

Confronting Gender Bias in Policing **by Diane Wetendorf**

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In the mid 1990s, I developed the nation's first advocacy program working specifically with victims of police-perpetrated domestic violence. The program's informational brochure identified the unique barriers confronting police victims:

- Call the police: *he is the police.*
- Go to a shelter: *he knows where the shelters are located.*
- Have him arrested: *responding officers may invoke the code of silence.*
- Take him to court: *it's your word against that of an officer.*
- Recant: *lose future credibility and protection.*
- Cooperate with law enforcement: *he may lose his job and retaliate against you.*

Despite the passage of two decades, the above barriers remain the same. I would not change a single word if I were writing an informational brochure today.

ACLU and DOJ actions

Considerable national attention recently has focused on the issue of improving gender bias in the police response to domestic violence. First, the American Civil Liberties Union (together with the City University of New York Law School, the University of Miami, and the ABA Commission on Domestic and Sexual Violence) issued a report in December 2015 stressing the need to address gender bias in the response to domestic violence and sexual assault as key elements of broader police reform efforts.¹

Second, the Department of Justice (DOJ) released new guidance in December 2015 to assist law enforcement agencies to prevent bias in the police response to victims of both domestic violence and sexual assault. The guidance was intended to provide guidelines to help ensure that gender bias does not undermine efforts “to keep victims safe and hold offenders accountable.”²

According to the findings of the ACLU report, significant barriers exist to victims' willingness to seek help. Specifically, the report identified four primary reasons why victims of domestic violence and sexual assault fail to call or cooperate with police: police inaction, hostility, and dismissiveness; police bias towards marginalized communities and women in general; negative collateral consequences including involvement with child protective services, immigration issues, and criminal

¹American Civil Liberties Union (2015). Responses from the field: Sexual assault, domestic violence, and policing. Available at www.aclu.org/responsesfromthefield.

²U.S. Department of Justice (2015). Identifying and preventing gender bias in law enforcement response to sexual assault and domestic violence, p. 4. Available at www.justice.gov/ovw/identifying-and-preventing-gender-bias.

charges resulting in loss of financial support, housing, employment, or welfare benefits; and survivors' goals out of alignment with the goals of the criminal justice system.

Shortly after release of the ACLU report, the U.S. Department of Justice released its policy statement similarly addressing the issue of gender bias in policing. The new guidance for law enforcement agencies (LEAs) urged them to examine and eliminate gender bias in policing and to hold officers who commit domestic violence and sexual assault accountable. The guidance has been hailed as a groundbreaking document because “[i]t constitutes the first time that the DOJ has provided guidance to law enforcement agencies about the importance of eliminating gender bias in policing in domestic violence and sexual assault, and the first time it has provided specific recommendations to improve police practices in the investigation of these crimes.”³

The DOJ guidance advises law enforcement agencies to incorporate eight principles into their policies, training, and supervision protocols in order to eliminate the gender bias undermining effective police response. The principles are: recognize and address biases and victim stereotypes; treat all victims with respect and employ interviewing tactics that encourage victim participation; investigate sexual assault and domestic violence complaints thoroughly and effectively; appropriately classify SA/DV reports; refer victims to appropriate services; and properly identify the assailant in domestic violence incidents. The seventh principle encourages LEAs to hold officers accountable when they commit sexual assault or domestic violence; the eighth advises LEAs to gather and maintain accurate data regarding sexual assault and domestic violence.

The DOJ guidance officially addressed a problem that has long remained buried: police-perpetrated domestic violence. The guidance explains that holding officers who commit sexual assault or domestic violence accountable is advantageous for LEAs that want to “be seen ... as credible and legitimate authorities in enforcing the law and protecting public safety.” If an agency fails to investigate reports of police sexual misconduct/assault and police-perpetrated domestic violence or fails to discipline officers appropriately, the “legitimacy of that law enforcement agency may be called into question.” Failing to hold officers accountable makes victims reluctant to report these crimes, “which jeopardizes public safety.” In order to “maintain public confidence, law enforcement agencies should develop policies and practices aimed at preventing and addressing on-duty sexual harassment and assault of members of the public.” It is important to note that safety and protection of the victims do not appear to be of primary concern in the DOJ guidelines. Rather, the focus is on protecting the *reputation* of the law enforcement agencies, *public* safety, and maintaining public *trust*.

Historical Skepticism

This policy statement may be the first official DOJ recognition of the importance of eliminating law enforcement's gender-biased response to sexual assault and domestic violence victims. However, advocates in the Battered Women's Movement recognized this problem *over 30 years ago* when they confronted discriminatory policing practices based on stereotypes and assumptions about gender roles. Domestic violence advocates at that time initiated social reform litigation against law enforcement agencies. The seminal case, **Thurman v. City of Torrington**, 595 F. Supp. 1521 (D. Conn. 1985), marked the first time that a woman successfully sued a town and its police department for violating her civil rights when law enforcement ignored the violence committed against her because her husband was her assailant. The court awarded her \$2.3 million in damages.

