportunities

Since the 1977 enactment of Pennsylvania’s Protection of Abuse Act, every state has improved dramatically their response to domestic violence. Collectively, these changes have been transformative. We no longer can say that society ignores the problem of domestic violence. Instead, all states have implemented statutes where arrest is the preferred option for intervention and, in many cases, is mandatory. Clearly the historical, religious, and societal biases against women discussed in Chapter 3 have diminished over time, although cultural vestiges still exist. New domestic violence statutes have increased substantially the grounds for arrest, have criminalized the violation of civil restraining orders, and have addressed the need for victim assistance. As a result, protocols for police officers and other first responders in social service and health-care fields have been developed and many are now more systematically trained to ensure appropriate intervention.

As discussed in Chapter 2, we now have far more available data documenting the incidence of, prevalence of, and trends in domestic violence. We also now have a growing awareness that coercive control is an important dimension of abuse which also should not be tolerated.

Once an offender is brought to the attention of the system, typically by an arrest, there is now a much greater likelihood that he or she will be prosecuted. Many jurisdictions have implemented strategies to increase victim support of prosecution or, in some cases, proceed without victim cooperation. Prosecutors now often have specialized staff to address safety concerns and victim advocates are now available to provide support and specialized services.

Despite ongoing changes resulting from newly recognized performance issues, statutes continue to be amended, almost all to the effect of further reducing the discretion of criminal justice agencies. At the same time, there is
a growing involvement of the judiciary both in issuing civil restraining orders and in developing far more comprehensive sentences emphasizing mandated BIPs and, in many cases, close monitoring of offenders.

Finally, as discussed in this text, intimate partner violence is now recognized as both a significant and preventable public health concern (Centers for Disease Control, 2011). Chapter 4 provided theoretical frameworks for understanding abusive behavior in all of its dimensions. As such, the need for the criminal justice system to work cooperatively with social service and health-care providers is now widely acknowledged, along with the willingness of such providers to intervene to address the needs not only for victims, but for minor children as well.

As we covered in Chapter 6, earlier practices of nonintervention were untenable in US society. Change had to occur. Chapters 7 through 10 discussed how critical changes have been made in policing, prosecution, use of restraining orders, and judicial responses—collectively, the criminal justice responses.

Chapter 11 discussed how these reforms evolved into legislative mandates at the state and federal level. Society is far less likely to tolerate these offenses. Being a batterer now carries strong condemnation in almost all segments of North America and this has been reflected by the enactment of numerous statutes. Substantial federal funding resulting from the various reenactments of VAWA, as well as state and local government appropriations, have made the provision of victim services far more readily available than in the past. These efforts are now coordinated with national toll-free hotlines, extensive publicity by the media, and wide-scale efforts to educate the general public. Variations of VAWA are also now being adopted internationally, resulting in major institutional changes.

Chapters 12 and 13 covered the increasing involvement of social service and health-care agencies as they are now recognized as critical responders. We also now understand that these services may be critical for the many victims who choose not to involve the criminal justice system as well for those who need services beyond what these agencies can provide.

Chapter 14 focused on the impact of domestic violence upon children. This is
a growing area of concern, both because of the direct impact such abuse has on their development and well-being, as well as the long-term consequences including their future risk for offending and victimization. For the first time, the possibility of intergenerational transmission of violence is being addressed by aggressive use of restraining orders that remove abusers from a family and by intervention programs for children who have witnessed violence in the home.

However, as also discussed, not all victims have benefited equally. We therefore need greater attention focused on the provision of services for previously underserved populations who disproportionately experience domestic violence, including Native Americans, recent immigrants, and some minority groups. Collectively, there have been monumental achievements but much work remains.
The Problem of High-Risk Offenders

While there has been startling progress, two major problems remain difficult to address despite the achievements described above: reducing incidents of intimate partner homicide and, apart from homicide, controlling the generally violent, high-risk offender.

Intimate partner homicide is recognized as an issue of growing import, and may be considered at least partially distinct from that of the generally violent, but not necessarily homicidal abuser. Rates for intimate partner homicide have not declined nearly as rapidly either in relation to the overall reduction in the rate of homicides in the population or in relation to reductions in the rate of domestic violence. Overall, the US Bureau of Justice Statistics estimates that intimate partner homicide now accounts for 14% of total homicides in the country for all male and female victims with the impact among women even higher, since 82% of these victims are women (Catalano, 2013). As a result the percentage of female victims of intimate partner homicide to total women killed has increased from 32.9% in 2007 to 37.5% in 2010 (Sheehan et al., 2015). In fact, one set of domestic violence homicides has grown particularly rapidly—that of the homicide-suicide. One estimate is that the US homicide-suicide toll is roughly 1,500 deaths per year, with most, 72%, involving intimate partners and the vast majority of victims, 94%, women (Violence Policy Center, 2013).

The offenders in the case of intimate partner homicide are particularly challenging for prevention efforts. Starzomski and Nussbaum (2000) noted that men who commit domestic homicide-suicide in Western countries are older than most murderers, and are typically middle-class and gainfully employed. Contact with the criminal justice agencies is often minimal before the final murderous rampage, with the perpetrator often having little or no police history (Thomas, Dichter, & Matejkowski, 2011).

Depression, stress-coping deficiencies, schizophrenia, and morbid jealousy have been associated with offenders committing domestic homicide-suicide. Theoretical explanations for domestic homicide-suicide are varied, but appear centered on the offenders’ thwarted need for sexual dominance, needs to
escape from their self-identity, inability to cope with relational tensions, failure to maintain a sense of well-being justifying their own existence, and an abusive—but often hidden—personality (Starzomski & Nussbaum, 2000). A Dutch study of intimate partner homicide reported that most perpetrators had an observable depressive illness, had already threatened to commit suicide prior to the homicide, and had shown “far-reaching dependency on the victim and fear of abandonment” (Liem & Roberts, 2009).

While the phenomenon of intimate partner homicide is still being investigated, the most likely immediate trigger appears to be the batterer’s loss of control over his intimate partner, especially in the context of separation or threat thereof (Catalano, 2006; Roberts, 2009). Some perpetrators now believe they have only one opportunity to regain control over their life prior to police intervention. Another researcher noted that morbid jealousy has become a precipitating factor in many intimate partner homicides, often resulting from the perpetrator’s perceived or actual loss of the intimate partner to another, or as a result of a successful relationship termination made possible by modern intervention (Websdale, 2010).

Unfortunately, none of the psychological factors underpinning the anger nor the immediate triggers for homicidal rage are likely to be addressed by current criminal justice initiatives to prevent intimate partner violence, since, as noted earlier, contact with the police and social welfare agencies for many of these potential killers is often minimal. Further, since the criminal justice system itself provides most referrals for BIPs, many are seen only by health-care professionals who—unless very well trained—may not be aware of the psychological stress nor the potentially explosive situation.

Under these conditions, a spike in the number of homicides—while still relatively few in number compared to overall rates of domestic violence—has been reported, especially among those separated and divorced or pending such actions. Equally tragically, these homicides often occur regardless of whether the victims had actively sought assistance of the police and support from victim advocates, public health service providers, or others in leaving the relationship.

We suggest that the scope of this problem warrants greater attention on insights developed over decades in feminist theory. Feminist emphasis has
always focused on societal inequality and male patterns of social control and presumed entitlement (Sheehan et al., 2015). Greater efforts at prevention could mobilize schools and universities, the media (both news and entertainment), health and social service agencies, and religious leaders.

Similarly, we encourage systemic outreach by practitioners who on a regular basis work with victims of domestic violence (criminal justice personnel, victim advocates, health-care workers, clergy, and social service professionals) to engage with other professions as diverse as the barbers, beauticians, and family law attorneys. These professionals regularly contact family members in distress, but probably have never received training. They may become potential resources to recognize early signs of violence and, in much less coercive encounters, soften some men’s irrational beliefs that facilitate rage. To the extent such efforts are at all successful, they would be preferable, or at least a necessary supplement, to focusing on the immediate precedents or the horrid aftermath of a homicide.
The Use of Risk-Assessment Tools

While it would be preferable for society to comprehensively address issues of systemic male entitlement, we also believe that an enhanced use of risk-assessment tools might better target resources toward those at highest risk for homicide.

While the exact nature of the link between intimate partner homicide and intimate partner violence has yet to be fully determined, some prior domestic violence is the most common risk factor for intimate partner homicide, with 67% to 80% of intimate partner homicide cases having a documented history of violence, whether or not brought to the attention of the police (Campbell, Webster, & Glass, 2009). The specific factors that substantially elevate the risk of intimate partner homicide within a pattern of domestic violence include a persistent pattern of coercive control, the type of violence deployed with specific attention on attempted strangulation (Liem and Roberts, 2009), a pattern of stalking, and threats with weapons (Bailey et al., 1997; Campbell, Glass, Sharps, Laughon, & Bloom, 2007; Sheehan, Murphy, Moynihan, Dudley-Fennessey, & Stapleton, 2015).

During the last 20 years, the field has introduced evidence-based tools that are available to help police, prosecutors, and victim advocates to assess these risks and support victims with services that reduce risks of serious injury and homicide. The result has been an increasingly focused attempt to enrich the growing body of research on intimate partner homicide that examines risk factors, derives strategies for risk management, and provides victim services to mitigate risk.
Risk Factors for Intimate Partner Homicide

Goussinsky and Yassour-Borochowitz (2012) have argued that male homicides of women partners are indeed discrete from nonlethal violence in terms of both emotional and physical circumstances. Similarly, Thomas, Dichter, and Matejkowski (2011) found that intimate partner homicide offenders have more social bonds and are more socially conforming in regard to employment and relationships than other domestic violence offenders, so they would not present the same profile. Instead, intimate partner murderers were more likely to act impulsively and in response to emotional rather than the instrumental uses of violence (using violence to get their way) shown by more chronic abusers. Further, a far greater incidence of intimate partner homicide occurs when the offender and victim were married or cohabitating for years and the offender is faced with sudden separation: incidence rates of intimate partner homicide increase by 300% after separation (Campbell et al., 2007).

In addition, at least in the United States, firearm ownership also appears to be a key independent risk factor for intimate partner homicide. Living in a household with firearms poses a much greater risk of a firearm homicide (Kellerman et al., 1993; Miller, Azereal, & Hemenway 2002; Miller, Azereal, & Hemenway, 2007). Not surprisingly, Vigdor and Mercy (2006) found states that pass laws restricting access to firearms by individuals subject to restraining orders see an average drop of 7% in female intimate partner homicide rates.

Knowledge about risk factors and strategies for risk management also has developed from the work of fatality review teams (FRT) and high-risk domestic violence teams (HRDVT), typically composed of personnel from local criminal justice, social and victim services, health-care agencies, child welfare organizations, and faith communities (and sometimes surviving family members and friends) who review and analyze intimate partner homicides to better understand the risk factors, potential points for intervention, and reforms in law and practice that might avert future intimate partner homicides. First established in the early 1990s, there were about 175 local domestic violence FRTs in 42 states and 10 statewide FRTs in a recent
survey (Dale, 2013).
Using Risk Factors to Target Recurrent Domestic Violence

While intimate partner homicide may be the worst possible outcome, we also recognize that further attention needs to be placed on that subset of generally violent offenders who cause the bulk of serious injury and—due to past history of violence and exposure to the criminal justice system—whose universal violent tendencies are not likely to be deterred by arrest, restraining orders, or the generally light punishment meted out to misdemeanor assailants.

