

Hands up at Home: Militarized Masculinity and Police Officers Who Commit Intimate Partner Abuse

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ABSTRACT

The deaths of Michael Brown and Eric Garner and the almost daily news stories about abusive and violent police conduct are currently prompting questions about the appropriate use of force by police officers. Moreover, the history of police brutality directed towards women is well-documented. Most of that literature, however, captures the violence that police do in their public capacity as officers of the state. This Article examines the violence and abuse perpetrated by police in their private lives, against their intimate partners. Although the public and private overlap, the power and training provided to police officers by the state makes them significantly more dangerous as abusers. Intimate partner abuse by police officers is a systemic, structural issue created and fueled by the ways in which police officers are socialized and trained. Police officers are more likely than others to abuse their partners, and as a result of their training and their state imprimatur, police abuse of partners is more problematic and potentially more dangerous than abuse by civilians. Changing the behavior of abusive police officers may be nearly impossible given the interplay of policing and masculinity. Policing is a male profession; it encourages and rewards many of the same notions of masculinity that underscore intimate partner abuse. Feminist theories about how intimate partner abuse serves a means of asserting control over one's partner may not explain officer-involved domestic violence; intimate partner abuse in law enforcement may be part of a larger pattern of violent behavior justified by problematic notions of masculinity. Moreover, the increasing militarization of police forces has given rise to a particularly pernicious type of masculinity, militarized masculinity, which is reflected in the attitudes and

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training of and methods used by police officers, both on the street and at home. Despite the high rates of intimate partner abuse by police officers, each incident is treated as an isolated event, rather than part of a systemic problem, and officers are largely able to act with impunity because of their centrality in the law and policy response to intimate partner abuse in the United States. The state has a serious stake in this conversation, not only because it trains and arms abusers, but because it depends upon these same abusers to enforce the very laws that they are violating in their own relationships. The U.S. response to intimate partner abuse relies heavily on the criminal justice system to enforce domestic violence laws; this Article asks whether criminalization can succeed as a policy when police officers are disproportionately committing intimate partner abuse.

INTRODUCTION

On May 7, 2013, Baltimore City police were called to the home of James Smith and Kendra Diggs by a neighbor reporting a disturbance.¹ Upon their arrival, officers heard a woman, later identified as Diggs, yelling, “Help me, help me” and a man shout, “Go away.”² Officers knocked on the door; when no one answered, they kicked down the door and took Diggs, who was bleeding from a small facial wound, outside.³ Officers then saw Smith, a twenty-year veteran of the Baltimore City Police Department,⁴ run upstairs.⁵ Diggs told the officers that Smith had a gun; Diggs was standing on the street with officers when Smith fired from a second floor window and killed her.⁶ Baltimore City Police Department spokesman Anthony Guglielmi insisted that Smith had not been given preferential treatment because he was a fellow officer: “[t]he minute

1. Justin George & Ian Duncan, *Family Members Say Victim, Police Officer Were Engaged: 20-year Veteran Charged with Murder in Killing of Kendra Diggs*, BALT. SUN (May 8, 2013), http://articles.baltimoresun.com/2013-05-08/news/bs-md-officer-charged-20130508_1_james-smith-west-baltimore-officers.

2. *Id.*

3. *Id.*

4. Justin Fenton, *Baltimore Officer Charged in Fiancee’s Killing Pleads Not Guilty*, BALT. SUN (June 13, 2013), http://articles.baltimoresun.com/2013-06-13/news/bs-md-ci-officer-smith-pleads-not-guilty-20130613_1_baltimore-officer-west-baltimore-city-officer.

5. George & Duncan, *supra* note 1.

6. *Id.*

he fired at that young lady and our police officers—he was treated as a suspect,” Guglielmi explained.⁷ When he fired a shot, Smith became a suspect—but apparently not before. Although officers had already been told that Smith had a gun and saw him flee when they approached, Guglielmi noted that the shooting was sudden and took the responding officers by surprise: “[y]ou’re not expecting to go to a home of a police officer, someone you work side by side with, who engages you in a gunbattle.”⁸

Perhaps police should have expected the worst. Media reports of intimate partner abuse⁹ by police officers are startlingly common.¹⁰ In the same week that Smith committed suicide, the Cato Institute’s National Police Misconduct Reporting Project listed a number of incidents of intimate partner abuse by police officers in jurisdictions ranging from Spokane, Washington¹¹ to Gonzales, Louisiana¹² to Fairfax County, Virginia.¹³ Five months after Smith shot Diggs, Baltimore City police officer Christopher Robinson shot his ex-girlfriend, Marie Hartman, and her new boyfriend, Andrew Hoffman

7. *Id.*

8. *Id.* Smith later committed suicide in jail while awaiting trial. Justin George, *Charged with Killing His Fiancee, Baltimore Police Officer Dies in Apparent Suicide in Jail*, BALT. SUN (Aug. 5, 2013), http://articles.baltimoresun.com/2013-08-05/news/bs-md-ci-police-suicide-20130805_1_apparent-suicide-west-baltimore-baltimore-police-officer.

9. I have used the terms “domestic violence” and “intimate partner abuse” interchangeably in this Article, though there is an argument to be made that they are not the same: domestic focuses on the home and may exclude violence between intimate partners who do not share a home, and violence is more associated with physical violence than with the myriad harms (emotional, psychological, economic, spiritual, reproductive) that are better captured by the broader term “abuse.” LEIGH GOODMARK, *A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM* 199 (2012).

10. See the 102 instances of intimate partner abuse by police officers described in the table found in the Appendix.

11. Tim Lynch, *National Police Misconduct NewsFeed Daily Recap 08-15-13*, CATO INST. (Aug. 16, 2013, 11:32 AM), <http://www.policemisconduct.net/national-police-misconduct-newsfeed-daily-recap-08-15-13/>.

12. Tim Lynch, *National Police Misconduct NewsFeed Daily Recap 08-10-13 to 08-12-13*, CATO INST. (Aug. 13, 2013, 4:56 PM), <http://www.policemisconduct.net/national-police-misconduct-newsfeed-daily-recap-08-10-13-08-12-13/>.

13. Tim Lynch, *National Police Misconduct NewsFeed Daily Recap 08-03-13 to 08-05-13*, CATO INST. (Aug. 6, 2013, 10:45 AM), <http://www.policemisconduct.net/national-police-misconduct-newsfeed-daily-recap-08-03-13-08-05-13/>.

(a Baltimore City firefighter), before killing himself.¹⁴ The shooting took place three months after Hartman ended her relationship with Robinson.¹⁵ In November 2013, District of Columbia police officer Samson Edwards Lawrence III struck his wife, who had a brain tumor, in the head in an attempt to kill her, according to Prince George's County, Maryland prosecutors.¹⁶ Lawrence hit his wife in the head with a metal lamp fixture and threatened her with knives.¹⁷ When asked about the recent increase in arrests of District of Columbia police officers, Chief Cathy Lanier noted that officers committing "interpersonal violence that occurs off duty and in the home" was not only one of the most pressing problems that her department faced, but also one of the two largest issues confronting police chiefs throughout the country.¹⁸

The scant social science research that does exist on intimate partner abuse by police officers might have given the responding officers in the Diggs case further reason for caution. Studies suggest that police officers are more likely than others to commit intimate partner abuse.¹⁹ Large numbers of officers report knowing someone in their department who has committed intimate partner abuse;²⁰ the

14. *Police: Baltimore Officer Fatally Shoots 2 Before Turning Gun on Himself*, WBAL-TV 11 (Oct. 28, 2013, 6:23 PM), <http://www.wbal.com/news/maryland/anne-arundel-county/3-dead-in-anne-arundel-county-murdersuicide/22656434>.

15. *Id.*

16. Lynh Bui, *D.C. Police Officer Beat His Wife, Who Has a Brain Tumor, in the Head, Prosecutors Said*, WASH. POST (Jan. 23, 2014), http://www.washingtonpost.com/local/crime/dc-police-officer-beat-his-wife-leaving-her-with-a-brain-tumor-prosecutors-say/2014/01/23/3ad5205a-8470-11e3-9dd4-e7278db80d86_story.html.

17. *Id.*

18. The other problem noted by Lanier was alcohol-related violence. Patrick Madden, *Lanier Defends D.C. Police Hiring Standards, Asks for Flexibility in Firings*, WAMU (Jan. 27, 2014), http://wamu.org/news/14/01/27/after_officers_arrests_lanier_defends_hiring_standards_and_asks_for_flexibility_in_firings. This problem is not unique to the United States. See, e.g., *Out of Control: Scottish Police Officers Accused of Rape, Assault, Theft*, SPUTNIK NEWS (Feb. 13, 2015, 16:32), <http://sputniknews.com/europe/20150213/1018219665.html> (explaining that approximately 160 Scottish police officers, constables, and inspectors are currently suspended for a number of criminal acts, including domestic assault).

19. Kimberly A. Lonsway, *Policies on Police Officer Domestic Violence: Prevalence and Specific Provisions Within Large Police Agencies*, 9 POLICE Q. 397, 399–400 (2006). Although men are not the perpetrators in all intimate partner violence committed by police officers, they do make up the majority of perpetrators, both in studies and anecdotally (consistent with the general literature on intimate partner violence).

20. Andrew H. Ryan, *The Prevalence of Domestic Violence in Police Families*, in DOMESTIC VIOLENCE BY POLICE OFFICERS 297, 300 (Donald C. Sheehan ed., 2000).

partners of officers report higher than average rates of physical and verbal abuse.²¹ A recent United States Department of Justice investigation of the Puerto Rico Police Department found that between 2005 and 2010, the department received 1,459 civilian complaints alleging domestic violence by officers.²² Ninety-eight officers were arrested more than once on domestic violence charges between 2007 and 2010; many of those officers remained employed by the Puerto Rico Police Department.²³ Three Puerto Rico Police Department officers shot their spouses in 2010.²⁴

The deaths of Michael Brown²⁵ and Eric Garner²⁶ and the almost daily news stories about abusive and violent police conduct²⁷ are currently prompting questions about the appropriate use of force by

21. Leonor Boulin Johnson et al., *Violence in Police Families: Work-Family Spillover*, 20 J. FAM. VIOLENCE 3 (2005).

22. CIVIL RIGHTS DIV., U.S. DEP'T JUST., INVESTIGATION OF THE PUERTO RICO POLICE DEPARTMENT 16 (2011), available at http://www.justice.gov/crt/about/spl/documents/prpd_letter.pdf.

23. *Id.* at 17.

24. *Id.*

25. Michael Brown was shot and killed by former Ferguson police officer Darren Wilson on August 9, 2014. Brown was unarmed when Wilson shot him. His death sparked weeks of protests focused on the excessive use of force against people of color and was the catalyst for the Black Lives Matter movement, a reexamination of the use of military equipment and tactics in policing, and a national conversation about prosecutorial misconduct in presentations of cases involving police to grand juries. Jack Healy, *Ferguson, Still Tense, Grows Calmer*, N.Y. TIMES (Nov. 26, 2014), <http://www.nytimes.com/2014/11/27/us/michael-brown-darren-wilson-ferguson-protests.html>; Nicky Woolfin, *Ferguson Prosecutor Says Witnesses in Darren Wilson Case Lied Under Oath*, GUARDIAN (Dec. 19, 2014, 15:43 EST), <http://www.theguardian.com/us-news/2014/dec/19/ferguson-prosecutor-witnesses-darren-wilson-michael-brown>.

