

Excerpt from:

Making Social Change: Reflections on Individual and Institutional Advocacy with Women Arrested for Domestic Violence

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1 Strategies for Advocacy

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3 First Strategy: Reducing the number of arrests

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

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

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

32 (2002) argues. It also points to the need for the understanding of the gendered nature of
33 violence to be embodied in institutionalized responses.

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

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

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50 It is important to emphasize that both of these initiatives, the insistence on more rigorous
51 self-defense investigations and the application of the predominant-aggressor test, have
52 required policymakers to revisit those very policies that just a few years ago were touted
53 as "state of the art" in terms of protecting women. In introducing the new strategies
54 described here, administrators must be prepared to respond to resistance. A substantial
55 number of officers in almost all law enforcement agencies subject to a policy change will
56 see the new strategies as biased in favor of arresting men but not women when both, in
57 their eyes, have committed a crime. Institutionalized resistance to activist goals is not
58 new. Thirty years ago, a significant number of police officers did not consider a man
59 beating his partner to be a crime requiring arrest. Then, as now, changing gender-biased
60 understandings of crime took time. Then, as now, the emphasis was on changing police
61 behavior to better protect women who are being beaten.

63 In Duluth, it took almost three years to win sufficient support in the police
64 department to successfully implement a predominant-aggressor arrest policy. It took
65 several well-respected officers insisting that such a change was needed to create the
66 conditions for a successful change in policy. In Duluth, the arrests of battered women is
67 now rare. In almost all those cases of problematic arrests reviewed there, the women in
68 question were victims of ongoing abuse. The current practice of arresting such women,
69 we argue, leaves the criminal justice system open to a new accusation, that failure to use
70 discretion in arresting victims of violence increases their risk of further victimization, a
71 risk which the arrest laws were intended to reduce.

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74 Second strategy: working with defense attorneys

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76 In a number of cities, including Duluth, women's advocacy programs now work with
77 defense attorneys to more aggressively defend women who are charged with assaulting
78 their abusers. This is not always an easy task because women defendants in these cases
79 tend to readily confess to the police that they hit their partners, how hard, and why.
80 Women, Joan Zorza (2001) explains, are more likely than men to volunteer information
81 about using violence simply because they are not socialized to respond with violence.
82 Abusers, on the other hand, will frequently deny their use of violence and demand a
83 vigorous defense by their court appointed or privately funded attorneys. This is not
84 necessarily so with women defendants. In Duluth, the chief public defender agreed to
85 hold a meeting between advocates and key defense attorneys to discuss the disturbing
86 rate of women pleading guilty to charges of domestic violence. Defense attorney's
87 explained that they routinely gave women their business cards at arraignment court and
88 asked them to set up an appointment but in misdemeanor cases it was rare that any of the
89 women arrested did so. Defense attorney's would come to pre-trials and briefly talk to
90 clients; but most women, according to the defense attorneys, wanted to get it over with
91 and wanted to plead guilty and so they negotiated a plea. Advocates, it turns out, were not
92 contacting women after being arrested and discussing the importance of meeting with
93 their defense attorney's. It was agreed that this should be a routine advocacy approach.
94 While Duluth advocacy groups understand the strategic importance of working with

95 defense attorneys there has been little innovative local work done in this area. The Duluth
96 City Attorney's office has shown the most interest in addressing the public safety and
97 social justice issues created by prosecuting battered women who fight back.

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100 Third strategy: working with prosecutors

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102 A strong notion of the social or public good inspired the original changes in the Criminal
103 Justice system to better protect women from violence. Using the same argument that
104 court interventions should serve the public good , women's advocates in Duluth
105 encourage prosecutors to defer cases where women have used violence but were clearly
106 not battering their partners. They argued that public safety is not enhanced by pursuing a
107 prosecution simply because it is technically possible. This, advocates point out, is not the
108 spirit or intent of the legal traditions granting prosecutors broad authority to determine
109 how to charge and prosecute in the interest of justice and the public good. Is there a
110 public interest, advocates ask, in prosecuting women who are being beaten, refuse to
111 "take it," and hit back? Given the gendered nature of violence, should prosecutors not
112 take into account the difference in risks to such a woman and to her partner (Zorza,
113 2001)?