As noted in an earlier chapter, the percent of these serious violent offenders is difficult to calculate precisely, as there are many different formulations, but most estimates place it as less than 10% of the total population of offenders. Unfortunately, BIPs often fail to recognize differences and their program structure is applied to everyone. Therefore, as noted earlier, in most jurisdictions BIPs remain fairly nonresponsive to the diverse range of the offender population as well as to alternate interventions including addressing psychopathology and mind–body bridging (see Miller et al., 2013, for detailed discussion). Not surprisingly, as we noted in an earlier chapter, treatment programs at this time appear to be associated with a limited effect on recidivism among generally violent, recurrent offenders.

In the future we would hope that the insights developed by the use of risk-analysis tools might assist in identifying and then effectively treating these individuals without the need for lengthy incarceration, which currently is the only really effective intervention. Such an approach requires passing several initial thresholds. The primary threshold is whether current instruments are robust enough to identify the most likely repeat offenders who account for a majority of serious domestic violence. These offenders share certain characteristics of a pattern of general violence and typically many past arrests for violent behavior.

In earlier chapters we discussed how profiles of serious violent offenders have during the course of the last several decades been developed, tested,
refined, and deployed, at least initially. The use of modern risk assessments may become a far more useful tool if they are adopted by police and prosecutors and as a role model for assessing risk by healthcare professionals, victim advocates, and social service agencies.
Are Several Risk Profiles Needed?

We note that, while there are good risk assessments, they might not be useful in all applications. For example, serious domestic violence assailants might be predicted based on an instrument focused on past criminal activity, especially past violence. The risk might then be more tuned toward the number and type of past infractions, especially violence.

This type of a risk assessment may not, however, accurately reflect the probability of the much rarer, but more serious occurrence of murder or murder-suicide. In contrast to the serial batterer, the potential perpetrator of an intimate partner homicide may not even have much of a criminal record but is far more likely to have foreseeable psychological and behavioral traits that point to a potentially lethal explosion of violent rage.

For this reason, deploying comprehensive risk assessments requires screening for several different behavioral patterns and then deploying resources to reflect the most likely outcomes. How can this be done?

We recognize that two risk patterns may exist. If a persistent pattern of past violence and multiple arrests and convictions is present, the risk assessment would suggest assignment to an aggressive anti–domestic violence task force. The suggested response would be far different for a lonely, middle-aged married offender, with no or little prior violent history reported to the police, but apparent and profound mental distress from a separation linked to domestic abuse or sudden changes in life that collectively result in a loss of control over his life.

For this group, with an enhanced immediate risk of intimate partner homicide or murder-suicide but far less involvement of the criminal justice system, the immediate police response might be focused on retrieving firearms and alerting social service agencies and public health agencies prior to the occurrence of a serious or fatal incident.3

Luckily, as a result of extensive research, there is a growing understanding of risk factors both for reoffending and intimate partner homicide. As a result,
criminal justice, social service, and health-care agencies may be able to develop far more tailored strategies than the monolithic policies most commonly used today.

Risk-assessment instruments therefore vary by purpose. Some seek to predict recidivism, others lethality, and still others both. Instruments assessing the risk for reoffending were developed as methods to facilitate comprehensive law enforcement investigation and intervention and to guide courts in sentencing and treatment decisions. Law enforcement agencies in the United States, Canada, and New Zealand may use the Ontario Domestic Violence Risk Assessment (ODARA) instrument, as well as a variety of investigative checklists, case management tools, and interagency protocols created by their organizations. The Kingston Screening Instrument for Domestic Violence (K-SID), Domestic Violence Screening Inventory (DVSI), Spousal Assault Risk Assessment (SARA), and Presentencing Inventory (PSI), as well as the ODARA, are intended for use within the criminal justice system and require data from various agencies (Messing & Thaller 2013). The Navy Risk Assessment and PSI were designed to predict both re-assault and lethality (Roehl, O’Sullivan, Webster, & Campbell, 2005).

Some instruments largely rely on information obtained through a review of criminal history, crime scene reports, and so on. Others seek information from victims as well. There is a growing preference for actuarial instruments for use by law enforcement and other professionals within the legal system.

With regard to the likelihood of IPH, The Lethality Assessment Program (LAP) was established with the intent of creating an easy and effective risk-assessment strategy for law enforcement and other agencies to identify domestic violence victims at the highest potential risk for being seriously injured or killed by their intimate partners. LAP seeks to connect high-risk victims with domestic violence programs for expedited access to services and legal protections. LAP is a risk-assessment and threat-management approach to engagement of relevant service providers in concerted attempts to prevent intimate partner homicide. Five hundred law enforcement agencies in 30 states were using the LAP model by 2013 (Dale, 2013).

Perhaps the most well-known risk-assessment instrument is the Danger Assessment Instrument (DA) developed in 1986 and revised in 2008 by
Professor Jacquelyn Campbell at the Johns Hopkins School of Nursing. The DA is intended to be administered through an interview with the victim and is for use by trained police, social service, or health-care professionals to facilitate safety planning with victims. Conversely, the MOSAIC 20 was developed as a strategy to facilitate comprehensive law enforcement investigation and intervention.4

Risk-assessment instruments may become far greater tools to provide the basis for determining intervention modalities by the criminal justice system and the broad spectrum of agencies and organizations that may be able to respond to offenders and victims. Such instruments have already been used in counseling victims of intimate partner violence (Campbell, 2004; Kress, 2008); facilitating appropriate interventions and referrals by police, prosecutors, and victim service agencies (Bennett, Goodman, & Dutton, 1999; Robinson & Howarth 2012); and making referrals to BIPs (Heckert & Gondolf, 2004; Maiuro & Eberle, 2008).

We do acknowledge that there is still controversy over which tools provide the greatest predictive validity and the extent to which they have been adequately tested. In part, this is due to the fact that use of risk-assessment instruments for intimate partner violence is relatively new, and the predictive validity of the measures is not yet supported by a rigorous body of research (Messing & Thaller, 2013). Research on the informal process of assessing, described above, is not yet available.5

Further, as noted earlier, these instruments were created for specific purposes and to be used for professionals and agencies. However, agencies often pick instruments without understanding their intent and, as a result, often informally modify their actual use (Robinson & Howarth, 2012; Storey, Gibas, Reeves & Hart, 2011). One recent British study reported that independent domestic violence advisors, who use standardized assessments but have the final say in risk categorization, often subvert the risk-factor model by using their discretion to upgrade cases originally classified as low-risk, but are prone to overlook or undercount factors like offenders’ general criminal history, victims’ fear that offenders would harm their children, prior strangulation, sexual abuse, and relationship separation, all of which increase revictimization risk (Robinson & Howarth, 2012). Partially as a result of such
concerns and perhaps because of a lack of knowledge and training, Cattaneo and Chapman (2011) found that only 2 of 13 practitioners they interviewed who worked with intimate partner homicide victims effectively used standardized risk assessment.
Implementing Risk Reduction Strategies

Analyzing and predicting high-risk offenders is certainly a logical way to target scarce resources. However, a fundamental component of the use of any risk-assessment instrument is follow-up by law enforcement agencies (as well as all system providers) once an individual is deemed “high risk.”

In fact, managing high-risk offenders is another core implementation strategy. Domestic violence high-risk intervention teams (DVHRT) constitute a proactive approach where those high-risk offenders are identified. For example, the Jeanne Geiger Crisis Center (Hague, Freeman, & Burt, 2012) developed a model that has been successfully adopted in many jurisdictions in New England (Hague, Freeman, & Burt, 2012; Storey, Gibas, Reeves, & Hart, 2011). Thus, a risk-management approach to targeting certain offenders necessitates a continual review of performance standards and practices by all participating stakeholders—the police, prosecutors, victim services agencies, health-care providers, and so on—to determine the optimum risk-assessment approach, the optimum risk-management strategies, and those services and resources for victims essential to prevent future violence or death in this high-risk population.

One method that is relatively easy to implement as it does not require use of an elaborate risk-assessment tool is to target certain types of abuse as conduct that automatically triggers an enhanced coordinated response of the police, prosecutors, courts, health-care providers, and public welfare and nonprofit agencies.

Based on current evidence we would probably use such a targeted response on statutorily based enhancement factors, such as use of a weapon or the commission of certain inherently dangerous acts. As discussed in Chapter 8, a program adopted in Maricopa County, Arizona, for offenders who have tried to strangle their intimate partners is a good example of this type of targeted interdisciplinary approach.

The key requirements for an effective high-risk offender program will be:
A. Training personnel in taking information and interpreting the risk assessment, often in a time compressed, emotional environment.

B. Full access to the risk assessment by all parties essential to handling the case—the police, prosecutors, courts, and probation officers—who will need access to criminal convictions, arrest records, and restraining orders for an offender.

C. Coordination with local social service and health agencies that interact with different victims than do the police and may have increased importance in chronically underserved groups such as minorities, immigrants, Native Americans, known to have high rates of domestic violence and high level of distrust of the criminal justice system.

D. Organizational commitment by the legislature for funding and involving the entire criminal justice system from police department through to trial judge and probation officers to handle offenders identified as high risk.

E. Diversion of the case to an integrated program committed to prosecuting identified high-risk offenders.

F. Sufficient resources to support victims who otherwise might be inclined not to support prosecution for recurrent offenders since, unlike the majority of domestic violence offenders, the state interest in mandatory arrest and mandatory prosecution is sufficient to supplant victim preferences for this targeted group.

While we have been extremely impressed by the major changes that virtually all organizations have made in responding to domestic violence, and believe that progress is continuing, we hope that by the next edition of this work we can effectively reach a larger proportion of victims whether or not they prefer criminal justice interventions or alternative strategies for intervention. Similarly, we have been impressed by increased international awareness of these issues, we suspect that many of these approaches may hold potential in their cultures, and we believe that we can learn innovative solutions from their experiences.

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1 Women appear more likely to commit intimate partner homicide to escape long-term physical abuse or protect children and as such choose either
homicide or suicide to escape the situation (Stark & Flitcraft, 1995; Liem & Roberts, 2009).

2 Such programs also tend to espouse theoretical tenets of feminism often rejected by many offenders, or even other segments of society, which can lead to rather cynical attendance at the sessions.

3 Retrieving firearms from batterers might indeed be one of the best follow-up interventions for this group. Barbara Hart (1990) noted that firearm access and use by “prohibited persons” such as those convicted of any domestic violence offense and those with a history of mental illness has, in the United States, been successfully reduced by media campaigns, increased targeted police activity, and improvements in database and recordkeeping technology.

4 The second instrument was designed by Gavin de Becker and Associates for individuals (as well as trained professionals) to do a reasonable assessment of potential risk https://www.mosaicmethod.com. Validation studies were conducted and results published at https://www.mosaicmethod.com/documents/DOJ_Study.pdf. In our opinion these do provide a good working tool for making an initial appraisal of a person’s risk in a variety of different scenarios, in domestic violence situations as well as workplace and school threats.

5 Nor will conclusive risk assessments be easy to determine. For example, some victims will not participate in intimate partner violence research, citing fears for their own safety or not wanting their relationship to be jeopardized (Heckert & Gondolf, 2004, Ranney, Madsen, & Gjelsvik, 2012). Similarly, offenders definitely are going to be less than forthright as they correctly fear the consequences of the information provided.


Cambridge, MA: Harvard University Press.


Bradley v. State 1 Miss. (1 Walker) 156 (1824).


Disease Control and Prevention.