26. Eric Garner was killed by a police officer who placed him in a chokehold after apprehending him for selling loose cigarettes in Staten Island, New York. The Staten Island grand jury declined to indict Officer Daniel Pantaleo one week after the Ferguson grand jury made its decision in the Wilson case, again sparking protests. J. David Goodman & Al Baker, *Wave of Protests After Grand Jury Doesn't Indict Officer in Eric Garner Chokehold Case*, N.Y. TIMES (Dec. 3, 2014), <http://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html>.

27. The Cato Institute's National Police Misconduct Reporting Project collects these stories at <http://www.policemisconduct.net/>. For the weekend of February 7 through February 9, 2015, for instance, there were nine reports of police misconduct, including one Davidson County, Tennessee deputy charged with aggravated assault in a case involving domestic violence. Jonathan Blanks, *National Police Misconduct NewsFeed Daily Recap 02-07-15 to 02-09-15*, CATO INST. (Feb. 10, 2015, 2:48 PM), <http://www.policemisconduct.net/national-police-misconduct-newsfeed-daily-recap-02-07-15-to-02-09-15/>.

police officers. And the history of police brutality directed towards women, particularly women of color, transwomen, and lesbians, has been well documented. As Andrea Ritchie writes, “[W]omen and girls, and particularly women of color, are sexually assaulted, raped, brutally strip-searched, beaten, shot, and killed by law enforcement agents with alarming frequency.”²⁸ Most of that literature captures the violence that police do in their public capacity, as officers of the state. This Article examines the violence and abuse perpetrated by police in their private lives, against their intimate partners. Although the public and private overlap, the power and training provided to police officers by the state makes them significantly more dangerous as abusers.²⁹ This Article argues that intimate partner abuse by police officers is a systemic, structural problem created and fueled by the ways in which police officers are socialized and instructed. The state has a serious stake in this conversation, not only because it trains and arms abusers, but because it depends upon these same abusers to enforce the very laws that they are violating in their own relationships. The U.S. response to intimate partner abuse relies heavily on the criminal justice system to enforce domestic violence laws; this Article asks whether criminalization can be a successful policy response to domestic violence when police officers are disproportionately committing intimate partner abuse.

Part I of the Article summarizes the social science literature on intimate partner abuse by police officers, arguing that the research, while flawed, supports the conclusion that police officers are more likely than others to abuse their partners. In Part II, the Article explains why, as a result of their training and their state imprimatur, police abuse of partners is more problematic and potentially more dangerous than abuse by civilians. The barriers to addressing intimate partner abuse by police officers are also the subjects of Part II.

Part III discusses the near impossibility of changing the behavior of abusive police officers given the interplay of policing and masculinity. Policing is a male profession; it encourages and rewards

28. Andrea J. Ritchie, *Law Enforcement Violence Against Women of Color*, in *COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY* 138, 139 (INCITE! Women of Color Against Violence eds., 2006).

29. See *infra* Section II.A.

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many of the same notions of masculinity that underscore intimate partner abuse. Moreover, the increasing militarization of police forces has given rise to a particularly pernicious form of masculinity, militarized masculinity, which scholars like Valerie Vojdik and Madeline Adelman have linked to violence against women by soldiers. Part III examines the interplay between masculinity, militarized masculinity, intimate partner abuse, and policing.

Intimate partner abuse and other forms of violence against women committed by members of the armed forces have been the subject of tremendous scrutiny in the last several years. That violence has been described as a systemic problem, created and shielded by military culture and hierarchy. Part IV asks why, in contrast, police officers are able to abuse their partners with impunity and why intimate partner abuse by police officers is seen as an individual rather than a systemic problem. One theory is that unlike soldiers, police officers are primarily responsible for enforcing the laws against domestic violence. Domestic violence law and policy in the United States has invested heavily, both monetarily and in terms of interagency cooperation, in police officers as first responders in cases involving intimate partner abuse. Hundreds of millions of dollars flow to police departments through the Violence Against Women Act; police are engaged in collaborative relationships with domestic violence service providers throughout the United States. The structure of current domestic violence law and policy makes the unwillingness to systemically engage the problem of intimate partner abuse by police officers unsurprising. Finally, given the structures that produce and support militarized masculinity among police officers and the ongoing abuse endemic in police forces, the Article concludes by asking whether criminalization of domestic violence can ever truly reduce rates of intimate partner abuse.

I. INTIMATE PARTNER ABUSE BY POLICE OFFICERS: THE DATA

Although much of the data is now quite dated, studies have repeatedly shown elevated rates of intimate partner abuse among police officers.³⁰ In 1991, Dr. Leonor Johnson testified before the

30. It is difficult to make a direct comparison between the rates of perpetration of intimate partner abuse by police officers and the rates of perpetration in the general population. Because perpetrators frequently deny or underestimate their abuse, self-

United States Congress that approximately 40% of the 728 officers she surveyed had been abusive towards a spouse in the last six months.³¹ Of the 479 spouses she surveyed, 10% reported having been physically abused³² and 60% of the spouses were subjected to verbal abuse by their officer spouses.³³ Seeking to replicate the results, a 1992 study found that 28% of male officers reported physically abusing their spouses, and 25% of their spouses reported having been physically abused.³⁴ In that study, 27% of female officers reported using minor violence in their relationships.³⁵

reporting data from perpetrators is considered suspect. *See, e.g.*, Russell P. Dobash et al., *Separate and Intersecting Realities: A Comparison of Men's and Women's Accounts of Violence Against Women*, 4 VIOLENCE AGAINST WOMEN 382, 405–06 (1998) (reporting significant differences in men's and women's reporting of violence in their relationships with men underreporting a number of types of severe and controlling violence); L. Kevin Hamberger & Clare E. Guse, *Men's and Women's Use of Intimate Partner Violence in Clinical Samples*, 8 VIOLENCE AGAINST WOMEN 1301, 1322–23 (2002) (explaining that men tend to significantly underreport their own violence); Michael S. Kimmel, "Gender Symmetry" in *Domestic Violence*, 8 VIOLENCE AGAINST WOMEN 1332, 1345 (2002) (same). Researchers therefore tend to rely on data reported by victims. For example, the 2010 National Intimate Partner and Sexual Violence Survey found that 35.6% of women and 28.5% of men in the United States reported rape, physical violence, and/or stalking in their lifetimes; 24.3% of women and 13.8% of men report severe physical violence at the hands of an intimate partner. NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY 2010 SUMMARY REPORT: EXECUTIVE SUMMARY 2 (2011). Data from official sources like the National Intimate Partner and Sexual Violence Survey are also problematic, however, given that they only "capture a small proportion of violent offenses." Hamberger & Guse, *supra*, at 1323. The general tendency of perpetrators to underreport coupled with the particular consequences police officers could face for committing acts of abuse make self-reports by police officers especially suspect, as discussed *infra* in text accompanying notes 55–64.

31. *On the Front Lines: Police Stress and Family Well-Being: Hearing Before the H. Select Comm. on Children, Youth, and Families*, 102d Cong. 32, 42 (1991) (testimony of Leonor Boulton Johnson, Associate Professor, Arizona State University); *see also* Johnson et al., *supra* note 21, at 3 (citing study). Johnson's testimony did not define "abuse," making it impossible to determine whether the officers were describing physical, emotional, verbal, or some other form of abuse. Peter H. Neidig et al., *Interspousal Aggression in Law Enforcement Families: A Preliminary Investigation*, 15 POLICE STUD. INT'L REV. POLICE DEV. 30, 31 (1992).

32. Neidig et al., *supra* note 31, at 31.

33. Johnson et al., *supra* note 21, at 4.

34. Neidig et al., *supra* note 31, at 32. Twenty-five percent of officers and twenty-two percent of their wives reported officers engaging in minor violence, defined as throwing something at a spouse; pushing, grabbing, or shoving a spouse; slapping; kicking; biting; or hitting with a fist. Three percent of both officers and their wives reported officers engaging in severe violence, defined as choking or strangling; beating up spouse; threatening with a knife or gun; or using a knife or gun. The female officers reported only using minor violence in their relationships; they also reported that seventeen percent of their spouses used minor violence

Later studies show lower rates of abuse.³⁶ In a 1999 study, 7% of Baltimore City police officers admitted to “getting physical” (pushing, shoving, grabbing and/or hitting) with a partner.³⁷ A 2000 study of seven law enforcement agencies in the Southeast and Midwest United States found 10% of officers reporting that they had slapped, punched, or otherwise injured their partners.³⁸ Of the officers surveyed, 54% knew someone in their department who had been involved in an abusive relationship, 45% knew of an officer who had been reported for engaging in abusive behavior, and 16% knew of officers involved in abusive incidents that were not reported to their departments.³⁹

and twenty percent used severe violence against them. *Id.* Generally, women are less likely to use violence in relationships than men, women usually use violence in their own defense, and are less likely to inflict damage when they do so. Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 92–96 (2008) (summarizing studies).

35. Neidig et al., *supra* note 31, at 32. One explanation for the use of violence among female police officers might be that female police officers take on the masculine norms of the profession. Masculinity is not a biological construct; rather, theorists contend, it is a learned behavior, a “performance . . . constructed by social norms.” Ann C. McGinley & Frank Rudy Cooper, *Identities Cubed: Perspectives on Multidimensional Masculinities Theory*, 13 NEV. L.J. 326, 327 n.9 (2013).

36. The lower rates of self-reporting in more recent studies may be related to the passage of the Lautenberg Amendment, which restricts access to firearms for those who have been convicted of domestic violence or who are subject to a protective order. That issue will be discussed *infra*.

37. Robyn R.M. Gershon et al., *Mental, Physical, and Behavioral Outcomes Associated with Perceived Work Stress in Police Officers*, 36 J. CRIM. JUST. & BEHAV. 275, 282 (2009); see also Anita S. Anderson & Celia C. Lo, *Intimate Partner Violence Within Law Enforcement Families*, 26 J. INTERPERS. VIOLENCE 1176 (2011). In Anderson and Lo’s study, white officers were less likely than officers of color to report engaging in intimate partner abuse. Moreover, female officers reported engaging in intimate partner abuse more often than male officers. Anderson and Lo conclude that this data supports the proposition that nonwhite officers and female officers of color were more likely to be physically aggressive at home. *Id.* at 1187. One might also conclude that they were simply more honest about their abusive behavior. SUSAN L. MILLER, VICTIMS AS OFFENDERS: THE PARADOX OF WOMEN’S VIOLENCE IN RELATIONSHIPS 126 (2005); Nancy Worcester, *Women’s Use of Force: Complexities and Challenges of Taking the Issue Seriously*, 8 VIOLENCE AGAINST WOMEN 1390, 1401 (2002). The problems of relying upon self-reports are discussed *infra*.