The **Torrington** case motivated law enforcement agencies to implement policy and training on the police response to domestic violence, seeking to shield LEAs from liability and improve the

³ D. Kelly Weisburg (Feb/Mar 2016), New federal regs target gender bias, 21(3) **DVR** 33.

police response to women experiencing domestic violence. Advocates assisted LEAs by providing information and training that addressed: the imbalance of power between men and women; the definition of domestic violence; victim stereotypes; why women stay; why women are afraid to report to the police; and why women are reluctant to cooperate with investigations and prosecution of their abusers. Advocates assisted LEAs by providing information and training that addressed: the imbalance of power between men and women; the definition of domestic violence; victim stereotypes; why women stay; why women are afraid to report to the police; and why women are reluctant to cooperate with investigations and the prosecution of their abusers. Advocates talked about the importance of treating victims with respect and believing what victims reported. They worked with law enforcement agencies to develop policy and protocol to ensure a proper police response, accurate identification of the primary aggressor, enforcement of the law, and protective orders. Advocates fostered collaborative relationships with police officers, prosecutors, the judiciary, and legislators.

The focus of the DOJ report is to improve the law enforcement response to victims of domestic violence. However, even if LEAs were to implement the DOJ guidance in cases when the alleged perpetrator is a civilian, I question whether LEAs will implement the DOJ guidance when the alleged perpetrator is one of their own. Many male police officers are conservative and believe in traditional family values. They are committed to maintaining social order, and they believe that social order depends largely on people acting in accordance with traditional gender roles. Sexist men, including those who are police officers, believe that men are physically and intellectually superior to women, and are therefore entitled to dominate them. Police officers who hold sexist beliefs are deeply invested in maintaining the status quo of gender inequality and accept that violence is sometimes necessary to remind a woman of her proper place.

These beliefs are reinforced by a police culture that breeds strong resistance to considering or classifying domestic violence a criminal offense. This is evidenced in police reports that blame the victim for her injuries because she was intoxicated or because she had questioned or defied her abuser's authority.

A police perpetrator's fellow officers may think it is unfair that in addition to the consequences a civilian male might face for committing domestic violence, a police officer faces potential consequences to his career. The DOJ guidance lists several potential consequences of gender bias in the police response to DV. These consequences are especially likely to occur when a fellow officer is the alleged perpetrator of domestic violence or sexual assault: fellow officers misclassify or underreport sexual assault or domestic violence cases; they inappropriately conclude that sexual assault cases are unfounded; they fail to test sexual assault kits; they interrogate rather than interview victims and witnesses; and they treat domestic violence as a family matter rather than a crime.

Many police officers view the penalties imposed by the criminal justice system as discriminatory against male officers, especially if the court confiscates the officer's firearms. Officers rely upon their weapon as an essential piece of equipment and losing their weapon equates to losing their career. Officers who perpetrate domestic violence go to great lengths to impress upon their victims that a 911 call can end a career and put their home, their family, and their life-style at risk.

Policy

Federal gun legislation passed in 1996 created a new liability for LEAs that employed officers who were convicted of misdemeanor crimes of domestic violence. The IACP crafted a Model Policy on Officer-Involved Domestic Violence to address this liability in 2003. The model policy considered pre-hire screening; the identification of abusive officers; protocol for victim reporting; internal and

criminal investigation of complaints; victim referrals; officer training, supervision, and discipline; and zero tolerance. Strangely enough, the majority of law enforcement agencies have failed to adopt this policy despite it providing a shield against liability.

Some law enforcement agencies, especially those with government funding that requires them to work collaboratively with victim advocates, may look to domestic violence advocates for input in developing response to victims. Though this collaboration may be beneficial in cases involving the general population, it is likely to present conflicts when the batterer is a member of law enforcement. Certain aspects of policy are absolutely necessary to protect victims from violence and departments from liability, but advocates and law enforcement often have opposing interests. Police administrators may want to protect victims—but not at the expense of exposing the department to liability or depriving officers of their rights to due process. Advocates may want LEAs to hold abusive officers accountable—but not at the expense of victims. Some citizens, advocates, and police administrators promote zero tolerance believing that an abusive officer should be fired, period. Others believe it is a complex issue that demands case-by-case consideration. While aware of the liability for negligent retention, police administrators are also aware that the agency has invested significant time and money in each officer. This investment, in addition to loyalty to their employees, may motivate the agency to do everything possible to preserve an officer's career. Though advocates do not want police agencies to sweep domestic incidents “under the rug,” they know ultimately the victim will pay the highest price if the abuser loses his career.

