Excerpt from:


By Martha McMahon and Ellen Pence.

*Violence Against Women, Vol 9, No. 1, January 2003*
Strategies for Advocacy

First Strategy: Reducing the number of arrests

Duluth’s women’s advocates approached the task of reducing the number of women arrested for assault in two ways. First, through institutional advocacy with the police, advocates succeeded in introducing the expectation that arresting officers determine if either party in a domestic violence case is acting in self-defense. After reviewing the reports of every arrested woman over a two-year period, police administrators were convinced that officers needed specialized training in making self-defense determinations at the scene. In some cities, including Duluth, a third to half of the women arrested for domestic-related assaults have a legitimate, direct claim of self-defense. Under the new procedures and training programs, the number of cases in which officers determine that a woman assaulted her partner has dropped dramatically.

The second approach was to discourage the growing practice of dual arrests when both parties assault each other but one party is clearly more dangerous and dominant in his/her use of force. This was accomplished through requiring investigating officers making the decision to arrest to apply a new test to the case under consideration, that of determining who is the “predominant aggressor.” A simple rule of thumb, for example, might be for the intervening officer to ask him or herself, "If I were to walk away from here without doing anything, who would be most at risk?" The new concept of predominant aggressor was tested first in Washington State, then in Wisconsin, and now in a growing number of states with strong preferred or mandatory arrest statutes.

In a DAIP staff review of 75 arrest reports of women in Duluth, it was found that in 22 cases officers failed to document sufficient facts to determine if the arrested woman was acting in self-defense. In 16 of those cases, it appeared that the women arrested had a self-defense claim. And in another 41 arrest reports out of the 75, the women admitted to using force that was not in response to an imminent threat but was in fact, in response to their partners’ ongoing abuse of them or in response to a recent incident. These cases point to the urgent need for the criminal justice system to develop a far better understanding of the gendered nature of domestic violence, as Shamita Das Dasgupta.
(2002) argues. It also points to the need for the understanding of the gendered nature of violence to be embodied in institutionalized responses.

In the 41 cases mentioned above, it was the male suspect who fit the criterion of predominant aggressor using the single criterion of who caused the most harm. Yet, the woman involved was also arrested. Women fit the predominant aggressor category in only a small minority of arrest reports describing situations where both parties used force. In five reports from the original 75, it was difficult to determine a predominant aggressor based on the incident under investigation or the history of violence between the parties. A well-trained police department, using a predominant aggressor policy and monitoring compliance among arresting officers, would eliminate well over 50% of arrests of women and show them to be problematic toward the goal of securing public safety.

At the urging of advocacy groups, Duluth officers are now instructed to arrest only the predominant aggressor and write a full report for prosecutorial review regarding the secondary aggressors actions. We argue that women’s advocates’ campaign for zero tolerance for violence is inappropriate to the reality of many women’s lives and needs to be re-formulated as one of conditional tolerance and contextual sensitivity.

It is important to emphasize that both of these initiatives, the insistence on more rigorous self-defense investigations and the application of the predominant-aggressor test, have required policymakers to revisit those very policies that just a few years ago were touted as “state of the art” in terms of protecting women. In introducing the new strategies described here, administrators must be prepared to respond to resistance. A substantial number of officers in almost all law enforcement agencies subject to a policy change will see the new strategies as biased in favor of arresting men but not women when both, in their eyes, have committed a crime. Institutionalized resistance to activist goals is not new. Thirty years ago, a significant number of police officers did not consider a man beating his partner to be a crime requiring arrest. Then, as now, changing gender-biased understandings of crime took time. Then, as now, the emphasis was on changing police behavior to better protect women who are being beaten.
In Duluth, it took almost three years to win sufficient support in the police department to successfully implement a predominant-aggressor arrest policy. It took several well-respected officers insisting that such a change was needed to create the conditions for a successful change in policy. In Duluth, the arrests of battered women is now rare. In almost all those cases of problematic arrests reviewed there, the women in question were victims of ongoing abuse. The current practice of arresting such women, we argue, leaves the criminal justice system open to a new accusation, that failure to use discretion in arresting victims of violence increases their risk of further victimization, a risk which the arrest laws were intended to reduce.