38. Ryan, *supra* note 20, at 301. Interestingly, far more female officers than male self-reported engaging in abuse.

39. *Id.* In another study that is sometimes cited in this area, Michael A. Campion surveyed police chiefs in small police departments (twenty-five officers or fewer) about their knowledge of intimate partner abuse. Of the police chiefs surveyed, 78% reported no knowledge of officer-involved intimate partner abuse in the departments in which they had

Independent investigations of police departments have also unearthed significant evidence of intimate partner abuse among police officers. In 1997, after the media reported that the Los Angeles Police Department (LAPD) failed to seriously address cases of intimate partner abuse by its officers, the LAPD's Inspector General reported that the Department's handling of those cases was problematic at best.⁴⁰ Two hundred twenty-seven cases of intimate partner abuse by officers were reported to the LAPD between 1990 and 1997.⁴¹ Many of the investigations involved the same officers; thirty officers were responsible for 71 (31%) of the 227 matters investigated.⁴² Moreover, repeat offenders accounted for almost one-third of the allegations of abuse that were sustained.⁴³ The Inspector General's report states that "many of the investigations [of those cases] lacked objectivity or were otherwise flawed or skewed."⁴⁴ Allegations of intimate partner abuse were not factored into officers' evaluations or considered when they sought promotions, even when the reports were substantiated. A supervisor praised an LAPD officer who was suspended for grabbing a woman by the hair, pushing her to the ground and punching her with a closed fist for having "consistently displayed a calm and professional demeanor even when dealing with the most highly agitated and stressful

served; 62% reported that they had never heard of officer-involved intimate partner abuse in other departments either. While Campion acknowledges that "[c]ritically inclined readers could question whether the 50 police administrators told the truth or covered up a dirty little secret," he argues that the administrators had no reason to lie and were protected by anonymity. Michael A. Campion, *Small Police Departments and Police Officer-Involved Domestic Violence: A Survey*, in DOMESTIC VIOLENCE BY POLICE OFFICERS, *supra* note 20, at 123. Given the consistent self-reports of much higher rates of intimate partner abuse by police officers, however, Campion's data is an outlier, and his methodology is problematic (the survey allows the chiefs to define "domestic violence" for themselves, then asks whether they have ever known an officer involved in domestic violence, presumably as they have defined it). *Id.*

40. *Shielded from Justice: Police Brutality and Accountability in the United States*, HUMAN RIGHTS WATCH (1998), <http://columbia.edu/itc/journalism/cases/katrina/Human%20Rights%20Watch/usphtml/uspo75.htm>; *see also* Matt Lait, *LAPD Abuse Probes of Its Officers Called Lax*, L.A. TIMES (July 20, 1997), <http://articles.latimes.com/print/1997/jul/20/news/mn-14630>.

41. *Shielded from Justice: Police Brutality and Accountability in the United States*, *supra* note 40.

42. *Id.*

43. *Id.*

44. *Id.*

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situations.”⁴⁵ Another officer, described by supervisors as “problem-free,” received a fifteen-day suspension for slapping his wife.⁴⁶ About 30% of the officers who had been the subject of complaints were promoted notwithstanding those allegations.⁴⁷ When officers were punished for their actions, those punishments were minor. An officer, driving after drinking, was involved in a hit-and-run accident. The officer hit his wife and broke her nose while he attempted to push his car away from the scene. “Despite being drunk in public, assaulting his wife, fleeing an accident scene and failing to have his car insured,” the officer was suspended for just ten days.⁴⁸ Although the LAPD substantiated the claims of abuse in about 40% of the cases, criminal charges were filed in very few, even when the officers were repeatedly abusive.⁴⁹ One officer who received an official reprimand after the LAPD found that he had raped his girlfriend was again reprimanded later that same year after the department found that he had “insert[ed] a 9-millimeter handgun into [his] girlfriend’s vagina without her consent.”⁵⁰ The officer was not criminally charged for either incident.⁵¹

More recent investigations by the United States Department of Justice confirm that intimate partner abuse remains a serious problem in police families. In its 2011 report on the Puerto Rico Police Department, the Department of Justice wrote, “Domestic violence infects the ranks of PRPD and interferes with the ability of PRPD to provide police services in a constitutional manner.”⁵² Between 2005 and 2010, 1,459 civilians alleged that officers committed intimate partner abuse.⁵³ “[D]isciplinary or corrective action” was recommended in 1,018 of those cases.⁵⁴ Between 2007 and 2010, ninety-eight officers were arrested more than once on

45. *Id.*

46. Lait, *supra* note 40.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. CIVIL RIGHTS DIV., *supra* note 22, at 16.

53. *Id.*

54. *Id.*

charges involving intimate partner abuse; eighty-four of those officers, including commanders, were still on active duty in 2011 when the Department of Justice investigation was completed,⁵⁵ notwithstanding a finding by the Puerto Rico Supreme Court that engaging in intimate partner abuse is inconsistent with the ability to carry out one's duties as a police officer.⁵⁶ Three PRPD officers shot their partners or former partners before killing themselves in 2010; one of the officers, Heriberto Rivera Hernández, was under electronic monitoring stemming from previous domestic violence and weapons charges at the time he murdered his ex-wife.⁵⁷ Although the PRPD had reportedly dismissed Rivera Hernández and confiscated his service weapon at the time of his initial arrest, Rivera Hernández used a PRPD firearm to kill his ex-wife.⁵⁸

The data on intimate partner abuse by police officers are both dated and potentially flawed, but in ways that make it more likely that abuse is being under—rather than over—reported.⁵⁹ Most of the studies rely on self-reporting by police officers to establish prevalence of abuse. Self-reporting is a notoriously unreliable measure; as one study noted, “The issue of the reliability of self-reports data is problematic when considering any socially undesirable behavior.”⁶⁰ Intimate partner abuse is frequently underreported,⁶¹ both by those who experience it and those who commit it. Underreporting is likely to be particularly prevalent among law enforcement officers “who fear, even when anonymity is assured, that admitting their own or their colleagues’ abusive behavior may jeopardize careers and livelihoods and break up families.”⁶²

55. *Id.* at 17 tbl.2.

56. *San Vicente Frau v. Policía*, 142 P.R. Dec. 1, 1 (1996).

57. CIVIL RIGHTS DIV., *supra* note 22, at 17.

58. *Id.*

59. Lonsway, *supra* note 19, at 399.

60. Neidig et al., *supra* note 31, at 33; *see also* Philip M. Stinson & John Liederbach, *Fox in the Henhouse: A Study of Police Officers Arrested for Crimes Associated with Domestic and/or Family Violence*, 4 CRIM. JUST. POL'Y REV. 601 (2013); Sandra M. Stith, *Police Response to Domestic Violence: The Influence of Individual and Familial Factors*, 5 VIOLENCE & VICTIMS 37, 47 (1990).

61. Anderson & Lo, *supra* note 37, at 1188.

62. *Id.*; *see also* Neidig et al., *supra* note 31, at 33 (“It seems reasonable to be particularly cautious in relying on self reports of marital aggression by law enforcement officers as they may be expected to be sensitive to potentially adverse consequences to reputation and

Additionally, most of the studies focus on physical abuse, ignoring the many other types of abuse that police officers use. With the exception of Johnson, Todd, and Subramanian's finding that 60% of police spouses reported verbal abuse,⁶³ no study measures emotional, verbal, or any other form of abuse by police officers. Definitions of intimate partner abuse vary among the studies: the definition of abuse used in Johnson's 1991 study, which found that 40% of officers were abusive, is unknown.⁶⁴ Neidig asked in 1992 about minor and severe, but only physical, violence.⁶⁵ Gershon's 2000 data involved rates of physical aggression.⁶⁶ Ryan's 2000 study focused on officers slapping, punching, or otherwise injuring their partners.⁶⁷ Physical violence is both illegal and detrimental to the person subjected to abuse; clearly, police officers should not physically abuse their partners. But this focus on physical abuse obscures the other forms of abuse that some women experience as even more harmful.⁶⁸

Even with flawed data, there is reason to believe that police officers are committing intimate partner abuse at rates greater than the general population. But if the rates of intimate partner abuse among police officers were consistent with the rates for the general population, there would still be reason for concern. As retired Nashville Police Lieutenant Mark Wynn notes, "[I]f we believe that 10 to 15 percent of the population in this country is involved in domestic violence . . . we at least have a 10 to 15 percent chance of getting someone in uniform who's an abuser."⁶⁹ Given the tools with which the state arms police officers, even those lower rates of abuse should be reason for real concern.

career, even when assurances of anonymity are given."). Police officers committing intimate partner abuse had an even greater disincentive to report after the passage of the Lautenberg Amendment. *See infra* text accompanying note 124.

63. Johnson et al., *supra* note 21, at 4.

64. Neidig et al., *supra* note 31, at 31.

65. *Id.* at 32.

66. Gershon et al., *supra* note 37, at 164.

67. Ryan, *supra* note 20, at 300–01.

68. The study's focus on physical violence is consistent with the law's fixation with physical violence. GOODMARK, *supra* note 9, at 199.

69. Sarah Moughty, *How to Combat Officer-Involved Domestic Violence*, FRONTLINE (Nov. 23, 2013), <http://www.pbs.org/wgbh/pages/frontline/criminal-justice/death-in-st-agustine/how-to-combat-officer-involved-domestic-violence/>.

II. OBSTACLES TO ADDRESSING INTIMATE PARTNER ABUSE COMMITTED BY POLICE OFFICERS

Intimate partner abuse by police officers is different than abuse perpetrated by others in two important ways. First, officers, by virtue of their training, learn a range of behaviors that they can use to control, intimidate, and isolate their partners. Second, because of the place police officers hold within the criminal justice system, access to state-based systems of assistance is extremely limited for their partners.

A. Police Officers Are Skilled Abusers

The very skills that police need in their work make abusive police officers particularly dangerous to their partners. Police officers are trained to assert control in any situation.⁷⁰ They use their physical presence—tone and volume of voice, and stance—to intimidate suspects.⁷¹ Police officers know how to “[o]btain information through interrogation and surveillance.”⁷² They have access to confidential databases providing them with information not available to the general public.⁷³ They can be deceptive and manipulative when dealing with suspects.⁷⁴ They are trained in the use of weapons and authorized to use deadly force in certain situations;⁷⁵ they also

70. Diane Wetendorf, *Police Perpetrated Domestic Violence*, National Center for Women and Policing 1998 Annual Conference (1998), http://www.abuseofpower.info/Wetendorf_NCWP_Secrets.pdf.

71. *Id.*

72. *Id.* Surveillance has become an increasing concern for people subjected to abuse with partners in the intelligence community as well. A recent *Washington Post* article described “victims who dismantle their cellphones to avoid being tracked, who are afraid that their e-mail accounts and computers have been hacked” by partners with security clearances. Caitlin Gibson, *For Domestic Violence Victims, Abusers’ Security Clearances Add an Extra Layer of Fear*, WASH. POST (May 17, 2014), http://www.washingtonpost.com/local/for-domestic-violence-victims-abusers-security-clearances-add-an-extra-layer-of-fear/2014/05/17/b281e63a-ca64-11e3-93eb-6c0037dde2ad_story.html.

73. Police officers in Fairfield, California were charged with using the California Law Enforcement Telecommunications System, a police database, to screen the profiles of women they found on Internet dating sites. Anjali Hemphill, *Dating on Duty: Officers Accused of Screening Dates Using Police System*, CBS SACRAMENTO (Aug. 22, 2014, 3:22 PM), <http://sacramento.cbslocal.com/2014/08/22/dating-on-duty-officers-accused-of-screening-dates-using-police-system/>.

74. Wetendorf, *supra* note 70, at 2.

75. *Id.*

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learn how to use lesser levels of force to subdue suspects without causing visible injury.⁷⁶

Abusive police officers use these same tactics when dealing with their partners. Abusive officers employ “command presence” to intimidate their partners.⁷⁷ The symbols of his profession—most notably, his gun—remind his partner that he has the power to do enormous bodily harm.⁷⁸ Diane Wetendorf, an advocate who has worked with hundreds of women subjected to abuse by police officers, writes, “Women tell us their abusers scream at them like they talk to criminals on the street—their voices and faces change; they use filthy street language; they tell the victim she is ‘just like the scumbags he deals with every day.’”⁷⁹ Verbal abuse can be incredibly powerful when used by a police officer “whose job training provides the skills to be physically and psychologically dominant through physical posturing and verbal intimidation.”⁸⁰ Using scanners, GPS systems, or recording equipment, abusive officers can track and surveil their partners;⁸¹ using databases only accessible to police officers, they can investigate not only their partners, but anyone with whom the partner might come into contact, or from whom she might seek help.⁸² An abusive officer can deceive neighbors, coworkers, and others into believing that he is a loving man simply looking for information about his partner and can manipulate others into helping him exercise control.⁸³ Using non-lethal techniques, abusive officers can inflict injuries that leave their partners afraid and in pain, but which are not visible to others.⁸⁴ As Wetendorf writes, “Smart police do not hit, slap, kick, or choke their partners”; the

76. Diane E. Wetendorf, *The Impact of Police-Perpetrated Domestic Violence, in DOMESTIC VIOLENCE BY POLICE OFFICERS*, *supra* note 20, at 375, 378.