Buchanan, F., Power, C., & Verity, F. (2013). Domestic violence and the
place of fear in mother/baby relationships: “What was I afraid of? Of making it worse.” Journal of Interpersonal Violence, 28(9), 1817–1838.


Congressional Record, 126 Cong. Rec. 24, 120 (1980).


Crawford v Washington 541 U.S. 36, 2004


D’Angelo, A. N. (2015, March 3). Maricopa County domestic-violence


Edleson, J. L. (2001). Studying the co-occurrence of child maltreatment and woman battering in families. In S. A. Graham-Bermann & J. L. Edleson (Eds.), Domestic violence in the lives of children: The future of research,


Fantuzzo, J. W., & Fusco, R. (2007). Children’s direct exposure to types of


Ford, D. A. (1988, November). Preventing wife battery through criminal
justice. Paper presented at the annual meeting of the American Society of Criminology, Chicago, IL.


Gall v. Gall, no. 1720 MDA (2002).


Gonzales v. City of Castle Rock, 307 F.3d 1258, 1261 (10th Cir. 2002), aff’d on reh’g, 366 F.3d 1093 (10th Cir. 2004), rev’d. 545 US.748 (2005).


Goussinsky, R., & Yassour-Borochowitz, D. (2012). “I killed her, but I never laid a finger on her”: A phenomenological difference between wife-killing
and wife-battering. Aggression and Violent Behavior, 17(6), 553–564.


Healing the wounded male spirit (pp. 1–30). New York: Springer.


Health Resource Center on Domestic Violence, Family Violence Prevention


Herman, J. L. (1992). Trauma and recovery: From domestic abuse to political terror. London: aPandora.


Hester, M. (2013a). From report to court: Rape cases and the criminal justice system in the North East. Bristol: University of Bristol in association with the Northern Rock Foundation.


Violence Against Women. Vienna, Austria


program. Journal of Interpersonal Violence, 19, 1435–1463.


Kulwicki, A. D., & Miller, J. (1999). Domestic violence in the Arab American population: Transforming environmental conditions through


Don’t be afraid to ask: The role of primary care clinicians in facilitating meaningful change for women experiencing domestic violence and abuse—Why waiting for women to speak-up may be harmful. Presentation at the 40th Annual Scientific Meeting of the Society for Academic Primary Care, University of Bristol, Bristol, England, July 7.


VA: Institute for Law and Justice.


Oppenheim v. Kridel, 236 N.Y. 156, 140 N. E. 227 (1923).


Osthoff, S. (2002). But, Gertrude, I beg to differ, a hit is not a hit is not a hit: When battered women are arrested for assaulting their partners. Violence Against Women, 8, 1521–1544.


People v. Guenther, 740 P.2d 971, 975 (Colo. 1994).

Press.


Plichta, S. B. (2004). Intimate partner violence and physical health


Washington, DC: US Department of Justice, Bureau of Justice Statistics.


Sociology of Law, 16, 359–382.


Smith, E., & Farole, D. (2009). Profile of intimate partner violence cases in


violent offending and potential mediating variables. Violence and Victims, 10, 163–182.


State v. Rhodes, 61 N.C. 453 (1868).

Kempe (Eds.), Child abuse and neglect: The family and the community. Cambridge, MA: Ballinger.


Straus, M. A., & Gelles, R. J. (1986). Social change and change in family


Thurston, W. E., Tutty, L. M., Eisener, A. C., Lalonde, L., Velenky, C., &


Townsend, R., & Bennis, W. (2007). Up the organization: How to stop the
corporation from stifling people and strangling profits. New York: Wiley.


New York: Praeger.


Index

Abortion, 354
Ackerman, J., 174, 191
Activism, judicial, 249 (box)–250 (box)
Adam and Eve, 66
Adams, D., 108, 138
Adolescents
  gender and arrest rates of, 183
  impact of domestic violence exposure on, 53–54
  reporting of violence by, 44
  restorative justice programs for offenders, 320
  victimization of, 54
  See also Children
Adultery, 60
Adverse Childhood Experiences (ACE) study, 369, 374, 376–378 (box)
Advocates, victim
  definition of abuse by, 105
  empowerment and, 206, 207–208, 384
  funding and, 220
  impact of, 206–207
  in UK, 230 (box)
  movement, 63
  on police response to concerns of women, 146
  on socioeconomic status of victims, 45 (box)
  potential limits of, 207–208
  prosecution and, 205–208, 221
  shelters and, 384
  stalking and, 55, 290
Affordable Care Act, 279, 300–301
African Americans
  alcohol abuse and, 96
  arrest and, 177 (box), 186
  as victims, 45
  bias against reporting crimes, 123, 186–187
homicide and, 5, 24, 26, 45
risk markers for domestic abuse among, 102–103
See also Race and ethnicity

Age
arrest patterns and, 183
of police officers, 178
of victims, 34, 44, 295, 346
See also Adolescents; Children

Agenda for the Nation on Violence Against Women, 360 (box)
Agha, S., 174
Alaska Natives. See American Indians/Alaska Natives

Alcohol abuse
arrest rates and, 176
as factor in decision to prosecute, 201
race/ethnicity and, 96, 105
relationship to domestic violence, 94–95, 104

Alimony, 282 (box)–284 (box)
American Bar Association (ABA), 281–282, 326–327
American Civil Liberties Union (ACLU), 296
American Indians/Alaska Natives
alcohol/drug abuse and, 96, 105
domestic violence rates and, 47, 104–105
peacemaking circles and, 320–321, 329 (box)–330
VAWA and, 294, 296, 297, 298 (box)–299 (box)
American Medical Association (AMA), 344, 358–359, 362
American Nursing Association, 362
American Prosecutorial Research Institute, 248
American Psychiatric Association, 90, 91
American Psychological Association, 388
Ammar, N., 67
Amnesty International (AI), 304, 305
Amnesty International USA, 301
Anabolic steroids, 88
Anderson, Berryl, 248 (box)
Andorra, 311
Androgens, 88
Angel, R. J., 46–47
Anxiety and fear, biological and psychological-based, 89, 90–93
Archer, J., 39
Arnold, Tom, 147 (box)

Arrest
   advantage for victim, 180–181
   age of offender and, 183
   as effective deterrent, 12, 150–151, 182–183
   as punishment, 149–150
   behavior/demeanor of offender and, 175–176
   behavior/demeanor of victim and, 171
   children present during, 169
   classical bias against, 130–131, 170
   costs and unintended consequences of, 131, 175, 183–185
   criminal history and, 175
   department variations regarding, 177–179
   deterrence theory and, 149–151
   discretion to, 165–166
   domestic violence suppression and, 65
   dual, 2, 176 (box), 188–189, 285
   effectiveness as deterrence, 12, 150–151, 182–183
   effect on hardcore offender, 183, 239, 338
   evolution of research supporting primacy of, 149–151
   felony vs. misdemeanor crimes and, 179
   gender of offender and, 173–175, 183
   incident injuries and, 168–169
   mandatory (see Mandatory arrest)
   marital status effect on, 160, 169–170
   organizational variations and, 107
   perceived mitigating circumstances and, 170
   police decisions on actions regarding, 163–164
   predictors of, 164, 167, 169, 177 (box)
   preferences of victims and, 170–171
   procedural barriers to, 280
   race/ethnicity affect on, 176 (box)–177 (box), 186–187
   restraining orders and, 280
   situational/incident characteristics and, 166–170
   societal reasons favoring, 181
structural impediments to, 130
substance abuse and rates of, 176
unintended consequences of, 131, 174–175
victim role in decision to, 170
weapons, presence of, 164, 166, 167, 168
who initiates call to police, 167–168, 184
widening net of domestic violence practices and, 183–184
witness intimidation effect on, 185
See also Police
Asian Americans, domestic violence rates among, 47–48. See also Race and ethnicity
Asian American Task Force on Domestic Violence, 47
Asian and Pacific Islander Institute on Domestic Violence, 47
Asian immigrants, 104
Assailants. See Batterers
Assaults
  fights vs., 8, 11
  frequency of abusive, 348 (box)
Atlanta replication study, 156
At-risk populations, 353–355
Augustine (Saint), 66–67, 68
Austin, G., 205
Austin, Steve, 147 (box)
Austin, T., 172–173
Australia, 131, 355
Autonomy, prosecutorial, 132–133
Axel Rose, 147 (box)

Bachar, K. J., 328
Bala, N., 376
Ballou, M., 226, 245
Bancroft, L., 381
Bannon, J., 149, 315
Bard, M., 148
Barnes, Donna, 349 (box)
Barnes, Nick, 349 (box)
Barnett, O. W., 83
Basile, S., 231–232
Bateman, L., 359
“The Battered Child Syndrome” (Kemp et al.), 148
Battered mother’s dilemma, 372, 390–391
Battered woman’s syndrome (BWS), 181, 351–352
Batterer intervention programs (BIPS), 2, 11, 330–341
advantages of, 335–336
characteristics of, 331–332
completion as successful outcome marker, 337–339
compliance and, 266–267
content of, 333–334
continued involvement of judicial system in, 285, 335
Duluth Model, 331
Duluth Model, alternatives to, 332–335
duration of, 333, 340–341
efficacy of, 336–337
group therapy as norm for, 334
online program, 340 (box)–341
proliferation of, 330
recidivism and, 331, 337–339, 398
role in divergent offender group, 330–331
victim participation in, 334–335
when to use, 339–341
See also Domestic violence courts

Batterers
absent when police arrive, 166–167
accountability focus in courts and, 254–256
assertiveness deficit of, 324
behavior and demeanor of, 175–176
brain chemistry and, 89–90
classified by severity/frequency of abuse, 77–78, 83–84
conflict resolution capabilities of, 92–93
criminal history of, 175
effect of religion on potential, 69
female, 38–39, 40, 41, 42–43, 174, 396 (note 1)
high-risk, future prevention and, 396–397
interference in victim’s parenting, 381
marital status of, 44
monitoring compliance of, 265–267
“prewired” for abuse, 87–88
prosecutorial assessment of characteristics of, 201
recidivism by, 9
risk of becoming, 87–90
self-esteem of, 92
treatment programs, 108, 138
typed by generality of violence and psychopathology, 84–86
typologies of, 7–8, 77–78, 83–84
using children as tools, 136, 380
with personality disorders/mental illness, 91, 93, 97, 350–351
Battering, defining, 108
Battering syndrome, 49–50
Battling couples. See Common couple violence
Battling spouses, 79
Bayley, D. H., 170, 176
Beauvais, C., 339
Beck, C. J., 324
Beck, C. J. A., 114
Beeman, S. K., 384
Behavioral problems, abuse and, 351
Behavioral risk Factor Surveillance System Survey (BRFSS), 354–355
Behavior and demeanor
   offender, 175–176
   victim, 171
Belknap, J., 41, 221
Bennis, W., 312
Bias against arrest, 130–131, 170
Biblical basis for abuse, 65–66
Biden, Joe, 5, 294
Binder, A., 152
Biologically based theories of abuse
   batterers “pre-wired” for abuse, 87–88, 102
   fear/anxiety and, 89, 90–93
Black, D., 125, 176 (box), 179
Black Americans. See African Americans
Blaikie, P., 102
Blame shifting, 269
Blanc, Julien, 112 (box)
Blumstein, A., 151
Borderline/dysphoric batterers, 84
Bowe, Riddick, 147 (box)
Bowe, Teri, 147 (box)
Bowker, L., 72, 104
Bowman, C. G., 157
Boxer, Barbara, 301
Bradley, S., 197, 255
Bradley v. State, 62
Brain chemistry, 89–90
Briggs, B., 127
Brown, Adrienne, 148 (box)
Brown, James, 147 (box)–148 (box)
Brown, Jim, 147 (box)
Brown, Monique, 147 (box)
Brown, Tami Rae, 147 (box)–148 (box)
Browne, K., 86
Bruno v. Codd, 159, 160
Bui, H. N., 218
Bullock, L., 359
Bureau of Justice Statistics (BJS), 23, 37
\hspace{1cm} on sentencing patterns, 252–253
\hspace{1cm} on socioeconomic status of victims, 45
See also National Crime Victimization Survey (NCVS)
Burgess Proctor, A., 225
Bush, G. W., 297
Buzawa, C., 173
Buzawa, E., 86 (box)–87 (box), 157, 167, 170–171, 172–173, 176, 177
(box), 183, 189, 206–207, 241, 287, 322
Byrne, J., 206
Bystander screening, 126