Second strategy: working with defense attorneys

In a number of cities, including Duluth, women’s advocacy programs now work with defense attorneys to more aggressively defend women who are charged with assaulting their abusers. This is not always an easy task because women defendants in these cases tend to readily confess to the police that they hit their partners, how hard, and why. Women, Joan Zorza (2001) explains, are more likely than men to volunteer information about using violence simply because they are not socialized to respond with violence. Abusers, on the other hand, will frequently deny their use of violence and demand a vigorous defense by their court appointed or privately funded attorneys. This is not necessarily so with women defendants. In Duluth, the chief public defender agreed to hold a meeting between advocates and key defense attorneys to discuss the disturbing rate of women pleading guilty to charges of domestic violence. Defense attorney’s explained that they routinely gave women their business cards at arraignment court and asked them to set up an appointment but in misdemeanor cases it was rare that any of the women arrested did so. Defense attorney’s would come to pre-trials and briefly talk to clients; but most women, according to the defense attorneys, wanted to get it over with and wanted to plead guilty and so they negotiated a plea. Advocates, it turns out, were not contacting women after being arrested and discussing the importance of meeting with their defense attorney’s. It was agreed that this should be a routine advocacy approach. While Duluth advocacy groups understand the strategic importance of working with
defense attorneys there has been little innovative local work done in this area. The Duluth City Attorney’s office has shown the most interest in addressing the public safety and social justice issues created by prosecuting battered women who fight back.

Third strategy: working with prosecutors

A strong notion of the social or public good inspired the original changes in the Criminal Justice system to better protect women from violence. Using the same argument that court interventions should serve the public good, women’s advocates in Duluth encourage prosecutors to defer cases where women have used violence but were clearly not battering their partners. They argued that public safety is not enhanced by pursuing a prosecution simply because it is technically possible. This, advocates point out, is not the spirit or intent of the legal traditions granting prosecutors broad authority to determine how to charge and prosecute in the interest of justice and the public good. Is there a public interest, advocates ask, in prosecuting women who are being beaten, refuse to "take it," and hit back? Given the gendered nature of violence, should prosecutors not take into account the difference in risks to such a woman and to her partner (Zorza, 2001)?

To prosecute victims of battering, whether they are men or women, exposes victims to new risks on top of those they already face from violent partners. Based on these arguments, the Prosecutor’s Office in Duluth convened an ad hoc committee to study the problem and provided the leadership to craft a program that gave defense attorneys and victims of ongoing abuse the option of asking for a conditional deferral of the case. The prosecutor’s office faced significant criticism from individuals in the police and court system for agreeing to defer cases that could easily be successfully prosecuted. The prosecutor’s office argued that they are charged with seeking justice, not convictions. They established a process where victims of ongoing abuse, regardless of their gender, who are charged with misdemeanor offenses against their abusers can, by agreeing to admit to the facts of the case, be sidetracked into an educational program and put on a quasi-probation status for a year.
The educational program is significantly different than that offered to persons convicted of assaulting their partners who are engaged in a pattern of intimidation, coercion and violence. The program was designed by an advocate with years of experience working with women as victims of abuse. She challenged women’s use of retaliatory violence pragmatically: while it might serve to immediately slow down or even stop his violence, as a long-term strategy for coping with battering, her violence has potentially dangerous consequences. In the educational classes, women receive training on the legal definition of self-defense in comparison to retaliatory, or even defensive, violence. Group members map out the history and pattern of their abusers’ violence and discuss its implications in their lives and the lives of their children. They explore available methods of stopping the violence and evaluate these, given their personal circumstances. They discuss the nature of their attachment to their abusers and the long-term consequences of continuing the relationship if their abusers do not stop battering. The members examine their economic, emotional, spiritual, and physical needs, and spend a great deal of time problem solving and assisting each other as advocates. The facilitator spends considerable time advocating for women in the group as they negotiate complicated problems with the courts, child protection, landlords, employers and others.