77. DIANE WETENDORF, WHEN THE BATTERER IS A LAW ENFORCEMENT OFFICER: A GUIDE FOR ADVOCATES 14 (2004), http://www.bwjp.org/assets/documents/pdfs/batterer_officer_guide_for_advocates.pdf.

78. *Id.*

79. Wetendorf, *supra* note 70, at 2.

80. Johnson et al., *supra* note 21, at 4.

81. *See* Wetendorf, *supra* note 76, at 377.

82. WETENDORF, *supra* note 77, at 15.

83. *Id.* at 16.

84. *Id.* at 17.

exercise of their power and control by “intimidating, isolating, and terrifying the victim” renders these overt acts unnecessary.⁸⁵

As Lieutenant Wynn explains, “You teach [police officers] all these skills, and then you add all of that to someone who is violent, you’ve got a lethal combination on your hands.”⁸⁶

B. Systemic Responses and Officer-Involved Intimate Partner Abuse

In a “routine” case of intimate partner abuse, the person subjected to abuse might be told to seek shelter with a local domestic violence agency or protection through the legal system. But these options are fraught for the partners of abusive officers; given the officer’s unfettered access to, and relationships with, all parts of the domestic violence response system, partners of abusive officers are frequently unwilling to engage those services.

1. Shelters

Because officers are trained to connect people subjected to abuse with the resources meant to protect them, they are often familiar with shelters and other service providers in the community.⁸⁷ Officers may have taken people subjected to abuse to shelter or have engaged in training with members of the shelter staff.⁸⁸ Officers may also have been tasked with maintaining a strong police presence around a shelter in particularly volatile cases. The sense of security conferred through the secrecy of a shelter’s location is unavailable to the partners of abusive officers as a result of these interactions. Moreover, people subjected to abuse report that shelters sometimes turn them away when they learn that the abuser is an officer. As one woman recalls,

85. Wetendorf, *supra* note 76, at 376.

86. Moughty, *supra* note 69. In a sense, the state is arming police officers with the tools they need to abuse their partners. The provision of these tools is arguably a violation of the state’s obligation under international human rights law to ensure that state actors are not committing violence using the mechanism of the state. See Julie Goldscheid & Deborah J. Liebowitz, *Due Diligence and Gender Violence: Parsing Its Power and Its Perils*, 48 CORNELL J. INT’L L. 301, 311–17 (2015).

87. WETENDORF, *supra* note 77, at 28–29.

88. The officer may also trade on those relationships to convince his partner that help will be unavailable, telling his partner that because shelter staff are familiar with him, they will not believe his partner’s claim of abuse. See *id.* at 29.

I went to a friend's home to begin making calls to find a shelter where we could go. . . . [O]f the 17 shelters in our county alone, three would not allow us to come because of the teenage boys and the rest just about slammed the phone down on me when they heard the perpetrator was a police officer. We then tried three other counties—again we were turned away because [he] is a police officer.⁸⁹

If the shelter is willing to admit the officer's partner, it may have requirements for entry that the person simply cannot comply with. Some shelters, for example, require that residents file a police report or seek protection through the courts⁹⁰—options that, as discussed below, are deeply problematic for the partners of police officers.

2. *The legal system*

Although the legal system is the best funded and most developed response to intimate partner abuse in the United States,⁹¹ for a number of reasons it offers little protection to the partners of police officers subjected to intimate partner abuse. A partner's use of the legal system may be perceived as an "act of aggression" by the abusive officer.⁹² If his partner does opt to seek protection from the state, doing so requires her to turn to "a legal system that is hostile and foreign to her, but is [the abuser's] daily work environment. He knows the system and [it overflows with] his acquaintances and co workers."⁹³

a. *Police.* To engage the criminal justice system often requires making a report to the police, but numerous obstacles may dissuade the partners of abusive police officers from taking this first step. Partners of police officers are indoctrinated in the culture of law enforcement; "[t]hose who marry a cop, marry into the police family and are expected to adhere to the values and norms of its

89. *Id.* at 28.

90. *Id.*

91. GOODMARK, *supra* note 9.

92. Wetendorf, *supra* note 76, at 378.

93. *Id.*; see also Mike Perlstein, *Ex-wives Say Some Cops Abuse Power After Bad Break-ups*, WWL-TV (May 4, 2015), <http://www.wvlv.com/story/news/local/investigations/mike-perlstein/2015/05/04/ex-wives-say-some-cops-abuse-power-after-bad-break-ups/26904863/> (detailing allegations by ex-wives of New Orleans police officers of legal system manipulation).

subculture.”⁹⁴ Chief among those norms is the expectation that the partners of officers will be loyal;⁹⁵ officers warn their partners against alerting the department to any personal problems.⁹⁶

Partners of abusive officers who choose to report their abuse to law enforcement (or whose abuse is reported to police by a third party) may run headlong into a “blue wall of silence.”⁹⁷ When law enforcement is called to the home of one of its own, the responding officers often respond as though the officer is in need of assistance, regardless of who made the call for help.⁹⁸ The camaraderie among officers, who may literally be relying upon each other to protect their lives, may prevent the responding officers from being able to see a fellow officer as a potential criminal, even in the context of an intimate relationship.⁹⁹ Moreover, the offending officer may have already disparaged his intimate partner to his colleagues, telling his fellow officers about her irrationality or her instability, making them less likely to take her claims seriously.¹⁰⁰ Responding officers may be unwilling to take a report or may write an inaccurate report when the perpetrator is an officer.¹⁰¹ Responding officers might remind the

94. Johnson et al., *supra* note 21, at 4.

95. *Id.*

96. WETENDORF, *supra* note 77, at 35.

97. See Thomas Nolan, *Behind the Blue Wall of Silence*, 12 MEN & MASCULINITIES 250 (2009); Johnson et al., *supra* note 21, at 4 (citing police solidarity as one of the central features of the police subculture).

98. Wetendorf, *supra* note 70, at 3.

99. Moughty, *supra* note 69. This notion of brotherhood is used by police officers to justify lying and deception. Nolan, *supra* note 97, at 254–55. The refusal or inability to appreciate the threat posed by a fellow officer is not specific to the United States. In their study of post-conflict Northern Ireland, Monica McWilliams and Fionnuala Ni Aoláin found that officers failed to take reports of abuse seriously, and even when weapons were removed from police officers, they were restored the following day. Monica McWilliams & Fionnuala Ni Aoláin, “*There Is a War Going on You Know*”; *Addressing the Complexity of Violence Against Women in Conflicted and Post Conflict Societies*, 1 TRANSITIONAL JUST. REV. 4, 33 (2013). Similarly, Jennifer Brown and Frances Heidensohn reported that three female officers who reported being raped by a male supervisor were told, “He’s all right, he’s a nice bloke, he wouldn’t do that.” JENNIFER BROWN & FRANCES HEIDENSOHN, GENDER AND POLICING: COMPARATIVE PERSPECTIVES 134 (2000). They also found that officers tried to suppress sexual assault allegations against police officers. *Id.* at 138.

100. Christopher Mallios & John Wilkinson, *Betraying the Badge: Officer-Involved Domestic Violence*, ÆQUITAS, (May 29, 2014), <http://www.aequitasresource.org/trainingDetail.cfm?id=109>.

101. Johnson et al., *supra* note 21, at 4.

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abused partner that the entry of a protective order or a criminal conviction for domestic violence could cost the officer his job and urge the person subjected to abuse to work things out without police intervention.¹⁰² Responding officers occasionally even arrest the police officer's partner, notwithstanding who makes the report or whether the partner has visible injuries.¹⁰³ When called to testify against another officer in court, police officers may give distorted or unhelpful testimony.¹⁰⁴ Abused partners may also find themselves rebuked by others within the police community, including the partners of other officers, as a result of reporting.¹⁰⁵

Reporting creates risks for the responding officers as well, particularly if the alleged abuser is higher ranking than the patrol officers who answer the call.¹⁰⁶ As in other cases where officers expose wrongdoing by their colleagues, "there may be the palpable, if unstated, threat of ostracism, lack of backup, or general opprobrium for cops who rat out other cops."¹⁰⁷

Police departments could decrease some of this pressure by having policies requiring that officer-involved intimate partner abuse be reported by the officer who perpetrates abuse and/or by others in the department who are aware of the behavior. Nonetheless, the vast majority of law enforcement agencies in the United States are policing without such policies.¹⁰⁸

b. *Prosecutors and courts.* Even if an officer is arrested for intimate partner abuse, his partner may not be interested in pursuing prosecution. As advocate Diane Wetendorf explains,

[S]he may fear further violence and retaliation against herself, her children, or her friends and family. She may know that the strongest deterrence to future violence is the abuser's fear of losing

102. Laurence Miller, *Police Families: Stresses, Syndromes, and Solutions*, 35 AM. J. FAM. THERAPY 21, 35 (2007).

103. Margaret Drew, *Shut Her Up!*, HUM. RTS. HOME BLOG (Jan. 16, 2015), http://lawprofessors.typepad.com/human_rights/2015/01/shut-her-up.html (describing case of Boston Police officer Michael Doherty, whose girlfriend was arrested after she reported being abused by Doherty, notwithstanding visible injuries to her face).

104. WETENDORE, *supra* note 77, at 41.

105. Johnson et al., *supra* note 21, at 4.

106. Miller, *supra* note 102, at 35

107. *Id.*

108. *See infra* text accompanying note 260.

his job, which will be jeopardized by prosecution and conviction. Or, her reluctance may rest on the complexity of everyday life, including the need for financial support and health insurance, the desire to save her marriage, his relationship with his children, and reluctance to harm his career.¹⁰⁹

Because the officer will lose his right to carry a firearm with a misdemeanor or felony conviction, successful prosecution makes it certain that the officer will lose his job. Prosecution, therefore, can create risks for the officer's partner, exacerbating the officer's sense that his partner has destroyed his life and livelihood and depriving the officer's partner of financial support and stability.¹¹⁰ As a result, the officer's partner may be opposed to prosecution. Nonetheless, under pressure from the public to hold officers accountable for their criminal behavior or as a result of concern about the risk the officer poses to others in the community as well as his partner, prosecutors may choose to proceed over the wishes of a reluctant partner.¹¹¹ This is particularly true in those jurisdictions that have adopted no-drop prosecution policies, which empower prosecutors to bring intimate partner abuse cases whenever they have sufficient evidence to do so, regardless of the willingness of the victim to participate.¹¹² Prosecutors may believe that they have the capacity to safeguard the partners of abusive officers. Veteran prosecutor Judith Munaker noted, however, that prosecutors may not appreciate how little they can actually offer. She stated, "I believe that it is only when [prosecutors] are asked (and pushed on) how they will guarantee the safety of the victim for the rest of her life, that they can begin to understand how 'even they' cannot protect her."¹¹³

Prosecution of an abusive officer raises another set of challenges. Prosecutors and judges may be as unlikely as others in law enforcement to believe the claims of a person subjected to abuse over a police officer they know and respect.¹¹⁴ The officer's status as a

109. WETENDORF, *supra* note 77, at 42–43.

110. Partners of abusive officers often use the threat of job loss as leverage when seeking safety or support; prosecution removes that threat. *Id.* Diane Wetendorf describes these outcomes as the unintended consequences of the Lautenberg Amendment. *Id.* at 5.