California, restraining order system in, 234–236, 235 (figure)
Campbell, A., 156
Campbell, Jacquelyn, 400
Campbell, J. C., 114, 348
Canada
- abuse of persons with disabilities in, 355
- classical bias against arrest in, 131
- coercive control in, 303
- crime reporting in, 125
- custody cases in, 387–388
- dating violence study in, 41
- domestic violence courts in, 256
- domestic violence screening in, 364
- prosecution rates in, 131
Cannon, T., 102
Canton v. Harris, 160
Cantor, E., 44
Carey, John, 301
Carlson, C., 328
Carlson, M. J., 238, 241
Carter, J., 69 (box)–70 (box)
Case attrition
- by victims, 134–137
- varied reasons for, 195–197
Caspi, A., 42–43, 91–92
Catalano, S., 44, 45
Cavanaugh, M., 83
Celebrities
- battering by, 48 (box)–49 (box), 52, 53, 147 (box)–148 (box)
- stalking of, 55
Center for Court Innovation, 248, 259
Centers for Disease Control and Prevention (CDC)
- funding of DELTA program by, 3
- NIPSVS program of, 22
- on health care for domestic violence victims, 297
- on health service provider training, 359
- on mental health of victims, 351
- on monetary costs of domestic violence, 50
on physical abuse of pregnant women, 354
on stalking, 111
on types of domestic violence experienced, 106, 346, 348
on use of health services by battered women, 345–346
See also National Intimate Partner and Sexual Violence Survey (NISVS); National Violence against Women Survey (NVAWS)

Change
legal liability as agent for, 158–160
Minneapolis Domestic Violence Experiment and, 151–154
parenting, 379–380, 381
political pressure for, 145–148
process of measuring judicial, 140–141, 248–251
replication studies and, 154–158
role of research in promoting, 148–149
Charlotte, NC, replication study, 155–156
Chastisement, 64
Chesney-Lind, M., 174
Child abuse, defining, 371–372
Child Abuse and Prevention and Treatment Act (1974), 384
Child endangerment, 218–219
Child Protective Services (CPS)
case example, 261 (box)–263 (box)
establishment of, 371
gender differences in focus of, 370, 372, 384, 391–392
mother’s dilemma and, 391
number of cases involving domestic violence, 383
temporary removal case, 384–386
Children
abuse of, 373–374
arrests and presence of, 169
changes in victimized parent and, 380
child endangerment, 218–219
child welfare system and, 383–386
custody cases and, 372, 387–389
developmental risks to, 375–376
diminished capacity for caretaking, effects on, 379
direct effects of domestic violence on, 99–100 (figure), 372,
effect of domestic violence exposure on, 53–54, 371, 372–382
effect of domestic violence on infants, 375
exposure to violence, effect on brain development, 89–90, 376–378
family courts and, 386–392
indirect effects of domestic violence on, 99–100 (figure), 372–373, 378–382
modeling by, 98, 381–382
mothering through domestic violence, effects on, 371, 380
no-drop policies and, 210
parenting changes, effects on, 379–380, 381
prevalence of experience of domestic violence of, 370–371
PTSD in, 90, 375
reporting of violence by, 44
research limitations and, 382–383
resiliency and, 371
self-esteem of, 53, 99, 374, 375
separation from parents, 378–379
sexual abuse of, 372, 373–374
shelters and, 384
underreporting of exposure to domestic violence, 28, 374
used as tools by perpetrators, 136, 380
witnessing of abuse by, 374–375
See also Adolescents

Child welfare system. See Child Protective Services (CPS)
Chimpanzees, aggression in wild, 89 (box)
Christianity, 68
Christoffel, K., 359
Ciraco, V. N., 186
Circles of Peace program, 329 (box)
Cissner, A. B., 266–267
Civil courts. See Restraining orders
Cleary Act, 298
Clinical violence intervention, 361–362, 365–367
Clinton, Bill, 4
Closz, Harold, 227 (box)
Coercion
control vs., 111
definition of, 109
Coercive control, 105–115
defining, 34–36, 105, 114–115
feminist view on, 78–79
health consequences of, 353, 355–356
intimidation as, 8, 34, 105, 109, 110–111, 352, 383
materiality of, 113
new approaches to in Europe, 303–304, 311
policy/practice implications of, 114–115
risk of fatality and, 113–114
sexual, 110, 349–350
social isolation as, 103, 104, 112–113, 136, 383
stalking as, 36–37, 111
tactics used in, 31 (table), 107–108, 109–114, 352, 356, 383
theory of, 107–109
violence in, 109–110

*Coercive Control: How Men Entrap Women in Personal Life* (Stark), 71, 113
Coker, D., 45–46, 329
Colorado Springs replication study, 156
Common couple violence, 8, 42, 188–189
Common law, English, 60–61
Communication failures, 92–93
Community conferencing. See Family group conferencing
Complexity
  of analyzing intimate partner abuse, 10, 81–83
  of victim motivation, 134–137, 197–198
Complex PTSD, 352
Compliance, batterer, 265–267
Conferencing, family group, 320–321, 328–329
Confidentiality, 220, 292, 297
Conflict resolution capabilities, 92–93
Conflict Tactics Scale (CTS), 31–33, 38
  feminist critique of, 41–42
  revised, 32 (box)–33 (box)
Constitutionality of antistalking laws, 292–293
“Contract of Wifely Expectations,” 113
Control
    coercion vs., 111
domestic violence as extreme form of social, 75–76
See also Coercive control
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 305
Conviction, likelihood of, 219–220
Cortisol, 89–90
Costs
    monetary, of domestic violence, 50
    of arrests to victims, 184–185
    of batterer intervention programs, 339–340
    of crime reporting to victims, 124
    of restraining orders, 229
    prosecution, victims’, 136–137
    unintended consequences of arrest and, 131, 175, 183–184
Courts. See Domestic violence courts; Family courts; Judiciary
Crawford vs. Washington, 208 (note 1)
Crenshaw, K., 373
Crime, misdemeanor-felony distinction, 134, 139, 167, 179
Criminal history of batterers, 175
Criminal justice system
    approach to domestic violence intervention, 7
    case attrition by victims and, 134–137
    challenges to approach, 8–11
    continuing importance of history in, 64
    drug cases, 133
    early 20th century, 64–65
    enforcement in mid-1800s, 63–64
    gender bias in, 139–140
    handling battling families as annoyance to, 137–141
    prioritizing prosecutorial efforts to targeted offenses, 133
    restorative justice and, 198, 319–321
    restraining order violations and, 233–234
    victim costs in, 136–137
See also Domestic violence courts; Family courts; Judiciary; No-drop policies; Prosecution; Prosecutors; Sentencing; Stalking

Crooks, C. V., 376
Cross, T., 44
Crown Protective Service (CPS), 209
Cultural values, traditional, 103, 104
Cumulative effects of abuse, 9, 106, 107, 310, 345, 347 (box), 349 (box), 352, 355, 366, 383
Custody cases, 386–389, 392
Cyberstalking, 293, 299–300
Cyber-threats, 290, 291
Cycle of violence, 351
Czech Republic, 311

Dabby, C., 47
Danger Assessment Instrument (DA), 400
Dating violence
  age of victim and, 44, 295
  gender of offender and, 41
  restraining orders and, 225
  VAWA and, 295, 296, 297–298, 299
Datz-Winter, Christa, 73 (box)–74 (box)
Davis, I., 102
Davis, J., 175
Davis, R. C., 202–203, 266–267
D. C. Sniper, 85 (box)
Dean, C. W., 155–156
Declaration on the Elimination of Violence Against Women, 305
Dedicated domestic violence police units, 179
DeJong, C., 225
DeKeseredy, W. S., 104
DeLeon-Granados, W., 26
Denmark, coercive control in, 303. See also Europe
Department of Justice
  batterer intervention programs and, 331
on stalking, 293, 299–300
on VAWA, 297, 299 (box)
See also National Crime Victimization Survey (NCVS); National Institute of Justice (NIJ)
Deschner, J., 373
DeShaney v. Winnebago County Dept of Social Services, 160
Deterrence
arrest as effective, 12, 150–151, 182–183
as primary preference for crime control, 149–150
general, 150–151
hardcore offenders and, 183, 239, 338
specific, 150
theory, 10, 150–151, 153–154
Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates, 151
Developmental age, 375–376
Dichter, M. E., 398
Disabled women, 355 (box)
Divorce
custody cases and, 386–389, 392
divorce mediation, 321, 322, 323, 324–325
historical, 63, 65
restraining orders related to, 229, 232
Dixon, J., 272
Dixon, L., 86
Dobash, R. E., 121
Dobash, R. P., 121
Domestic Abuse Intervention Program (DAIP), 108, 109 (box), 112 (box)
Domestic violence
as extreme form of social control, 75–76
as gendered crime, 386–387
challenges in dealing with, 6–8
control of, effect on other violence, 54 (box)–55 (box)
criminal justice approach to, 8–11
cumulative effects of, 9, 106, 107, 310, 345, 347 (box), 349 (box), 352, 355, 366, 383
defining, 9, 311 (box)
definitional controversies, 33–34
duration of abuse and, 106, 345, 347 (box), 348, 356
emotional abuse as, 108
feminist perspective on, 41–42
fragmentation in responses to, 3
funding of interventions, 3, 5, 6, 10
historic attitudes on, 59–64
impact of, 49–54
media portrayal of, 4, 146 (box)–147 (box)
offenses, types of, 34–37
revolution, success of, 4–6
same-sex, 41, 43–44, 77
specialization in field of, 2, 3
statistics on, 6
types of offenses, 34–37
underreporting of, 28, 32, 38, 39–40, 121, 374
See also Domestic violence courts; Family courts; Historic attitudes; Police

Domestic Violence and the Police, 149

Domestic violence courts
focus on victim needs/offender accountability in, 254–256
goals of, 260
integrated, 258, 273–274
judges, 256 (box)–257 (box)
long-term impact of, 267
mediation programs, 321–328
monitoring of batterer compliance by, 265–267
New York State innovations, 270–274
perceptions of judicial empathy and fairness in, 260–261
resource availability and, 264–265
structure and content of, 257–260
successful, 260–267
types of, 257
See also Batterer intervention programs (BIPS); Criminal justice system; Family courts; Judiciary