114 To prosecute victims of battering, whether they are men or women, exposes
115 victims to new risks on top of those they already face from violent partners. Based on
116 these arguments, the Prosecutor's Office in Duluth convened an ad hoc committee to
117 study the problem and provided the leadership to craft a program that gave defense
118 attorneys and victims of ongoing abuse the option of asking for a conditional deferral of
119 the case. The prosecutor's office faced significant criticism from individuals in the police
120 and court system for agreeing to defer cases that could easily be successfully prosecuted.
121 The prosecutor's office argued that they are charged with seeking justice, not convictions.
122 They established a process where victims of ongoing abuse, regardless of their gender,
123 who are charged with misdemeanor offenses against their abusers can, by agreeing to
124 admit to the facts of the case, be sidetracked into an educational program and put on a
125 quasi-probation status for a year.

127 The educational program is significantly different than that offered to persons
128 convicted of assaulting their partners who are engaged in a pattern of intimidation,
129 coercion and violence. The program was designed by an advocate with years of
130 experience working with women as victims of abuse. She challenged women's use of
131 retaliatory violence pragmatically: while it might serve to immediately slow down or
132 even stop his violence, as a long-term strategy for coping with battering, her violence has
133 potentially dangerous consequences. In the educational classes, women receive training
134 on the legal definition of self-defense in comparison to retaliatory, or even defensive,
135 violence. Group members map out the history and pattern of their abusers' violence and
136 discuss its implications in their lives and the lives of their children. They explore
137 available methods of stopping the violence and evaluate these, given their personal
138 circumstances. They discuss the nature of their attachment to their abusers and the long-
139 term consequences of continuing the relationship if their abusers do not stop battering.
140 The members examine their economic, emotional, spiritual, and physical needs, and
141 spend a great deal of time problem solving and assisting each other as advocates. The
142 facilitator spends considerable time advocating for women in the group as they negotiate
143 complicated problems with the courts, child protection, landlords, employers and others.

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

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155 Fourth strategy: sentencing and rehabilitation

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157 A fourth strategy employed in Duluth was to challenge sentencing practices that treated a
158 person who assaulted an abusive partner the same way they treated the abuser. The

159 courts tend to homogenize the meaning of violence, to see quite different actions as
160 “equivalent” and therefore to apply the same remedies to quite different uses of violence.
161 As an alternative, women's advocates and probation officers in Duluth developed a
162 sentencing recommendation matrix that attempts to contextualize violence and make
163 recommendations based on the severity, frequency, and impact of the violence. This
164 matrix is designed to require that sentencing recommendation put less emphasis on past
165 unrelated criminal activity or on the absence of previous convictions. Instead,
166 recommendations should be based on an understanding of the pattern, severity, and
167 frequency of the abuse. In essence, it is a shift from determining a sentence based on the
168 defendant’s relationship to the State to one based on understanding his\her relationship to
169 the victim.

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

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180 Fifth strategy: confronting criticism

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182 Finally, women arrested for domestic violence require an aggressive advocacy
183 program to take up the cause of women who fight back. Today, increasing numbers of
184 advocacy programs are using gender-neutral language to describe their services. When
185 battered women are arrested, advocates are told they cannot advocate for these women
186 because they are not victims but the offenders. In a culture where dominant
187 understandings of equity and fairness rely on the denial of the reality of differences, the
188 strategies we advocate will initially be perceived as unfair or as expressing a double
189 standard. Women's advocates will need to become sophisticated and adept at explaining

190 the gendered nature of violence and the meaning of pursuing equality in social contexts
191 where people are clearly not equal in power and social resources

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

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