111. *Id.* at 42.

112. See GOODMARK, *supra* note 9, at 111–13.

113. WETENDORF, *supra* note 77, at 43.

114. *Id.* at 34.

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member of the “in group” in the criminal justice system confers credibility on him.¹¹⁵ The officer’s uniform marks him as one of the good guys, his trustworthiness underscored by the state’s willingness to allow him to carry a firearm. The partners of abusive police officers understand the power of these symbols. As one woman recounted, “My ex was allowed to be there in police uniform, claiming he had to work, also wearing his duty weapon until finally the bailiff had to tell him to remove it.”¹¹⁶ The investigating officers may be reluctant to testify in a case involving one of their own and may give testimony that is equivocal at best, harmful to the prosecution’s case at worst.¹¹⁷ Other officers may come to court to support their colleague, intimidating the victim and further underscoring the officer’s role within the criminal justice system.¹¹⁸ In a contested proceeding in which the only evidence is the testimony of both the officer and his partner, the officer’s facility with and knowledge of the legal system, as well as his ties to those within the courtroom, can easily swing a credibility determination in his favor.¹¹⁹

3. *The Lautenberg Amendment*

The Lautenberg Amendment, added to the Gun Control Act in 1996,¹²⁰ prohibits anyone who is convicted of a felony or misdemeanor domestic violence crime or who is subject to the terms of a domestic violence protective order from owning or using a firearm.¹²¹ Unlike other provisions of the Gun Control Act, the Lautenberg Amendment applies to police officers, omitting the public interest exemption found in other parts of the Act that allows

115. *Id.* at 41. As a former St. Louis police officer noted, “[Police officers] know there’s a different criminal justice system for civilians and police. . . . Prosecutors are tight with law enforcement, and share the same values and ideas.” Conor Friedersdorf, *Applying ‘Broken Windows’ to the Police*, ATLANTIC (Dec. 8, 2014), <http://www.theatlantic.com/national/archive/2014/12/applying-broken-windows-to-the-police/383490/>.

116. WETENDORF, *supra* note 77, at 42.

117. *See id.* at 43.

118. *Id.* at 42.

119. *See id.* at 43.

120. 18 U.S.C. § 922(g)(1) (2012).

121. 18 U.S.C. § 922(g)(1)–(9) (2012).

police officers to carry firearms after a conviction.¹²² Although the Lautenberg Amendment's effectiveness has been questioned,¹²³ even the faint possibility that reporting intimate partner abuse could lead to the loss of a partner's gun and, as a result, a partner's job, would be a powerful disincentive to reporting abuse.¹²⁴ Similarly, other officers might be less willing to report domestic violence given the repercussions for their "brothers in blue."¹²⁵

III. POLICING AND MASCULINITY

Officer-involved domestic violence emerges out of a particular culture—the highly masculinized world of policing. Examining the behavior of police officers through the lens of masculinities theory makes it clear that the world of policing not only tolerates, but encourages, the kinds of attitudes and behaviors that undergird intimate partner abuse. Moreover, as policing becomes increasingly militarized, notions of masculinity, particularly militarized masculinity, become more deeply entrenched among officers in ways that are destructive for the partners of abusive officers.

122. Adeola Olagunju & Christine Reynolds, *Domestic Violence*, 13 GEO. J. GENDER & L. 203, 222 (2012).

123. Summarizing the research on the aftermath of the Lautenberg Amendment, Kimberly Lonsway argues that few officers have surrendered their weapons under Lautenberg, partly because they plead to charges other than those involving domestic violence, and partly because police departments have no mechanism for ensuring that they are notified when courts enter protective orders against police officers. Indeed, some officers have their convictions expunged and continue working as police officers notwithstanding Lautenberg. Lonsway, *supra* note 19, at 400–01. Diane Wetendorf contends that courts have been less willing to convict officers who commit domestic violence since the passage of Lautenberg, in order to protect officers' careers. Wetendorf, *supra* note 76, at 379.

124. Diane Wetendorf contends that Lautenberg is an example of how "*well-intended attempts to improve safety can have unintended consequences.*" WETENDORF, *supra* note 77, at 5; see also Jason M. Fritz, Comment, *Unintended Consequences: Why Congress Tossed the Military-Family Out of the Frying Pan and into the Fire When It Enacted the Lautenberg Amendment to the Gun Control Act of 1968*, 2004 WIS. L. REV. 157 (making a similar argument in the context of military families).

125. See Nolan, *supra* note 97, at 250; see also Johnson et al., *supra* note 21, at 4 (citing police solidarity as one of the central features of the police subculture).

*A. Rethinking Theories of Domestic Violence: How Officer Involved
Violence May Be Different*

Theories abound as to the source of officer-involved domestic violence. Some studies posit that work-related stress is to blame for the high rates of abuse in police families;¹²⁶ others suggest that alcohol or other substance abuse may be a contributing factor.¹²⁷ Some would argue that intimate partner abuse is an assertion of power and control by the police officer over his partner, in line with the long-standing feminist understanding of what causes intimate partner abuse.¹²⁸ Central to the feminist narrative is the idea that men who abuse are not generally angry or violent; rather, they only abuse their partners as a means of asserting power and control.¹²⁹ But intimate partner abuse by police officers may follow another narrative altogether—a narrative of unfocused, generalized violence. In their study of media reports of officer-involved domestic violence between 2005 and 2007, Philip Stinson and John Liederbach found that almost 21% of the officers accused of domestic violence had also been named as defendants in federal civil rights police misconduct claims.¹³⁰ Policing tends to attract individuals with authoritarian personalities.¹³¹ Among the characteristics of an authoritarian personality are narrow-

126. Anderson & Lo, *supra* note 37, at 1178–79 (summarizing studies); Neidig et al., *supra* note 31, at 30.

127. Daniel J. Tyler, *Pitfalls of Police Work Leading to Domestic Violence*, in DOMESTIC VIOLENCE BY POLICE OFFICERS, *supra* note 20, at 344. *But see* Johnson et al., *supra* note 21, at 10 (finding no link between alcohol abuse and domestic violence by police officers).

128. Jana L. Jasinski, *Theoretical Explanations for Violence Against Women*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 12 (Claire M. Renzetti et al. eds., 2001).

129. *See, e.g.*, V. Pualani Enos, *Prosecuting Battered Mothers: State Laws' Failure to Protect Battered Women and Abused Children*, 19 HARV. WOMEN'S L.J. 229, 233 (1996).

130. Stinson & Liederbach, *supra* note 60, at 615, 619. One of the officers being investigated by the Department of Justice in the April 2015 death of Freddie Gray in Baltimore, Maryland, has had two domestic violence cases filed against him in the Maryland courts. Jon Swaine & Oliver Laughland, *Baltimore Officer Suspended in Freddie Gray Case Accused of Domestic Violence*, THE GUARDIAN (Apr. 21, 2015, 4:05 BST), <http://www.theguardian.com/us-news/2015/apr/21/baltimore-officer-freddie-gray-case-domestic-violence>.

131. Anderson & Lo, *supra* note 37, at 1178; Johnson et al., *supra* note 21, at 3. This is a long-standing observation. *See* HERBERT L. PACKER, THE LIMITS OF THE CRIMINAL SANCTION 283 (1968) (explaining that “[p]olice work attracts people with a strong authoritarian bent”).

mindedness, violence, suspicion, and an unwillingness to tolerate the failure to submit.¹³² For some subset of police officers, that authoritarian personality may be manifested in the use of violence whenever the officer is angry or feels challenged in some way, whether by a partner or by a citizen.¹³³ This more generalized use of violence contradicts assertions by the battered women's movement that men who abuse focus their violence solely on their partners, assertions that have been used to justify policy positions like the rejection of anger management in favor of more specialized batterer intervention treatment.¹³⁴ This insight—that police officers may abuse less from a desire to exert power and control over a specific partner than from some generalized belief in their right to use violence—upends the received wisdom of the domestic violence movement and suggests that different policy interventions may be necessary to address officer-involved domestic violence.¹³⁵

132. Anderson & Lo, *supra* note 37, at 1178 (citing studies).

133. See Stinson & Liederbach, *supra* note 60, at 604.

134. See, e.g., Victoria L. Lutz & Cara E. Gady, *Necessary Measures and Logistics to Maximize the Safety of Victims of Domestic Violence Attending Parent Education Programs*, 42 FAM. CT. REV. 363, 368 (2004) (asserting that “because domestic violence is not the result of anger, anger management will not work to curtail it”).

135. A parallel conversation has been sparked by the repeated arrests of George Zimmerman. Zimmerman shot and killed Trayvon Martin, claiming that Martin attacked him; he has also been arrested twice for domestic violence since Martin's death. Another man claimed that Zimmerman threatened to kill him during what CNN calls “a road rage incident.” Greg Botelho & Carma Hassan, *George Zimmerman Arrested on Suspected Domestic Violence*, CNN (Jan. 13, 2015, 6:17 AM ET), <http://www.cnn.com/2015/01/10/us/george-zimmerman-arrested/>. Similarly, Ismaaiyl Brinsley, who became infamous after shooting two New York City police officers, first shot his ex-girlfriend, Shaneka Thompson, the same day. Referring to Brinsley, as well as a number of other cases of misogynistic violence, law professor Nancy Leong suggests the need to see such cases as “a warning sign both of violence against women and of violence, period.” Nancy Leong, *Domestic Violence is Violence*, SLATE (Dec. 22, 2014, 10:49 AM), http://www.slate.com/articles/news_and_politics/jurisprudence/2014/12/domestic_violence_before_mass_killings_ismaaiyl_brinsley_man_haron_monis.html; see also Julia Dahl, *Louisiana Shooter John Houser Had History of Domestic Violence*, CBS NEWS (July 24, 2015, 4:31 PM), <http://www.cbsnews.com/news/louisiana-shooter-john-houser-had-history-of-domestic-violence/>; Lawrence Mower, *11 Women Accuse Cop of Assault, Rape, or Harassment*, PALM BEACH POST (Feb. 21, 2015, 5:00 PM), <http://www.mypalmbeachpost.com/news/11-woman-accuse-cop-of-assault-rape-or-harassment/nkGNs/> (listing multiple accusations of domestic violence, sexual assault and harassment made against Palm Beach Shores Police Officer Charles Hoeffler); Pamela Shifman & Salamishah Tillet, Opinion, *To Stop Violence, Start at Home*, N.Y. TIMES (Feb. 3, 2015), <http://www.nytimes.com/2015/02/03/opinion/to-stop-violence-start-at-home.html> (noting that Boston Marathon bombing

Confronting officer-involved intimate partner abuse through existing state systems poses significant challenges. Another way to tackle the problem could be through prevention—an attempt to eradicate officer involved intimate partner abuse through improved training of officers. But such training and education is unlikely to substantially change the rates of officer involved intimate partner abuse because of the entrenched culture of masculinity, and the particular form that masculinity takes, among police officers.