Domestic Violence Crime and Victims Act (2004; UK), 230 (box)–231
Domestic violence high-risk intervention teams (DVHRT), 401
Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA), 3
Domestic Violence Restraining Order System (DVROS), 234–236, 235 (figure)
Domestic Violence Training Project (DVTP), 358
Doty, L., 88
Drexel, Louis, 244–245
Droegenmuller, W., 148
Drug abuse, 94, 95, 176, 201
Drug cases, 133
Drug courts, 255
DSM-III-R (Diagnostic and Statistical Manual of Mental Disorders), 90, 91
Dual arrests, 2, 176 (box), 188–189, 285
Due Process Clause, 241, 242, 243
Dugan, L., 26
Dunedin Multidisciplinary Health and Development Study, 91
Dunford, F. W., 86, 154, 158, 166
Duration of abuse, 106, 345, 347 (box), 348, 356
Dutton, D. G., 155, 339

Eberle, J. A., 333
Edleson, J. L., 53, 384
Edwards, S., 345
Eitle, D., 313
Electronic evidence, 220, 221
Electronic harassment, 290
Electronic monitoring, 246, 292
Elliot, D. S., 154
Ellis, D., 322, 324
Ellis, L., 87, 88
Ellison, C. G., 69
EMERGE, 108, 138
Emotional abuse, 8, 42
children and, 370
effect on parenting, 380
harmfulness compared to physical abuse, 32 (box), 50

See also Coercive control

Emotional security hypothesis, 375

Empowerment, victim
advocacy and, 206, 207–208, 384
clinical violence intervention as, 366
divorce mediation and, 323, 324
health services and, 366
mandatory arrest and, 187, 189, 190
no-drop policies and, 214, 215, 216–218
prosecution and, 135, 137, 196, 210, 273
restraining orders and, 228–229, 238

England. See United Kingdom (UK)

English common law, 60–61

Entrapment, 9, 16, 71, 106, 107, 115

Epinephrine, 89

Episodic dyscontrol, 88

Eppler, A., 159

Epstein, D., 211, 216

Equal Protection Clause, 2, 115, 242, 244

Erel, O., 374

Ethnicity. See Race and ethnicity

Europe
coercive control in, 303–304
new approaches to woman abuse in, 302–311
See also United Kingdom (UK)

European Council, 307

European Court of Human Rights (ECHR), 306–307

Evolutionary neuroandrogenic theory (ENA), 87, 88

Exchange/social control theory, 97

Ex-parte temporary restraining orders, 285

Fagan, J., 10, 83, 152

Faggiani, D., 167, 176, 177 (box), 287

Failure to communicate, 92–93

Failure to report crime, 46, 120–123, 191–192
Families, violent, 97–98, 188–189
Family courts
  child welfare system and, 391–392
  criminal courts vs., 65
  custody cases in, 389–390
  domestic violence courts vs., 267–270
  effectiveness of, 267–270
  See also Domestic violence courts
Family group conferencing, 320–321, 328–329
Family Justice Centers, 3, 6
Family patterns of violence, 96–98
  as intergenerational problem, 98–100, 298, 381
Family Violence Prevention and Response Act, 358
Family Violence Prevention Fund, 46, 300, 301
Family Violence Survey, 53
Fathers’ Rights, 302
Fear and anxiety, biological and psychological-based, 89, 90–93
Federal Bureau of Investigation (FBI), 24, 129, 224–225. See also
Uniform Crime Report (UCR)
Federal Interstate Stalking Punishment and Prevention Act, 299–300
Federal laws, 294–301
Felony domestic violence court (FDVC), 271
Felony vs. misdemeanor crimes, 134, 139, 167, 179
Felson, R. B., 77, 98, 173, 191
Feminist perspective on domestic violence, 41–42, 43, 76–78
Ferraro, K., 172
Ferree, Myra Marx, 74–75
Fields, A. M., 41
Fighting words, 289
Fight or flight response, 89
Fights vs. assaults, 8, 11
Financial crisis, recent, 182
Financial strain. See Poverty
Fink, Bruce R., 233 (box)
Finkelhor, D., 44
Firearms
  homicide and, 398
removing from batterers, 399 (note 3)
restraining order prohibition on, 226, 229, 234, 236
stalking and, 292
See also Weapons

Fisher, B., 56
Flitcraft, A., 34, 370, 373
Ford, D. A., 127, 196, 197, 202, 215
Foster care, 3, 219, 239, 371, 378, 384, 391, 392
Fourteenth Amendment, 2, 115, 159, 241, 242, 243, 244, 292

France
coercive control in, 303
pressure for reform in, 307
psychological abuse and, 35 (box), 302
See also Europe

Frankel, S. L., 76
Frederick, L., 329
Frias, S., 46–47
FUTURES, 359, 364, 365

Gallagher, C., 191
Gambone, L. J., 41
Garland, D., 7, 149, 153
Garner, J., 154, 156
Gartin, P., 152
Gaslight (film), 111
Gay couples, 77
Gelles, R. J., 33, 35, 45, 53, 77–78, 83, 96–97, 385

Gender
dating violence and, 41
defining, 38
funding and, 39
judicial bias and, 139–140
of abused disabled persons, 354–355
of children exposed to domestic violence, 375, 381–382
of homicide offenders, 174, 396, 396 (note 1)
of homicide victims, 24, 25 (table)
of offenders, 77, 345
of police officers, 178
of stalking victims, 55
of victims, 24, 25 (table), 28–30, 29 (table), 38–43
posttraumatic stress disorder and, 352
restraining order issuance bias and, 231–232, 234, 235 (figure), 236
self-esteem of children and, 99, 375
Gender violence, defining, 304 (note 4)
General deterrence, 150–151
Generally violent/antisocial batterers, 84
George, D. T., 88
Giles-Sims, J., 98
Girls Study Group, 183
Glass, N., 114
Goldman, Ron, 4
Gondolf, E. W., 332, 338, 339
Gonzales v. City of Castle Rock, 227, 242–244
    restraining order enforcement after, 244–245
Gonzalez, Aurora, 233 (box)
Goodell, Roger, 52 (box)
Gordon, L., 373, 383–384
Gottman, J. M., 84–85
Goussinsky, R., 398
Grau, J., 240
Graves, Karen, 265 (box)
Graves, Robert, 265 (box)
Great Britain. See United Kingdom (UK)
Green Book initiative, 389
Greenfield, L. A., 174
GREVIO, 308
Group therapy, 334
Halpern, R., 339
Hamberger, L. K., 338–339, 345
Hamel, J., 32, 43
Hamilton, E., 156
Hammons, S. A., 77, 98
Harassment, 36, 37, 289
Hare, L. L., 345
Harrell, A., 237, 241
Harris, Crystal, 282 (box)–284 (box)
Harris, R. N., 314
Harris, S. D., 238
Hart, B., 399 (note 3)
Hastings, E., 205
Hastings, J. E., 338–339
Hawaii, victim empowerment in, 366
Hawkins, R., 150, 339
Healey, K., 335
Health Care Reform Act (2010), 6, 344
Health services
  abused-related costs of, 344
  access to, 49, 344 (box)
  Affordable Care Act and, 300–301, 344, 362
  battered women’s need for/use of, 345–346
  clinical violence intervention, 361–362, 365–367
  cumulative effects of violence and, 345, 347 (box), 349 (box), 352, 355, 366
  gender and, 40–41
  hallmarks of domestic violence in, 348
  importance of primary care in, 346
  mandatory reporting by, 365, 384
  medical neglect by, 357
  nature of injuries caused by abuse and, 347 (box)
  provider training, 359
  reforms and, 6, 357–361
  role of, 344–345
  screening by, 362–365 (box)
  secondary consequences of abuse and, 350–353
  trauma care, 346
  victim empowerment and, 366
See also Health setting

Health setting
  defining woman battering in, 355–356
measuring prevalence/incidence of abuse in, 356–357
Helms, Jessie, 294, 296
Hemmens, C., 140
Herman, J., 352
Hester, M., 369, 390
Higley, J. D., 95
Hines, Libby, 256 (box)–257 (box)
Hispanic Americans
alcohol abuse and, 96
arrest rates for, 177 (box)
as victims, 45–47
bias against reporting crimes, 123
types of violence suffered by Latinas, 46
undocumented Latinas, 104
See also Race and ethnicity

Historic attitudes
Biblical basis for abuse, 65–66
continuing importance of, 64
early American law, 61–63
enforcement in mid-1800s, 63–64
English common law and, 60–61
feminist perspective on, 74–75
historical pull back in early 20th century, 64–65
Koranic basis for abuse, 67, 71
nonintervention by prosecutors and, 131–132
of police, 127–128
on domestic violence, 59–64
Roman civil law and, 59
social critique perspective on religion and, 74–78
See also Laws
HIV/AIDS, 296, 350
Holden, G., 238
Holland-Davis, L., 169–170, 175
Holtzworth-Munroe, A., 84, 86, 94, 324
Homant, J. R., 178
Homelessness, 101
Homicide, intimate partner, 5–6, 24–27
gender of offenders, 174, 396, 396 (note 1)
gender of victims, 24, 25 (table)
in France, 303
in workplace, 51, 52
marital status effect on, 44
no-drop policy and, 211, 216
police response and, 149
reasons for, 396–397
restraining order effect on, 236
unemployment effect on, 101
Homicide Prevention Act, NC, 236
Honeymooners, The (TV program), 4, 61
Hoover, L., 177 (box)
Hopkins, C. Q., 328
Hormones, 87–88, 89–90, 96
Hotaling, G. T., 85, 86 (box)–87 (box), 157, 170–171, 189, 322
Hughes, D., 113
Huizinga, D., 154
Human rights, 108, 114, 304–308
Human Rights Watch, 309
Hutchison, I. W., 155–156, 200
Hyman, A., 365
Hypothalamus, 89

I Love Lucy (TV program), 61
Immature personality, 93
Immigrants
   cultural norms and, 104
   failure to report crime by, 46
   procedural safeguards for victims, 298
   prosecution views of, 218
   restraining orders and, 233
   undocumented, 46, 47, 104, 233, 298
Incest, 373
Incident and situational characteristics, 166–170
Incident report forms, 220
Independent Domestic Violence Advocates (IDVA; UK), 230 (box)
Individual-focused theories of violence, 83–87
Injuries
  arrest and incident, 168–169
  cumulative effects of, 348
duration of abuse and, 106, 345, 347 (box), 348, 355
frequency of, 348 (box)
impact of domestic violence on, 49, 50 (figure)
minor nature of, 347 (box)
nature of abuse-caused, 106, 349, 350
rates of, 49, 50 (figure)
  See also Health services; Posttraumatic stress disorder (PTSD)
Institute for Law and Justice, 248
Integrated domestic violence (IDV) courts, 258, 273–274
Intergenerational transmission of violence, 98–100, 298, 381
International Association of Chiefs of Police (IACP), 148, 243, 315
International Violence Against Women Act (proposed), 301
Intimate partner homicide (IPH). See Homicide
Intimate terrorism, 8, 77–78, 83, 84, 98, 383
Intimidation
  as coercive control, 8, 34, 105, 109, 110–111, 352, 383
  of witness, effect on arrest, 185
  prosecution and victim, 136–137, 196, 210, 214, 220–221, 222
  restraining orders and, 225, 227
  stalking and, 289, 300
tactics used in, 383
Islam, 59, 65, 67, 68, 72 (box)–74 (box)
Istanbul Convention (IC), 302, 305, 307–309