Training

In the previous Special Issue of **DVR** on Police and DV, Professor Leigh Goodmark wrote, “Hundreds of millions of federal dollars have already been committed to the training police officers on domestic violence, with equivocal results . . . Few communities have taken advantage of the federal dollars specifically dedicated to addressing intimate partner abuse by police officers. *Resources should be used on services for people subjected to abuse instead of continuing to pour money into police coffers for training that does not seem to fundamentally change the quality of the law enforcement response to domestic violence.*”⁴ I agree, particularly if police training fails to address the root cause of poor police response to domestic violence and sexual assault: sexism.

I have provided training to police supervisors and patrol officers on police-perpetrated domestic violence and sexual assault over the past 20 years. I strove to design a curriculum that exposes and confronts the deeply embedded sexism of the police culture and the stereotypes that sexist officers hold about proper gender roles and behavior, including the male sense of entitlement to use violence to assert power and control over women. I highlighted that the same characteristics and training that make a good police officer also can make a dangerous abuser, and talked about the abusive officer's ability to misuse his professional training and skills to manipulate responding officers and investigators. The curriculum included discussion of the formal as well as the informal police culture that has tolerated sexist attitudes and behaviors since the inception of policing, and how the culture condones and sometimes even promotes the use of violence against women as a means of keeping women under male control.

Some male officers reacted to the very mention of sexism with denial and anger, defending their beliefs and attitudes regarding proper gender roles and behavior. Some insisted that women have power over men and professed that “all a wife, ex-wife or girlfriend has to do is accuse a police officer of assault or domestic battery and she can ruin his career.” This perceived threat to their

⁴ Leigh Goodmark (Feb/Mar 2016), *Militarized masculinity and police officers who commit intimate partner abuse*, 21(3) **DVR** 37.

careers has made many officers determined to ensure that no officer would lose his job because of a woman's allegations of assault or battery.

Neutralize the Threat

Many law enforcement agencies treat complaints of police-perpetrated domestic violence and sexual assault the way they treat citizens' brutality complaints: the victim's complaint is a threat to the accused officer's career; a threat to the reputation of the department; a threat to the public trust; and a threat of a lawsuit. Accordingly, they go on the defensive by strategizing how to neutralize the complaint.

Neutralizing the complaint typically involves destroying the credibility of the complainant. The agency denies that the incident occurred, attempts a cover up, minimizes the harm done, attempts to shift the blame to the complainant and claims that the offender is the real victim. The complainant becomes the focus of the investigation. If unable to deny or cover up the officer's use of violence and misuse of police powers, the agency offers the victim, advocates, and members of the community a scripted response: the agency expresses its regret; assures that it was an "isolated incident" rather than an indication of a pattern or practice; promises to review its policy and procedures; commits to providing additional officer training; pledges to work collaboratively with members of the community; and—last but not least—promises to hold future offenders accountable. After a sufficient amount of time passes and things quiet down, it is back to business as usual, though the agency is better prepared to avoid accountability in the future.

Conclusion

Many law enforcement agencies still consider domestic violence committed by police officers to be a private family matter. Because of the sexist beliefs that are deeply embedded in the police culture, the role of the police wife is seen by many persons as one of providing love, support, and a private haven away from public scrutiny and accountability. All too often, part of that role is to absorb an officer's violence.

When we hear the term "marginalized victims" of intimate partner violence, we often think of those victims who are underrepresented minorities or LGBT. However, I would add another category to marginalized people who are subjected to police bias: victims of sexual assault and domestic violence perpetrated by police officers. This bias favors abusive police officers and the culture in which they thrive. Law enforcement agencies expect advocates to encourage a victim to trust the police and prosecutors, even when the victim has determined that it is against her own best interest to cooperate with an investigation. LEAs may expect advocates to give them information on the whereabouts of the victim and her safety plan. Such expectations prioritize law enforcement's interests and put advocates in an untenable position.

Police-perpetrated sexual assault and domestic violence factors are many and complex. Both police administrators and advocates are bound to experience conflict and frustration when they confront this problem. It is essential that everyone acknowledge from the outset that law enforcement and advocates have different—and often conflicting—perspectives, priorities, and goals. The ACLU report gives us valuable information on why victims are reluctant to report to the police. It remains to be seen what the DOJ and law enforcement agencies actually do to remedy the situation.

Diane Wetendorf is an advocate and author specializing in police-perpetrated domestic violence. Now retired, she created a unique program in 1996 to provide advocacy, training, and consulting services specific to police-perpetrated domestic violence. She worked

collaboratively with police departments to develop policies; trained community advocates, law enforcement, and prosecutors; served as an expert witness in the U.S. and Canada; and was a consultant to the Battered Women's Justice Project. She has authored numerous articles and several books on officer-involved domestic violence. Her website is *AbuseofPower.info*.