Masculinities theory offers a theoretical underpinning for this counternarrative. Masculinity is not biologically determined. Rather, masculinities theorists argue, masculinity is “socially constructed through performances. That is, men construct their masculine identities through relationships with others”¹³⁶ and, as James Messerschmidt argues in *Masculinities and Crime*, by creating differences between men and women.¹³⁷ Given the traditional association of violence and criminality with men, men can use violence and crime to separate themselves from women, thereby constructing their masculinity.¹³⁸ Men are not inherently violent, and “[c]rime by men is not simply an extension of the ‘male sex role.’ Rather, crime by men is a form of social practice invoked as a resource, when other resources are unavailable, for accomplishing masculinity.”¹³⁹ Violence is a tangible manifestation of cultural norms around manliness; put differently, “being violent is one socially recognized way of being a man.”¹⁴⁰

suspect Tamerlan Tsarnaev was arrested for assaulting his girlfriend). In an analysis of the 110 mass shootings (defined as an incident where at least four people were murdered using a gun) that have occurred in the last six years in the United States, Everytown for Gun Safety found that sixty-three shooters (57%) killed a current or former spouse, intimate partner, or family member, and at least twenty of the shooters had previously been charged with domestic violence offenses. EVERYTOWN FOR GUN SAFETY, ANALYSIS OF RECENT MASS SHOOTINGS 1, 3 (2014).

136. Ann C. McGinley, Ricci v. Destafano: *A Masculinities Theory Analysis*, 33 HARV. J.L. & GENDER 581, 586 (2010).

137. JAMES MESSERSCHMIDT, MASCULINITIES AND CRIME: CRITIQUE AND RECONCEPTUALIZATION OF THEORY 182 (1993).

138. *Id.* at 84–85.

139. *Id.* at 85.

140. Angela Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 782 (2000).

Particularly in the hypermasculine world of policing, violence is “the lingua franca of men.”¹⁴¹

B. Hegemonic Masculinity

Violence by police may serve not only to construct masculinity generally, but also to help police achieve ideal or normative masculinity: hegemonic masculinity.¹⁴² Hegemonic masculinity is about power: the power that men have and the power that men

141. *Id.* at 799.

142. See Frank Rudy Cooper, “Who’s the Man?”: *Masculinities Studies*, Terry Stops, and Police Training, 18 COLUM. J. GENDER & L. 671, 686–87 (2009); McGinley, *supra* note 136, at 586. R.W. Connell first articulated the concept of hegemonic masculinity in the 1987 book *Gender and Power*, and although the concept is the subject of academic debate, it continues to serve as a framing device for much of the literature on masculinities. See, e.g., Jamie R. Abrams, *The Collateral Consequences of Masculinizing Violence*, 16 WM. & MARY J. WOMEN & L. 703 (2010) (discussing reforms that have broadened opportunities for women in the military while further entrenching hegemonic masculinity); Eric Anderson, *Openly Gay Athletes: Contesting Hegemonic Masculinity in a Homophobic Environment*, 16 GENDER & SOC’Y 860 (2002) (exploring the experiences of gay athletes in male dominated sports, finding that when men fit the traditional idea of hegemonic masculinity except for sexual orientation, there is some flexibility with acceptance); David Crider, *For Those (Men) About to Rock: Rock Radio and the Crisis of Masculinity*, 21 J. RADIO & AUDIO MEDIA 258 (2014) (looking at the limited role of women at rock radio stations and the marginalization and culture of masculinity at such stations); Keith Cunningham-Parmeter, *Men at Work, Fathers at Home: Uncovering the Masculine Face of Caregiver Discrimination*, 24 COLUM. J. GENDER & L. 253, 272 (2013) (explaining that expectations of hegemonic masculinity change based on the setting; there may be different measures of success and conformity in different settings); Mike Donaldson, *What Is Hegemonic Masculinity?*, 22 THEORY & SOC’Y 643, 645 (1993) (discussing the theory of hegemonic masculinity as strategy for the subordination of women); Jo Goodey, *Boys Don’t Cry: Masculinities, Fear of Crime, and Fearlessness*, 37 BRIT. J. CRIMINOLOGY 401 (1997) (discussing class and race factors in the development of the hegemonic masculinity persona); Melissa Kay & Samantha Jeffries, *Homophobia, Heteronormativity and Hegemonic Masculinity: Male Same-Sex Intimate Violence from the Perspective of Brisbane Service Providers*, 17 PSYCHIATRY, PSYCHOL. & L. 412 (2010) (explaining that hegemonic masculinity is a factor in male-on-male domestic violence); Cara Rabe-Hemp, *Survival in an “All Boys Club”: Policewomen and Their Fight for Acceptance*, 31 POLICING: INT’L J. POLICE STRATEGIES & MGMT. 251, 257 (2008) (discussing how hegemonic masculinity forces women in policing into roles more traditionally viewed as women’s roles); Douglas P. Schrock & Irene Padavic, *Negotiating Hegemonic Masculinity in a Batterer Intervention Program*, 21 GENDER & SOC’Y 625 (2007) (discussing the successes and failures of one batterer intervention program which attempted to reconstruct batterers’ ideas of masculinity); Kevin Tomkins, *Bouncers and Occupational Masculinity*, 17 CURRENT ISSUES CRIM. JUST. 154 (2005) (explaining that bouncers and other security staff at nighttime venues have a hegemonic masculinity which includes violence and aggression).

wield over others.¹⁴³ Hegemonic masculinity's defining characteristics include aggression, competitiveness, and stoicism.¹⁴⁴ Hegemonic masculinity is white, middle-class, and heterosexual; striving towards hegemonic masculinity requires that a man continually prove that he is neither feminine nor gay.¹⁴⁵ Because most men cannot achieve normative or hegemonic masculinity, many men engage in homosocial behaviors intended to prove to other men that they are, in fact, masculine.¹⁴⁶

Repudiation and mistreatment of women is a powerful method of asserting masculinity. One goal of hegemonic masculinity is to assert and maintain men's societal dominance over women;¹⁴⁷ as James W. Messerschmidt and Stephen Tomsen explain,

[H]egemonic masculinity has no meaning outside its *relationship* to femininity—and non-hegemonic masculinities—or to those forms of femininity that are practiced in a complementary, compliant, and accommodating subordinate relationship with hegemonic masculinity. It is the legitimization of this relationship of superordination and subordination whereby the meaning and essence of hegemonic masculinity is revealed.¹⁴⁸

Given hegemonic masculinity's need to establish clear dominance over women, "it is not surprising that in some contexts, hegemonic masculinity actually does refer to men's engaging in toxic practices—including physical violence—that stabilize gender dominance in a

143. Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity*, in *SEX, GENDER AND SEXUALITY: THE NEW BASICS, AN ANTHOLOGY* 58, 61 (Abby L. Ferber et al. eds., 2009).

144. David S. Cohen, *No Boy Left Behind? Single-Sex Education and the Essentialist Myth of Masculinity*, 84 *IND. L.J.* 135, 144 (2009).

145. Cooper, *supra* note 142, at 689–90; Carol Emslie et al., *Men's Accounts of Depression: Reconstructing or Resisting Hegemonic Masculinity?*, 62 *SOC. SCI. & MED.* 2246, 2247 (2006); McGinley, *supra* note 136, at 586.

146. McGinley, *supra* note 136, at 586.

147. As Frank Rudy Cooper notes, hegemonic masculinity requires striving towards dominance over anyone "below you in the identity hierarchies," including not only women, but also men from minority groups and gay men. Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 *U.C. DAVIS L. REV.* 853, 896 (2006); *see also* Emslie et al., *supra* note 145, at 2247.

148. James W. Messerschmidt & Stephen Tomsen, *Masculinities*, in *ROUTLEDGE HANDBOOK OF CRITICAL CRIMINOLOGY* 172, 174 (Walter S. DeKeseredy & Molly Dragiewicz eds., 2012).

particular setting.”¹⁴⁹ Social scientists have argued that male violence against women sometimes serves as a man’s means of presenting a dominant image not only to himself and to his victim, but also to his peer group.¹⁵⁰

C. Policing and Masculinity

The history of policing reveals the extent to which policing has always been, and continues to be, gendered male,¹⁵¹ notwithstanding the inroads women have made into this traditionally most masculine of professions.¹⁵² Policing shares a number of attributes with all-male institutions like sports teams or single sex schools: a need for dominance, an emphasis on masculine solidarity and the insistence that others within the group be protected “especially when they are in the wrong,”¹⁵³ a focus on physical courage, and the glamorization

149. R. W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC’Y 829, 840 (2005); see also Jamie R. Abrams, *The Collateral Consequences of Masculinizing Violence*, 16 WM. & MARY J. WOMEN & L. 703, 707 (2010); Angela P. Harris, *Gender Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 785 (2000).

150. Walter S. DeKeseredy & Martin D. Schwartz, *Masculinities and Interpersonal Violence*, in HANDBOOK OF STUDIES ON MEN AND MASCULINITIES 357–58 (Michael S. Kimmel et al. eds., 2005); see also Tracy Xavia Karner, *Engendering Violent Men: Oral Histories of Military Masculinity*, in MASCULINITIES AND VIOLENCE 198 (Lee H. Bowker ed., 1998) (citing study of veterans showing that “masculinity appears intertwined with violence and aggressive domination”); MICHAEL KIMMEL, *MANHOOD IN AMERICA: A CULTURAL HISTORY* 269 (2012) (arguing more generally that “the capacity for violence is a marker of authentic masculinity . . . a test of manhood”).

151. Susan Broomhall & David G. Barrie, *Introduction*, in A HISTORY OF POLICE AND MASCULINITIES, 1700–2010 22 (David G. Barrie & Susan Broomhall eds., 2012); JENNIFER BROWN & FRANCES HEIDENSOHN, *GENDER AND POLICING: COMPARATIVE PERSPECTIVES* 14 (2000); Cooper, *supra* note 142, at 679; Messerschmidt & Tomsen, *supra* note 148, at 180; SUSAN L. MILLER, *GENDER AND COMMUNITY POLICING: WALKING THE TALK* (1999); LOUISE WESTMARLAND, *GENDER AND POLICING: SEX, POWER AND POLICE CULTURE* 133 (2001). Susan Broomhall and David Barrie note that policing’s association with masculinity has remained constant even as the traits associated with masculinity have changed over time. Broomhall & Barrie, *supra*.

152. See, e.g., MILLER, *supra* note 151, at 177, 226.

153. WESTMARLAND, *supra* note 151, at 93–94. Former Boston police lieutenant Thomas Nolan has argued that the “blue wall of silence” is a masculine construction “characterized by regimentation and ritualistic hegemony and a hidebound tradition of heterosexism and homophobia . . . infused with a homosocial and homoerotic cast that sexualizes the construct in a form unique to policing.” Nolan, *supra* note 97, at 251.

of violence.¹⁵⁴ Machismo is central to police culture;¹⁵⁵ criminologist Susan Miller describes gatherings of police officers where “the conversation revolved around ‘guy stuff,’ such as joking about guns or other weapons, talking about surveillance work, and pretending to pull out one’s gun. Their language was full of expletives, with some version of ‘f—k’ being the most common. . . . These topics reinforced the tough, masculine, crimefighting image of policing.”¹⁵⁶

Policing has been called a “pure form” of hegemonic masculinity.¹⁵⁷ Among the features of hegemonic masculinity ascribed to police officers are combative personalities,¹⁵⁸ resistance to management,¹⁵⁹ a propensity towards violence,¹⁶⁰ and use of weapons.¹⁶¹ Police officers are trained to be “stoic, hard, . . . decisive, unemotional, strong, dominating, and in control.”¹⁶² Moreover, in an attempt to preserve their authority, police officers are quick to punish what they perceive as disrespect, seeing challenges to their authority as assaults on their masculinity.¹⁶³ Studies show that police officers embrace a number of “rigidly masculine beliefs.”¹⁶⁴ Law professor Angela Harris describes policing as hypermasculine, embracing a form of masculinity “in which the strictures against

154. WESTMARLAND, *supra* note 151, at 93–94; *see also* KIMMEL, *supra* note 150, at 233 (arguing that male bonding promotes “excesses of violence and brutality, groupthink imperatives that obliterate individual responsibility, and an idealization of the warrior”). Walter DeKeseredy and Martin Schwartz have argued that while other social forces contribute, the all-male patriarchal subculture is one of the most effective mechanisms for teaching hegemonic masculinity. DeKeseredy & Schwartz, *supra* note 150, at 356.