Jacobson, N. S., 84–85
Jaffe, P., 205, 374, 376
John, R. S., 374
Johnson, H., 95, 96
Johnson, M., 326
Johnson, M. P., 7–8, 77, 78, 83–84, 86, 98, 103, 106, 109
Joint Commission on the Accreditation of Health Care Organizations (JCAHO), 359, 362
Jolin, A., 206
Jones, A., 108, 113
*Journal of Family Violence, 231–232
Judaism, 59, 68
Judeo-Christian basis for abuse, 65–68
Judicial Oversight Demonstration (JOD) Project, 249 (box)–250 (box)
Judiciary
  battling families as annoyance to, 137–141
  case disposition by, 138–141
  empathy and fairness of, 260–263 (box)
  judicial activism and, 249 (box)–250 (box)
  measuring judicial change, 140–141, 248–251
  reform and, 285
  sentencing, domestic vs. nondomestic violence offenders, 252–254
  sentencing, variability in patterns, 139, 251–252
  sentencing role of, 248–249
See also Criminal justice system; Domestic violence courts; Family courts; Mediation; Restorative justice; Restraining orders
Juveniles. See Adolescents
Juvenile Victimization Questionnaire (JVQ), 54

Kaiser Permanente, 364, 376
Kane, R., 168, 169, 226
Kauder, N. B., 267
Kaufman Kantor, G. K., 94–95
Keilitz, S. L., 241, 258, 259
Kelley, J. J., 155–156
Kelly, J., 326
Kemp, C. H., 148
Kennedy, D. B., 178
Kent, J., 385
Kernic, M. A., 389–390
Kings County, NY, 271–272
Klap, R., 156
Kochel-Rinehart, T., 176 (box)–177 (box)
Koranic basis for abuse, 67, 71
Koss, M. P., 328
Ku Klux Klan, 64

Labriola, M., 197, 255, 266–267
Latinas/os. See Hispanic Americans
Law Enforcement Assistance Administration (LEAA), 148
Law Enforcement Bulletin, 148

Laws

- anti-stalking, 288–294, 299–300
- as structural impediments to police action, 130
- child abuse, 189
- domestic violence-related state, 279
- early American, 61–63, 280
- early changes in, 280–281
- enforcement in mid-1800s, 63–64
- English common, 60–61
- federal, 294–301
- future federal, 301
- international reforms, 301–311
- legal liability, 158–160
- mandatory/presumptive arrest, 286–288, 312–316
- police street-level behavior changes and, 284–285, 312–313
- primary aggressor, 239, 316
- recent, 281–286
- Roman civil, 59

See also Historic attitudes

Learning theory, 98
Lee, C. Y., 83
Lee, J., 177 (box)
Legal liability as change agent, 158–160
Legislation. See Laws
Leighton, B., 387–388
Lempert, R., 152
Lesbian couples. See Same-sex couples
Lethality Assessment Program (LAP), 400
Levinson, D., 74
LGBT victims, 298, 301. See also Same-sex couples
Liability, legal
  police misconduct and, 158–160
  tort, 242, 245
Limbaugh, Rush, 297
Limbic system, 89
Lincoln, A., 85
Lippman, J., 270
Lipton, D., 149
Litchman, K. E., 245
Lloyd, S., 379
Locke, John, 63
Logan, T. K., 236
Loseke, D. R., 170
Luther, Martin, 67

Maiuro, R. D., 333
Maley, Mary H., 329 (box)
Mandatory arrest
  advantages for victims, 180–181
  controversy regarding, 7, 11, 181–182
  costs and unintended consequences of, 131, 175, 183–184, 183–185
  dual arrests and, 188
  empowerment of victims and, 187, 189, 190
  justification in context of victim needs, 189–192
  minority populations and, 186–187
  organizational policies mediating impact of, 312–316
  policies mediating the impact of, 286–288
  rationale for, 7, 286–287
  restraining order violation and, 234
  societal reasons favoring, 181
  statutes, 286–288
  success of, 182
  variations in police use of, 287–288
See also Arrest
Mandatory prosecution alternatives, 220–222. See also No-drop policies
Mandatory reporting, 365, 384
Manganello, J., 114
Manning, P., 314
Margolin, G., 374
Maricopa County, AZ, 204 (box)–205 (box)
Marital rape, 28, 62–63, 108, 253, 284, 297, 304
Marital status
  arrest and, 160, 169–170
  bystander screening and, 126
  domestic violence statutes and, 281
  of victims, 44
  prosecution and, 200, 298
See also Divorce; Marital rape
Married Women’s Property Acts, 64
Martin, M., 188
Martinson, R., 149
Mary Kay Charitable Foundation, 101
Massachusetts Body of Laws and Liberties, 61–62
Mass media. See Media
Mastrofski, S. D., 176 (box)–177 (box)
Matejkowski, J., 398
Mathis, R. D., 324
Maxwell, C., 156, 157
Mazza, J. J., 375
McFarlane, J., 359
McNeill, J., 373
Mears, D. P., 238
Media
  portrayals of violence against women in, 4, 146 (box)–147 (box)
  socioeconomic status of victims and, 45, 101
See also Celebrities
Mediation, 321–328
  advantages of, 322
  effectiveness of, 322–323
  limits of, 323–326
  structural safeguards for, 326–327
  when and how should occur, 326–328
Medical neglect by health services, 357
Medical treatment. See Health services
Meehan, J. C., 86
Meeker, J., 152
Meloy, J. R., 192
Melton, H., 41–42
Men
as victims, 38–40, 42–43, 173–174
reasons for not granting restraining orders to, 231–232
See also Gender
Mental illness, 91, 97, 351
Mercy, J. A., 398
Miami replication study, 156
Middle Eastern immigrants, 104
Miller, N., 225, 282, 312, 315
Miller, V., 359
Mills, L., 217
Mills, Linda, 329 (box)
Milwaukee replication study, 155
Minneapolis Domestic Violence Experiment (MDVE), 138, 338, 339
deterrence theory and, 153–154
impact of, 152–153
methodological concerns of, 151–152
role of publicity in promoting, 152
Minority populations, arrest and, 186–187
Misdemeanor vs. felony crimes, 134, 139, 167, 179
Mission-centric approach to domestic violence intervention, 10
Mixon, Kay, 148 (box)
Model Anti-Stalking Code, 55, 290
Modeling by children, 98, 381–382
Model State Code on Domestic and Family Violence, 247
Moffitt, T. E., 42–43, 91–92
Moore, S., 197, 206, 255
Moore v. Green, 244–245
Moose, C. A., 206
Morash, M., 218
Morella, C., 387
MOSAIC 20, 400
Mothering through domestic violence, 371, 380
Mothers Against Drunk Driving (MADD), 213
Motivation, complexity of victim, 134–137, 197–198
Mrsevic, S., 113
Muhammad, John A., 85 (box)
Muhammad, Mildred, 85 (box)
Muller, Martin, 89 (box)
Muslim Men Against Domestic Violence, 72 (box)–73 (box)
Muslims, 71, 104. See also Islam
Mutual orders of protection, 285
Mutual violent control, 8

National Academy of Sciences, 149, 151
National Association of Women Judges, 139
National Center for State Courts, 238
National Center for Victims of Crime (NCVC), The, 55, 290
National Coalition of Physicians Against Family Violence, 359
National Council of Juvenile and Family Court Judges, 206, 247
National Crime Information Center (NCIC), 224–225
National Crime Victimization Survey (NCVS)
  Conflict Tactics Scale of, 31–33, 32 (box)–33 (box), 38, 41–42
definition of assault of, 37
  on abuse of persons with disabilities, 354
  on age of victim, 44
  on children, 53
  on decline in violence, 23, 26, 182
  on female offenders, 173, 174
  on gender, 27 (figure), 40, 41
  on socioeconomic status of victims, 44–45
  on victim-offender relationship, 23 (figure), 27 (figure), 37, 83
  on victim reporting, 120, 121, 122–123, 124, 184, 191
National District Attorneys Association (NDAA), 200
National Domestic Violence Hotline (NDVH), 101, 295
National Family Violence Survey (NFVS)
  definition of assault of, 123
  on age of victim, 44
  on alcohol abuse, 94
on batterer history of violence, 83
on children, 381
on gender, 31, 32, 38, 39
on victim reporting, 121

National Football League (NFL), 52 (box), 344
National Health Resource Center on Domestic Violence (The Center), 361 (box)

National Incident Based Reporting System (NIBRS)
on female offenders, 173–174
on gender effect on arrest, 183
on mandatory arrest, 287
on offender-victim relationship, 34
on predictors of arrest, 164, 167, 169, 177 (box)
on race of victim, affect on decision to arrest, 177 (box)
on victim reporting, 184

National Institute of Justice (NIJ)
batterer intervention programs and, 335, 336
MDVE/replication studies and, 152, 154, 156
on child endangerment, 218
on deterrence theory, 151
on effect of no-drop policies on homicide rate, 216
on felony domestic violence courts, 271, 272
on partner homicide, 5
on police officer training, 148
on stalking, 290, 299
on types of offenders, 86 (box)–87 (box)

See also National Violence against Women Survey (NVAWS)

National Intimate Partner and Sexual Violence Survey (NISVS)
on age of victim, 44
on coercive control, 30, 31 (table), 34–35
on gender of victim, 28–30, 29 (table), 40
on posttraumatic stress disorder, 352
on race/ethnicity of victim, 45, 46, 47
on same-sex violence, 43
on secondary health problems, 352, 354
on severe physical violence, 21
on sexual assault, 28
on stalking, 36
National Organization for Women (NOW), 139
National Survey of Children’s Exposure to Violence (NatSCEV), 99–100 (figure), 374, 382
National Violence against Women Survey (NVAWS)
on age of victim, 44
on alcohol abuse, 94
on gender differences in controlling behavior, 77
on gender of victims, 39, 40–41
on race, 46, 47
on same-sex violence, 43
on stalking, 56
on victim lifestyle, 173
on violence against persons with disabilities, 354
statistics of, 6
Native Americans. See American Indians/Alaska Natives
Natural disasters, 102
Negative emotionality, 91–92
Negligence theory, 159
Netherlands, 131, 303, 311. See also Europe
Newmark, L., 271
New York State domestic violence courts, 270–274
New Zealand, abuse of persons with disabilities in, 355
*Next Time, She’ll Be Dead* (Jones) [“be” is lowercase in text], 108
Nicholls, T., 43
*Nicholson v. Williams*, 385, 391
NIPSVS, 22
Nixon, Richard, 146
No-drop policies
adversely affecting victims, 216–218
alternatives to, 221–222
current use of, 208–209
description of, 208–218
evidence for effectiveness of, 210–211
justification based on superior results, 215–216
limitations of, 211–215
protection of children as justification for, 210
rationale for, 7, 209–210
reforms, 284
victim empowerment and, 214, 215, 216–218
See also Criminal justice system; Prosecution
Nonfatal violent victimization, 26–27 (figure)
Norepinephrine, 89
North Carolina, restraining orders and, 236
Norway, 311. See also Europe

Obama, Barack, 299 (box)
O’Brien, M., 374
Occupational culture, police, 128
Offenders. See Batterers
Officers. See Police
Okun, L., 108
Olp, Bernhard, 74
Omaha replication study, 154
Ontario Domestic Violence Risk Assessment (ODARA), 399
Oppenheimer v. Kridel, 62–63
Opuz v. Turkey, 305–307
Orantes, Ana, 305 (box)–306 (box)
Osofsky, J. D., 375
Ostrom, B. J., 267
O’Sullivan, C. S., 197, 215–216, 255, 335
Outlaw, M., 77, 98