The class is not intended to be a batterers’ group; no one challenges the women’s perceived entitlements to physically control their partners, and the facilitator does not level moral challenges against the members’ choice to use violence. As one would expect, however, members do question the ethical and moral meanings of their violence. Occasionally, women who are in fact engaging in patterns of abuse and violence likely to use violence in any relationship are referred. Facilitators meet separately with them, but also invite them to participate in the group process. When women are battering their female partners or are engaging in a pattern of abuse against men who are not abusing them, it is important to challenge them as one would men in abusers’ programs.

Fourth strategy: sentencing and rehabilitation

A fourth strategy employed in Duluth was to challenge sentencing practices that treated a person who assaulted an abusive partner the same way they treated the abuser. The
courts tend to homogenize the meaning of violence, to see quite different actions as “equivalent” and therefore to apply the same remedies to quite different uses of violence. As an alternative, women's advocates and probation officers in Duluth developed a sentencing recommendation matrix that attempts to contextualize violence and make recommendations based on the severity, frequency, and impact of the violence. This matrix is designed to require that sentencing recommendation put less emphasis on past unrelated criminal activity or on the absence of previous convictions. Instead, recommendations should be based on an understanding of the pattern, severity, and frequency of the abuse. In essence, it is a shift from determining a sentence based on the defendant’s relationship to the State to one based on understanding his/her relationship to the victim.

Advocates and probation officers successfully argued that mandating battered women who hit back, or refuse to simply “take it,” to a year’s probation and a batterers’ group was inappropriate. Not only were these women not batterers, but the process also distracted the criminal justice system and the community from providing battered women with what they really needed. In cases where battered women are not eligible for the deferral program (e.g., they have committed a felony assault against their abuser or they have committed a second assault against their abuser) and are convicted, the use of the new matrix will likely result in a sentence tailored to their specific circumstances.

Fifth strategy: confronting criticism

Finally, women arrested for domestic violence require an aggressive advocacy program to take up the cause of women who fight back. Today, increasing numbers of advocacy programs are using gender-neutral language to describe their services. When battered women are arrested, advocates are told they cannot advocate for these women because they are not victims but the offenders. In a culture where dominant understandings of equity and fairness rely on the denial of the reality of differences, the strategies we advocate will initially be perceived as unfair or as expressing a double standard. Women's advocates will need to become sophisticated and adept at explaining
the gendered nature of violence and the meaning of pursuing equality in social contexts where people are clearly not equal in power and social resources

But even the best arguments will be countered by accusations of reverse sexism. While it is important not to ignore perceptions of unfairness, it is equally important not to capitulate to reactionary forces resisting our goal to provide a community response that protects women from ongoing abuse. Women who fight back become increasingly vulnerable to their abusers if the advocacy community does not recognize their actions as legitimate responses to being beaten. The idealized image of the perfect victim and the naïve notion that there is a healthy or proper way of being abused makes women who fight back, women who are prostituted, women who have become addicted to drugs or alcohol, and women who are homeless more vulnerable to both the abuser and the institutions they turn to for help.

The leadership in women’s advocacy programs that is white, middle-class, and oriented toward a predominantly westernized view of social relationships can learn much from the struggles of marginalized groups and third world women—whose demands for equity are falsely represented as demands for special privileges or cultural exceptions. As demonstrated in these struggles, it is important to resist seeing advocacy for women who use violence as an issue of bias or special treatment. It should be remembered that much of the battered women’s movement’s work has been to challenge the social sanctioning of male violence in the private sphere and to end the protections afforded such male privilege by the criminal justice system and other institutions. Every effort we have made has met with resistance and claims that we seek to establish a double standard. We have consistently fought against such efforts to obscure women’s realities. Battered women who use violence to protect themselves from brutal partners deserve no less from us.