155. BROWN & HEIDENSOHN, *supra* note 99, at 29; Nigel Fielding, *Cop Canteen Culture*, in JUST BOYS DOING BUSINESS? 47 (Tim Newburn & Elizabeth A. Stanko eds., 1994).

156. MILLER, *supra* note 37, at 175–76.

157. Fielding, *supra* note 155, at 47; *see also* Miller, *supra* note 102, at 71; Anastasia Prokos & Irene Padavic, *There Oughtta Be a Law Against Bitches: Masculinity Lessons in Police Academy Training*, 9 GENDER, WORK, & ORG. 439, 442 (2002) (describing hegemonic masculinity as “a central defining concept in the culture of police work in the United States”).

158. Prokos & Padavic, *supra* note 157, at 442.

159. *Id.*

160. *Id.*; WESTMARLAND, *supra* note 151, at 182.

161. Prokos & Padavic, *supra* note 157, at 442.

162. Nolan, *supra* note 97, at 253.

163. Cooper, *supra* note 142, at 697.

164. Anne O’Dell, *Why Do Police Arrest Victims of Domestic Violence? The Need for Comprehensive Training and Investigative Protocols*, 15 J. AGGRESSION, MALTREATMENT & TRAUMA 53, 56 (2007).

femininity and homosexuality are especially intense and in which physical strength and aggressiveness are paramount.”¹⁶⁵

Violence and the denigration of women are endemic in such hegemonic or hypermasculine settings.¹⁶⁶ From the minute they enter the police academy, even when the training is facially gender neutral, police officers are expected to adhere to a form of masculinity that devalues and objectifies women.¹⁶⁷ In their study of a law enforcement training academy, sociologists Anastasia Prokos and Irene Padavic found that male recruits regularly belittled and objectified women, adopting the phrase “There oughtta be a law against bitches” as their mantra when joking about female police recruits and women generally.¹⁶⁸ Male recruits also downplayed the seriousness of violence against women, ignoring the content of a domestic violence training film in order to rate the attractiveness of the actresses playing roles in that film.¹⁶⁹ That type of verbal degradation continues after officers leave the academy; criminologist Susan Miller describes how, in a progressive, diverse law enforcement agency, female officers were “still privately classified as ‘bitch,’ ‘whore,’ ‘dyke,’ or ‘prude,’ and never seen as just another officer.”¹⁷⁰

Those attitudes, and the abusive actions they engender, carry over into police officers’ interactions with the public. Attorney and activist Andrea Ritchie has documented numerous instances of

165. Harris, *supra* note 140, at 793; *see also* Cooper, *supra* note 142, at 692.

166. Marisa Silvestri, *Managerial Masculinity: An Insight into the Twenty-First-Century Police Leader*, in *A HISTORY OF POLICE AND MASCULINITIES, 1700-2010* 235, 236 (David G. Barrie & Susan Broomhall eds., 2012). Retired Detective Sergeant Anne O’Dell notes that “‘hostile masculinity,’ wherein men endorse domination and control over women, including the use of violent behavior to enforce that dominance,” is often found in hypermasculine settings. O’Dell, *supra* note 164, at 56.

167. Prokos & Padavic, *supra* note 157, at 440, 446; *see also* Nolan, *supra* note 97, at 253.

168. Prokos & Padavic, *supra* note 157, at 439. The phrase was taken from an episode of the television show *COPS* used during police academy training, spoken by a man who was arrested after his girlfriend called the police. *Id.*

169. *Id.* at 452.

170. MILLER, *supra* note 15137, at 177. Male officers, by contrast, were not stereotyped in this way, but were rather evaluated based on their performance. *Id.*; *see also* Joseph Stepansky & Rocco Parascandola, *NYPD Sergeant Suspended After Allegedly Throwing Semen on Female Co-worker He Was “Enamored” with*, *Sources Say*, N.Y. DAILY NEWS (July 8, 2015, 3:20 AM), <http://www.nydailynews.com/new-york/nypd-sergeant-allegedly-threw-semen-coworker-sources-article-1.2284889> (describing how Michael Iscenko threw semen on a co-worker after telling her that he “liked” her).

brutality, sexual harassment, sexual assault, and rape of women by police officers.¹⁷¹ Police abuse disproportionately affects low-income women of color, who are more likely to be targeted by police enforcing “war on drugs” or “zero tolerance” and “quality of life” policies.¹⁷² The attitudes and actions associated with hegemonic or hypermasculinity also carry over into officers’ personal lives, making them particularly dangerous to their partners. As Jennifer Brown and Frances Heidensohn have argued, policing and abuse have a great deal in common: they are both structures within which “men maintain control by being patronizing, violent, or paternalistic. . . . The structural realities of a male majority in control of resources within the police mirror those in domestic relationships.”¹⁷³

D. Militarized Masculinity

Police officers not only operate in a hypermasculine setting, but in a militarized masculine setting as well. Criminologist Peter Kraska defines militarism as “an ideology that stresses aggressiveness, the use of force, and the glorification of military power, weaponry, and technology as the means to solve problems.”¹⁷⁴

Militarism and masculinity are deeply intertwined. As sociologist Paul Higate and social worker John Hopton explain,

[M]ilitarism is the major means by which the values and beliefs associated with ideologies of hegemonic masculinity are eroticized and institutionalized. Although there are alternative contexts in which traditional masculine virtues are valorized and eroticized, they lack the potential to link masculinity with the political concerns of the state.¹⁷⁵

Militarism glorifies men as warriors, and, equally importantly, warriors as men.¹⁷⁶ Women fare less well in a militarized system.¹⁷⁷

171. See generally Ritchie, *supra* note 28.

172. *Id.* at 138–39.

173. BROWN & HEIDENSOHN, *supra* note 99, at 155.

174. Peter B. Kraska, *Playing War: Masculinity, Militarism, and Their Real-World Consequences*, in *MILITARIZING THE AMERICAN CRIMINAL JUSTICE SYSTEM: THE CHANGING ROLES OF THE ARMED FORCES AND THE POLICE* 141, 153 (Peter B. Kraska ed., 2001).

175. Paul Higate & John Hopton, *War, Militarism, and Masculinities*, in *HANDBOOK OF STUDIES ON MEN AND MASCULINITIES*, *supra* note 150, at 436.

176. JOSHUA GOLDSTEIN, *WAR AND GENDER: HOW GENDER SHAPES THE WAR SYSTEM AND VICE VERSA* (2001); see also Abrams, *supra* note 149, at 718.

Militarized masculinity defines itself in opposition to femininity and relies on the denigration of the feminine.¹⁷⁸ Militarism shares important characteristics with hegemonic masculinity: sexism, glorification of aggression, and the need for domination.¹⁷⁹ Hypermasculinity is, Kraska argues, essential to militarism, the combination of masculinity and militarism creating a cultural foundation justifying the use of violence by militarized actors.¹⁸⁰

Feminist scholars have posited a relationship between militarism and violence against women.¹⁸¹ Militarism's embrace of hypermasculinity, with its focus on dominance, control, and violence, creates a climate within which violence against women flourishes.¹⁸² Militarism entrenches patriarchal gender hierarchies that dictate appropriate roles for men (dominant) and women (subservient).¹⁸³ Men working within militarized settings may have difficulty maintaining boundaries between the expressions of masculinity expected in work settings and their behavior in their relationships with their partners. As cultural anthropologist Madelaine Adelman explains, "Militarized men, unable to contain their soldiering, unable to become civilianized, bring home military norms of domination and violence to enforce compliance with, protect the integrity of,

177. Susan L. Caulfield, *Militarism, Feminism, and Criminal Justice: Challenging Institutionalized Ideologies*, in *MILITARIZING THE AMERICAN CRIMINAL JUSTICE SYSTEM*, *supra* note 174, at 120, 137.

178. Valerie Vojdik, *Sexual Abuse and Exploitation of Women and Girls by U.N. Peacekeeping Troops*, 15 MICH. ST. J. INT'L L. 157, 163 (2007). *But see* Bell Hooks, *Feminism and Militarism: A Comment*, 23 WOMEN'S STUD. Q. 58, 59 (1995) ("By equating militarism and patriarchy, these feminists often structure their arguments in such a way as to suggest that to be male is synonymous with strength, aggression, and the will to dominate and do violence to others and that to be female is synonymous with weakness, passivity, and the will to nourish and affirm the lives of others. While these may be stereotypical norms that many people live out, such dualistic thinking is dangerous; it is a basic ideological component of the logic that informs and promotes domination in Western society."). While the stereotypes ascribed to militarized masculinity may not apply to all men, they are particularly dangerous for the partners of those men who subscribe to them.

179. Higate & Hopton, *supra* note 175, at 443.

180. Kraska, *supra* note 174, at 154.

181. *See generally* Madelaine Adelman, *The Military, Militarism, and the Militarization of Domestic Violence*, 9 VIOLENCE AGAINST WOMEN 1118 (2003); Caulfield, *supra* note 177, at 120; Vojdik, *supra* note 178.

182. Adelman, *supra* note 181, at 1132; Caulfield, *supra* note 177, at 126, 134; Vojdik, *supra* note 178, at 158.

183. Caulfield, *supra* note 177, at 124.

and quash women's resistance to their regime of domestic power."¹⁸⁴ Militarized men rely on the belief that they are maintaining the natural (patriarchal) order to justify their abuse of their partners.¹⁸⁵ Such men use their status and their skills to abuse their partners, relying upon knowledge of military systems and exploiting economic and social vulnerability to entrap them and using military-issued weapons to reinforce their threats.¹⁸⁶ The partners of militarized men are entreated to keep their silence lest the status of their "hero" partner be devalued and are told that to leave their military partner is to neglect their duty to their country.¹⁸⁷

E. Police Officers and Militarized Masculinity

The line between military service and policing is increasingly blurry.¹⁸⁸ Although police forces were constructed within a "quasi-military" framework,¹⁸⁹ the distinctions between policing and military service were clear until the last several decades. The language of war found its way into policing first, with the inception of the "war against crime" announced by President Lyndon Johnson in 1965¹⁹⁰ and the "war on drugs" of the 1970s.¹⁹¹ Although policing and military service both serve to reinforce the power of the

184. Adelman, *supra* note 181, at 1134–35; *see also* Caulfield, *supra* note 177, at 125 (explaining that "[w]omen who were battered reported on the difficulty their men seemed to have in leaving their war preparedness at work. What better example might we have of the connection between militarism and the harms perpetrated against women?").