Parachini, Allan, 233 (box)
Paré, P. P., 173
Parental alienation syndrome (PAS), 388
Parenting changes, 379–380, 381
Parmley, A. M., 35
Parnas, R. I., 148
Partner rape, 304
Pate, A., 156
Patria potestas, 59
Patriarchal terrorism, 98
Pattavina, A., 167, 176, 177 (box), 287
Peacemaking circles, 320–321, 329 (box)–330
Pearson, J., 321
Peled, E., 376
Pence, Ellen, 108
Pennsylvania Coalition Against Domestic Violence, 358
Personality
    disorders, 91, 97
    immature, 93
Perspecticide, 355 (box)
Pesackis, C. E., 155–156
Peterson, R., 273–274
Peterson, R. R., 272
Phelan, M. B., 345
Phillips, M. J., 88
Picard-Fritch, S., 274
Pierce, G. L., 126, 127
“Pink lining,” 344
Pittman, Gregory, 226 (box)–227 (box)
Plea-bargaining, 133
Police
    age of officers, 178
    classical bias against arrest, 130–131
danger of handling domestic violence calls, 129–130
deciding which actions to take, 163–164
dedicated domestic violence police units, 179
department variations regarding arrest, 177–179
deterrence as rationale for action by, 150–151
disincentives to respond to domestic violence, 128–129
gender of officers, 178
historical view on domestic abuse as “real,” 127–128
legal liability and, 158–160
mandatory arrest by (see Mandatory arrest)
misconduct of, and restraining order enforcement, 242–244
occupational culture and, 128
organizational priorities, 179
organizational resistance to change, 288
organizational variations, 107
perceptions of violence as part of victim’s lifestyle, 171–172
race of officer, 178–179
record keeping and, 281, 285, 286
response patterns, 107
response to stalking, limitations of, 192
screening by, 126–127
service community characteristics, 180
structural impediments to action by, 130
training of, 285, 292, 314–316
who initiates call to, 167–168, 184
See also Arrest
Police Family Crisis Intervention, 148
Policy mediating mandatory/presumptive arrest statutes, 312–316
impact of, 313–314
training and, 314–316
Political pressure for change, 145–148
Pollack, Gregory, 282 (box)–283 (box)
Pollitz, A. A., 170
Posttraumatic stress disorder (PTSD)
complex, 352
gender and, 352
in abusers, 90
in children, 90, 375
in infants, 375
in victims, 49, 50, 56, 181, 205, 237, 345, 352
long-term effects of, 353
Potter, H., 68, 72
Poverty and unemployment, 100–103
Power and Control Wheel, 109 (box), 112 (box)
Preferences, victim, 189–192
Pregnancy Risk Assessment Monitoring System (PRAMS), 354
Pressure and release model, 102
Prevention. See Risk reduction
Preventive Series Task Force, 363
Procedural barriers
to arrest, 280
to prosecution, 201–202
Proof texting, 69
Property rights, historic, 60, 62, 64
Prosecution
advocates and, 205–208, 221
alternatives to mandatory, 220–222
changing response to, 203–208 (box)
timidation of victim and, 136–137, 196, 210, 214, 220–221, 222
likelihood of conviction and, 219–220
marital status and, 200, 298
offender characteristics and, 201
of victims for child endangerment, 218–219
organizational factors affecting decision for, 201
procedural barriers to, 201–202
rates of, 203–204
role of victim behavior/motivation in decision to, 200–201
traditional agency attitudes toward, 131–132, 199–200
vertical, 211, 221, 250 (box), 271
victim empowerment and, 135, 137, 196, 210, 273
victim reasons for, 135, 196–197
victims’ self-doubts and complexity of motivation, 134–137, 197–198
See also No-drop policies
Prosecutors
autonomy of, 132–133
budgetary issues and, 132–133
organizational factors affecting responses of, 132–134
organizational incentives for screening, 134
prioritizing efforts to targeted offenses, 133
reforms, 285
responses to new pro-arrest policies, 131, 202–203
screening prior to adjudication, 131–132
unique factors limiting effectiveness of, 133–134
See also Criminal justice system
Protection from Abuse Act, 280
Protective orders. See Restraining orders
Proxy stalking, 36, 303
Psychological-based fear and anxiety, 89, 90–93
Psychological effects of domestic violence, 49–50, 51 (figure), 383. See also Emotional abuse
Psychologically based theories of domestic abuse, 90–93
Psychopathology and generality of violence of batterers, 84–86
Psychotic trigger reaction, 88
Ptacek, J., 329

Quality-of-life effects of domestic violence, 49–50
Quincy District Court (QDC) study, 140
increase in cases and, 267
reoffenders and, 86 (box)–87 (box)
restraining orders and, 240, 241
revictimization and, 214
victim advocacy programs, 206–207

Race and ethnicity
as risk marker for domestic abuse, 102–105
effect on decision to access victim services, 141 (table)–142 (table)
effect on restraining order issuance, 234–235 (figure)
of police officers, 178–179
of victims, 24, 26
victim, affect on decision to arrest, 176 (box)–177 (box)
Raghavan, D., 114
Rape
coercive control and, 110, 303
gender and, 29 (table)
marital, 28, 62–63, 108, 253, 284, 297, 304
media portrayal of, 4
of prisoners as torture, 304
race/ethnicity and, 28
Rawlings, R. R., 88
Reagan, Ronald, 146
Real Social Dynamics, 112 (box)
Rebovich, D., 209, 216, 330–331
Recidivism, 106
alcohol abuse and, 94
as factor in decision to prosecute, 201
batterer intervention programs and, 331, 337–339, 398
case study on, 86 (box)–87 (box)
sentencing effect on, 251
spousal actions effect on, 98
Record keeping, 281, 285, 286
Reform
coercive control and, 114–115
domestic violence, 2–6
gender and, 298, 301
health services, 6, 357–361
in Europe, 307, 309–311 (box)
in Turkey, 305–307, 309
judicial, 270–274, 285
prosecution, 284, 285
sentencing, 284, 285
Refuge UK study, 109, 110–111, 113
Regina v. Mawgridge, 60
Regoli, M. J., 215
Reitzel, D., 205
Relational distance, 120–121
Relationships, statutorily defined, 33–34
Religion
as basis for abuse, 65–68
as part of solution to domestic violence, 72, 73
domestic violence rates among followers of, 71–72
effect on potential batterers, 69
effect on potential victims, 70–71
feminist perspective on, 74–75
immigrants and traditional, 104
importance in modern society, 68
societal standards for specific groups, 73 (box)–74 (box)
Rempel, M., 197, 255, 266–267
Renzetti, C., 42
Replication studies, 154–158
Atlanta, 156
Charlotte, NC, 155–156
Colorado Springs, 156
Miami, 156
Milwaukee, 155
new analysis of data from, 157
Omaha, 154
reaction to, 157–158

Reporting
by children/adolescents, 44
bystander reporting, 126
demographics of people involved in, 123
failure to report crime, 46, 120–123, 191–192
immigrants and, 46
in Canada, 125
mandatory, 365, 384
mother’s dilemma and, 391
NCVS data on, 120, 121, 122–123, 124, 184, 191
police response to, 187–188
race and, 123, 186–187
reasons for, 121, 123–124, 184
socioeconomic status and, 125
who initiates, 167–168

See also Underreporting

Reproductive health, 353, 353–354, 359

Research
  evolution of, supporting primacy of arrest, 149–151
  Minneapolis Domestic Violence Experiment, 151–154
  on children and domestic violence, 382–383
  replication studies, 154–158
  role in promoting change, 148–149
  role of publicity in promoting, 152

Resource availability, domestic violence courts, 264–265

Restorative justice, 198, 319–321
  peacemaking circles and, 329 (box)–330

Restraining orders
  advantages of obtaining, 227–229
  “best practice” for obtaining and enforcing, 245–246
  effectiveness of, 237–238
  empowerment of victims and, 228–229, 238
enforcement after Gonzales v. City of Castle Rock, 244–245
explosive growth of, 224–226
FBI and, 224–225
firearm removal and, 226, 229, 234, 236
inherent limits to, 225
interstate, 295–296
judicial enforcement of, 241–245
lack of information on, 137
limitations of, 51, 233–239
limits on widespread use of, 229–233
misuse of, 239
monitoring technology for, 246
police misconduct and, 242–244
potential enhancements to, 245–246
process of obtaining, 224, 236
reforms, 285
role of, 223–224
surveys of, 234–236, 235 (figure)
when women use, 236–237
Retribution needs of victim, 181, 198
Reuland, M., 167, 176 (box)–177 (box), 287
Revolution, domestic violence, 2–6
success of, 4–6
Reynolds, W. M., 375
Rice, Ray, 344
Risk reduction
high-risk batterers and, 396–397
instruments for assessing risk, 245, 397–398
key requirements for high-risk offender program, 401
risk factors for homicide, 398
risk factors for recurrent domestic violence, 398–399
risk profiles, need for variety of, 399–400
strategies for, 400–401
Robins, R., 42–43, 91–92
Robinson, A. L., 167
Roid rage, 88
Roman civil law, 59
Rousseau, Jean-Jacques, 63
Rule of thumb, 60–61, 62
Rural police departments, 180
Rural victims, reasons for not granting restraining orders to, 232
Rutter, M., 43

Salem, P., 321
Same-sex couples
  as underserved population, 311
  reform and, 298, 301
  restraining orders and, 236
  violence and, 41, 43–44, 77
Sanders, A., 146
Schaeffer, Rebecca, 289
Schechter, S., 108, 113
Scheeringa, M. S., 375
Schmidt, J. D., 155, 200
Schwartz, J., 104, 174
Schwartz, M. D., 104
Schwarzenegger, Arnold, 6, 196
Scott v. Hart, 159, 160
Screening
  as result of organizational incentives, 134
  bystander, 126
  case attrition by victims and, 134–137
  health services and, 362–365 (box)
  police, 126–131
  prior to adjudication, prosecutorial, 131–134
  traditional agency attitudes toward prosecution and, 131–132, 199–200
  victim case, 120–126
Secondary consequences of abuse, 350–353
Selective serotonin reuptake inhibitors (SSRIs), 88
Self-defense, 39, 41, 42, 175
Self-doubts of victims, 205
Self-esteem
of batterers, 92
of children, 53, 99, 374, 375
of victims, 49, 111, 353 (box)

Sentencing
  for domestic vs. non-domestic violence offenders, 252–253
  for stalking, 399
  pattern variability in, 251–252
  trends in reform, 284, 285

Serotonin, 88, 95

Services
  availability of, 12
  coordination of, 3

Sexual abuse
  child, 372, 373–374
  gender and, 39
  victim-offender relationship and, 28
  See also Rape

Sexual assault, underreporting of, 28

Sexual coercive control, 110, 349–350

Sexual harassment, 148 (box)

Shakespeare, William, 61

Sham rage, 89

Shannon, L., 236

Shelters
  financial strain effect of use of, 101
  Istanbul Convention and, 308, 309
  origins of, 1
  race and, 26
  shift in official goal of, 105–106

Shen, H., 225, 236

Sherman, L. W., 10, 150–151, 153–154, 155, 158, 339

Shifman, P., 54 (box)–55 (box)

Shimizu, Aily, 293

Silva, P. A., 43

Silver, H., 148

Silverman, F. N., 148

Silverman, J., 381
Simpson, Nicole Brown, 4, 56, 147 (box)
Simpson, O. J., 4, 56, 147 (box)
Situational and incident characteristics, 166–170
Situational couple violence, 8, 78, 83, 84
Slavery, 103
Sleeping with the Enemy (film), 111
Smith, B., 237, 241
Smith, B. E., 202–203
Smith, C., 335
Smith, D. A., 158
Smith, Kirk, 226 (box)–227 (box)
Smith, Sabrina, 226 (box)–227 (box)
Snell, T. L., 174
Snow, D. L., 41
Social control, domestic violence as extreme form of, 75–76
Social isolation of victims, 103, 104, 112–113, 136, 383
Social work, bias against, 128
Social work movement, 65
Sociodemographics, correlates of violence and, 100–105
Socioeconomic status, decision to report and, 125
Soeken, K., 348
Sorenson, S. B., 225, 236
South Africa, abuse of persons with disabilities in, 355
Spaar, S., 126, 127
Spain
  definition of domestic violence in, 36
  domestic violence homicide in, 305 (box)–306 (box)
  reform and, 307, 311
  See also Europe
Specialization in domestic violence field, 2, 3
Specialized domestic violence courts, 258
Specialized Domestic Violence Courts (SDVC; UK), 230 (box)–231 (box)
Specialized domestic violence units, 206, 221
Specific deterrence, 150
Sriram, S. K., 72 (box)–73 (box)
Stalking
as coercive control, 36–37, 111
constitutionality of statutes against, 292–293
example of internal, 36 (box)–37 (box)
federal efforts to combat, 299–300;
gaps in current laws against, 293–294
gender and, 30, 39
impact of, 56
impact of domestic violence and, 55–56
initial statutes on, 288–290
limitations of police response to, 192
Model Code, 55, 290–291
on college campuses, 297–298
prevalence of, 55–56
race/ethnicity and, 46
recent trends in laws on, 291–292
restraining orders and, 238

Stalking and Domestic Violence: Report to Congress, 292
Stanko, E. A., 130
Stark, E., 8, 26, 34, 35, 71, 84, 106, 107, 110, 111, 113, 373, 379, 383
State Court Processing of Domestic Violence Cases, 253
Statistics, domestic violence, 6
Statutorily defined relationships, 33–34
STDs, 350
Steele, B. F., 148
Steffensmeier, D., 174
Steinmetz, S. K., 77–78
Stereotypes, 45, 83, 108, 171
Steroids, anabolic, 88
Stets, J. E., 77, 98
Steury, E. H., 200
Stigma, 11, 141, 151, 185, 186, 199, 239, 363
Still, Susan, 185 (box)–186 (box)
Still, Ulner, 185 (box)–186 (box)
Stockholm Syndrome, 113, 353 (box), 388
STOP (Services *Training*Officers* Prosecution) program, 5
Stop Violence Against Women: It’s in Your Hands (AI), 305
Strachan, C., 339
Straus, M. A., 33, 38, 45, 53, 77–78, 85, 94–95, 98, 99, 126
Structural impediments to police action, 130
Stuart, B., 329
Stuart, Carol, 146 (box)–147 (box)
Stuart, Charles, 146 (box)–147 (box)
Stuart, G., 84, 86, 94
Substance abuse, 93–96
Sugarman, D. B., 76
Suicide, 49, 52, 53, 146 (box), 354
Sullivan, T. P., 41
Supplemental Homicide Report (SHR), 24–26, 25 (table)
Swan, S. C., 41
Sweden, coercive control in, 303, 311. See also Europe
Syeed, Nafeesa, 85 (box)
Taiwan, abuse of persons with disabilities in, 355
Taming of the Shrew, The, 61
Tanner, Z., 324
Technology
  cyberstalking, 293, 299–300
  cyber-threats, 290, 291
  electronic evidence, 220, 221
  electronic harassment, 290
  electronic monitoring, 246, 292
Temperance Leagues, 63
Temporary restraining orders (TROs), 224, 225, 226, 230, 232, 237, 285. See also Restraining orders
Terrorism, intimate, 8, 77–78, 83, 84, 98, 383
Testosterone, 87–88, 96
Thelen, R. E., 83
Theoretical frameworks
  biological/psychological-based fear and anxiety, 89, 90–93
  complexity of analyzing abuse and, 10, 81–83
  correlates of violence and underserved populations, 100–105
  deterrence, 10, 150–151, 153–154
  domestic violence as intergenerational problem, 98–100
  family patterns of violence, 96–98
individual-focused, 83–87
risk of becoming batterer, 87–90
substance abuse, 93–96
Thoennes, N., 49, 321
Thomas, K. A., 398
Thomas, T., 241
Threats, as coercive control, 110–111
Three Planet model, 390
Thurman v. City of Torrington, 159–160, 244
Thurston, W. E., 364
Tillet, S., 54 (box)–55 (box)
Tjaden, P., 49
Torre, Joe, 372
Tort liability, 242, 245
Townsend, R., 312
Training
  child welfare workers, 372
  court personnel, 220, 372
  health service providers, 359
  police officer, 285, 292, 314–316
Trauma care, 346. See also Health services
Tribal Law and Order Act (TLOA; 2010), 298 (box)–299 (box)
Truesdell, D., 373
Turkey
  coercive control in, 303, 304
  rape in, 303
  reform in, 305–307, 309
Twin studies, 87
Typologies, batterer
  by generality of violence and psychopathology, 84–86
  by severity/frequency of abuse, 77–78, 83–84
  intervention programs and, 333
  role and use of batterer, 7–8, 83, 98
Umhau, J. C., 88
UN Commission on the Status of Women, 305
Underreporting
of child exposure to domestic violence, 28, 374
of domestic violence, 32, 38, 121
of female-against-male violence, 39–40
of sexual assault, 28
See also Reporting
Underserved populations, 100–105
Undocumented immigrants, 46, 47, 104, 233, 298
Unemployment
  as domestic violence risk factor, 155
  Native Americans and, 105
  poverty and, 100–103
UN General Assembly, 304
Unified Family Courts: A Progress Report, 268
Uniform Crime Report (UCR)
  homicide data of, 24–26, 25 (table), 174
  limitations to data of, 28, 129
  on age of victim, 44
  on female offenders, 174
  on victim reporting, 120
  See also National Incident Based Reporting System (NIBRS)
UNITE (to End Violence Against Women), 305
United Arab Emirates (UAE), domestic violence policing in, 190
  (box)–191 (box)
United Kingdom (UK)
  abuse of persons with disabilities in, 355
  classical bias against arrest in, 131
  coercive control in, 303–304
  definition of domestic violence in, 36
  domestic violence courts in, 256
  identification of victims in, 362
  legislative reform in, 309–311 (box)
  no-drop policy in, 209
  police screening in, 127
  pressure for reform in, 307
  prosecutorial autonomy and, 132
  rape in, 303
  ratio of arrests to police calls in, 107
Refuge study, 109, 110–111, 113
restraining orders in, 230 (box)–231 (box)
types of trauma suffered by abused women in, 346
Universal Declaration of Human Rights, 304
Urban Institute, 237–238
Urban police departments, 180
US Commission on Civil Rights, 11, 281, 294

Van Maanen, J., 314
Vaughan, S., 1
Verbal aggression, 31, 37, 83, 87, 93, 332
Vertical prosecution, 211, 221, 250 (box), 271
Victims
advantages of mandatory arrest for, 180–181
advocates (see Advocates, victim)
age of, 34, 44, 295, 346
behavior and demeanor of, 171
case attrition by, 134–137
case screening and, 120–126
charged with child endangerment, 218–219
costs in prosecution, 136–137
effect of religion on potential, 70–71
empowerment of (see Empowerment, victim)
gender and (see Gender)
identifying, 356, 362
initiated attrition, impact of, 137
injury rates of, 49, 50 (figure)
intervention program participation by, 334–335
interventions as centered on, 9–11
marital status of (see Marital status)
men as, 38–40, 42–43, 173–174
police perceptions of violence as part of lifestyle of, 171–172
preferences of, 189–192
PTSD in, 49, 50, 56, 181, 205, 237, 345, 352
race and ethnicity of, 24, 26, 45–48
reasons for prosecution, 135, 196–197
reasons for reporting crimes, 121, 123–124, 184
revictimization reporting by, 187–188
rights of, 130, 158, 214, 308
same-sex violence, 41, 43–44, 77
satisfaction with police response by, 187–188
self-doubts and complexity of motivation of, 134–137, 197–199
self-esteem of, 49, 111, 353 (box)
social isolation of, 103, 104, 112–113, 136, 383
socioeconomic status of, 44–45
stereotypes of, 11
subgroups of, 38, 56, 101
substance abuse by, 95
unanticipated costs of arrest to, 184–185
women who fight back as, 40 (box)
Vigdor, E., 398
Violations, restraining order, 184, 233–234, 239–245
Violence, defining, 106
Violence against women, IC definition of, 307
Violence Against Women Act (VAWA)
  American Indians/Alaska Natives and, 294, 296, 297, 298 (box)–299 (box)
  domestic violence courts and, 255–256
  gender and funding of, 39
  on child protection, 294
  on compliance variations among states, 225–226
  on demographics of people involved in reporting crime, 123
  on health service provider training, 359–360
  on restraining orders, 224–226, 229, 231, 234, 239
  passage of, 1994, 4–5, 279, 294–296
  reauthorization, 2000, 225, 231, 296–297, 300
  reauthorization, 2005, 297, 359–360
  reauthorization, 2013, 294, 297–298, 300
Violence Against Women in the Family (UN), 305
Violent resistance, 8, 77–78, 83, 98
Von Hirsch, A., 153–154

Wales
  domestic violence courts in, 256
legislative reform in, 310–311
no-drop policy in, 209
restraining orders in, 230 (box)–231 (box)

See also United Kingdom (UK)
Walker, L., 352
Walker, R., 236
Walsh, M. E., 324
Wayne, John, 61
Weapons, presence of
  coercive control and, 114
  compliance and, 248 (box), 252
  custody cases and, 387
  decision to arrest and, 164, 166, 167, 168, 175
  decision to charge and, 134, 167
  legislative reform and, 284, 285
  prevalence of, 136, 346
  restraining orders and, 225
  risk assessment and, 397
  stalking and, 291
  victim reporting rates and, 123, 184

See also Firearms
Weinstein, Jack, 385
Wells, W., 26
Western, B., 156
Weston, R., 324
Wexler, S., 237
When Love Goes Wrong (Jones & Schechter), 108
Whetstone, T., 206
Whitcomb, D., 219
White, R. J., 332
White, Ronyale J., 244–245
Wilks, J., 149
Williams, Debra, 147 (box)
Williams, K. R., 150
Williams, Steve, 147 (box)
Wills, D., 210, 213
Wilson, D. V., 176 (box)–177 (box)
Wilson, S., 374
Wilt, M., 149
Wisner, B., 102
Wolfe, D. A., 374
Women Against Abuse, 255
Women as offenders, 38–39, 40, 41, 42–43, 174, 396 (note 1)
Women’s Advocates, 1
Women’s Club of Chicago, 1
Woods, L., 157
Worden, R. E., 170
Workplace, impact of domestic violence on, 50–52
World Health Organization (WHO), 303, 362, 363

Yale Trauma Studies (YTS), domestic abuse and
  on abuse during pregnancy, 354
  on behavioral/psychological consequences, 351
  on children of battered mothers, 370
  on duration of abuse, 348
  on foster care, 384
  on identification of cases, 357
  on prevalence of abuse, 344, 346, 348 (box), 356
  on sexual nature of injuries, 349
Yassour-Borochowitz, D., 398
Yoshihama, M., 47

Zhang, Y., 177 (box)
Zhong, H., 174
Zorza, J., 157
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