185. Caulfield, *supra* note 177, at 125.

186. Adelman, *supra* note 181, at 1143.

187. *Id.*

188. Peter B. Kraska, *Preface*, in *MILITARIZING THE AMERICAN CRIMINAL JUSTICE SYSTEM*, *supra* note 174, at vii.

189. WESTMARLAND, *supra* note 151, at 183.

190. Katherine Beckett & Theodore Sasson, *The Origins of the Current Conservative Discourse on Law and Order*, in *DEFENDING JUSTICE: AN ACTIVIST RESOURCE KIT 47* (Palak Shah ed., 2005), <http://www.publiceye.org/defendingjustice/pdfs/chapters/toughcrime.pdf>.

191. Nolan, *supra* note 97, at 255; *see also* JAMES P. GRAY, *WHY OUR DRUG LAWS HAVE FAILED AND WHAT WE CAN DO ABOUT IT: A JUDICIAL INDICTMENT OF THE WAR ON DRUGS 27* (2001) (crediting Nixon as "the first U.S. president formally to declare the nation's 'War on Drugs'"). And as Major "Bunny" Colvin noted during Season 3, episode 10 of *The Wire*, once you declare a war on crime, everyone becomes a warrior. *The Wire: Reformation* (HOME BOX OFFICE television broadcast Nov. 28, 2004).

state¹⁹² and enable those representing the state to use force in certain situations, some military tactics now regularly being employed by law enforcement agencies had long been reserved for use against foreign aggressors, not United States citizens. This blurring is in part in response to terrorist threats within the United States; police serve as the “frontline shock troops” in the war on terror.¹⁹³

The blurring of the line between police and military manifests itself in a number of ways. The hierarchical structure found in most law enforcement agencies resembles that used in the military.¹⁹⁴ Recruits are trained military-style,¹⁹⁵ using techniques like those deployed in boot camp training to “remold[] the individual to take on a new identity.”¹⁹⁶ Police increasingly use paramilitary tactics on the streets.¹⁹⁷ Police officers “dress in commando black, instead of the traditional blue. They own military-grade weapons, armored personnel carriers, helicopters, and Humvees. Their training is military. Their approach is military. They are in a war against crime and violence and terror that . . . never ends.”¹⁹⁸

The militarization of policing on the state and local levels has been exacerbated by federal policy. Since its creation in 1990, the Department of Defense’s Excess Property (or 1033) Program has transferred equipment worth hundreds of millions of dollars, including weapons, field packs, and medical supplies, to law enforcement agencies.¹⁹⁹ Moreover, since September 11, 2001,

192. Gerda W. Ray, *Science and Surveillance: Masculinity and the New York State Police, 1945–1980*, in A HISTORY OF POLICE AND MASCULINITIES, *supra* note 151, at 217–18.

193. Nolan, *supra* note 97, at 255.

194. O’Dell, *supra* note 164, at 55.

195. Nolan, *supra* note 97, at 253 (arguing that police recruit training resembles boot camp).

196. Amanda L. Robinson, *The Effect of a Domestic Violence Policy Change on Police Officers’ Schemata*, 27 CRIM. JUST. & BEHAV. 600, 605 (2000).

197. Higate & Hopton, *supra* note 175, at 435; O’Dell, *supra* note 164, at 55.

198. Editors, *Warring Against Crime*, 99 ABA J. 26, 43 (2013); *see also* McWilliams & Aoláin, *supra* note 99, at 26 (documenting a similar phenomenon in Northern Ireland). For a historical perspective on the militarization of policing, *see generally* RADLEY BALKO, THE RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA’S POLICE FORCES (2014).

199. Dan Bauman, *On Campus, Grenade Launchers, M-16s, and Armored Vehicles*, CHRON. HIGHER EDUC. (Sept. 11, 2014), <http://chronicle.com/article/On-Campus-Grenade-Launchers/148749/>. The 1033 program has also made military equipment available to college campus police, providing both the University of Central Florida and Hinds

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billions of dollars in funding for military-style equipment has been provided to state and local police through Department of Justice and Department of Homeland Security programs to fight terrorism.²⁰⁰ Police SWAT teams patrol the streets in battle dress uniforms, carrying automatic weapons and attempting to restore order through their presence.²⁰¹ Officers carry combat knives, sport military-style haircuts, and wear army fatigues and t-shirts that memorialize their campaigns.²⁰²

Individual officers may not necessarily subscribe to this form of masculinity. But the notion of what it means to be a police officer is now firmly embedded in the context of militarized masculinity, and

Community College in western Mississippi with modified grenade launchers. Central Florida (and at least sixty other institutions) also received M-16 assault rifles. *Id.*

200. Niraj Chokshi, *Militarized Police in Ferguson Unsettles Some; Pentagon Gives Cities Equipment*, WASH. POST (Aug. 14, 2014), http://www.washingtonpost.com/politics/militarized-police-in-ferguson-unsettles-some-pentagon-gives-cities-equipment/2014/08/14/4651f670-2401-11e4-86ca-6f03cbd15c1a_story.html. The militarized police response to citizen protests after the murder of Michael Brown by a police officer in Ferguson, Missouri, during the summer of 2014 brought these programs to light and prompted calls for demilitarization of police forces. *See, e.g.*, Elizabeth R. Beavers & Michael Shank, Editorial, *Get the Military Off Main Street*, N.Y. TIMES (Aug. 14, 2014), <http://www.nytimes.com/2014/08/15/opinion/ferguson-shows-the-risks-of-militarized-policing.html>; Julie Bosman & Matt Apuzzo, *In the Wake of Clashes, Calls to Demilitarize Police*, N.Y. TIMES (Aug. 14, 2014), <http://www.nytimes.com/2014/08/15/us/ferguson-missouri-in-wake-of-clashes-calls-to-demilitarize-police.html>; Ryan Cooper, Opinion, *The Fiasco in Ferguson Shows Why You Don't Give Military Equipment to Cops*, WEEK (Aug. 14, 2014), <http://theweek.com/articles/444552/fiasco-ferguson-shows-dont-give-military-equipment-cops>. In response, in May 2015 President Barack Obama announced that he would prohibit the federal government “from giving certain types of military-style equipment to local police forces and sharply restricting others.” Julie Hirschfeld Davis & Michael D. Shear, *Obama Puts Focus on Police Success in Struggling City in New Jersey*, N.Y. TIMES (May 18, 2015), <http://www.nytimes.com/2015/05/19/us/politics/obama-to-limit-military-style-equipment-for-police-forces.html>. Some are questioning, however, whether the President’s actions will have any real impact on the flow of equipment through the 1033 program. Eyder Peralta & David Eads, *White House Ban on Militarized Gear for Police May Mean Little*, NPR (May 21, 2015, 7:09 PM ET), <http://www.npr.org/sections/thetwo-way/2015/05/21/407958035/white-house-ban-on-militarized-gear-for-police-may-mean-little>.

201. Peter B. Kraska, *The Military-Criminal Justice Blur: An Introduction*, in MILITARIZING THE AMERICAN CRIMINAL JUSTICE SYSTEM, *supra* note 174, at 7–8.

202. Peter B. Kraska, *Playing War*, in MILITARIZING THE AMERICAN CRIMINAL JUSTICE SYSTEM, *supra* note 174, at 144 (observing that one off-duty police officer “wore a T-shirt that carried a picture of a burning city with gunship helicopters flying overhead and the caption ‘Operation Ghetto Storm’”).

militarized masculinity is particularly dangerous for the partners of those who do.²⁰³

IV. POLICE OFFICERS, DOMESTIC VIOLENCE, AND IMPUNITY

Scholars have identified similarities in the abusive treatment of women in the hypermasculine settings of police work and military service. Both policing and military service involve a masculinity based in large part on the control of violence and the use of violence as a means of control.²⁰⁴ But intimate partner abuse perpetrated by police officers has not received nearly as much scrutiny as violence against women perpetrated by soldiers. In recent years, the topic of sexual assault in the military has frequently been in the news.²⁰⁵ The documentary *The Invisible War*, which detailed the epidemic of sexual assault in the military, was nominated for an Academy Award.²⁰⁶ Sexual assault in the military was also the subject of high profile Congressional hearings, with lawmakers considering legislation to radically reform the military's handling of sexual assault cases.²⁰⁷ The Senate voted 97-0 to adopt sweeping reforms to the prosecution of military sexual assault cases in 2014. Although proponents of the legislation were not able to garner support for the changes they sought in the House of Representatives, the debate on those bills led to a national conversation on the incidence, severity, and appropriateness of response to sexual assault in the military.²⁰⁸ Those conversations focused on both the stories of individual victims

203. Caulfield, *supra* note 177, at 129.

204. Prokos & Padavic, *supra* note 157, at 454.

205. Intimate partner abuse by soldiers has received more limited coverage. See Stacy Bannerman, Opinion, *High Risk of Military Domestic Violence on the Home Front*, SFGATE (Apr. 7, 2014, 11:21 AM), <http://www.sfgate.com/opinion/article/High-risk-of-military-domestic-violence-on-the-5377562.php>.

206. See *The Invisible War: Awards*, IMDB, <http://www.imdb.com/title/tt2120152/awards> (last visited Feb. 24, 2015).

207. See Military Justice Improvement Act of 2013, S. 967, 113th Cong. (2013).

208. See, e.g., Donna Cassata, *Senate Blocks Change to Military Sex Assault Cases*, YAHOO! NEWS (Mar. 6, 2014, 9:16 PM), <http://news.yahoo.com/senate-blocks-change-military-sex-assault-cases-192951694--politics.html>; Richard Lardner, *Congress to Continue Debate over Military Sexual Assault Legislation*, HUFFINGTON POST (Mar. 12, 2014, 1:49 PM EDT), http://www.huffingtonpost.com/2014/03/12/military-sexual-assault_n_4950273.html.

of sexual assault and, equally importantly, the military culture within which those assaults occurred and were adjudicated.

By contrast, the response to officer-involved intimate partner abuse has been muted. The media does cover the stories of police officers who assault their partners; several times a week, newspaper articles and television news stories report that police officers have been arrested for physically abusing their partners.²⁰⁹ But that coverage tends to focus on each incident as isolated, creating a sense that this abuse is the result of the bad behavior of individual officers rather than a predictable consequence of an ideology prevalent in law enforcement.²¹⁰ Even in those cases that receive greater attention—the murder of Crystal Judson Brame by her husband, Seattle Chief of Police David Brame,²¹¹ or the prosecution of San Francisco Sheriff Ross Mirkarimi for abusing his wife²¹²—the larger context of masculinity within law enforcement is rarely, if ever, mentioned and calls for investigation of police culture or specific policy proposals are absent. With the exception of the debate around the Lautenberg Amendment’s impact on law enforcement, there has been little policy discussion on the state or national level about responding to intimate partner abuse by police

209. See Stinson & Liederbach, *supra* note 60, at 606; see also *infra* Appendix; Tanya Brannan, *Police Officer-Involved Domestic Violence: The Extent of the Problem*, PURPLE BERETS (May 2004), http://www.purpleberets.org/violence_dv_extent_problem.html (cataloging older cases); *supra* note 10 (collecting two years’ worth of articles).

210. In October 2013, I discussed the two recent murders of intimate partners committed by police officers with a reporter from the *Baltimore Sun*, hoping that the *Sun* would cover the issue. The reporter responded that in a big department like Baltimore’s, two murders in six months did not seem that excessive and that he could not see an angle for the story.

211. *Brame Family Settles Lawsuit Against Tacoma*, SEATTLE TIMES (Sept. 13, 2005, 8:34 PM), <http://www.seattletimes.com/seattle-news/brame-family-settles-lawsuit-against-tacoma/>.

212. Mirkarimi pled guilty to false imprisonment and was sentenced to three years probation. Julia Prodis Sulek, *Decision on S.F. Sheriff Ross Mirkarimi Outrages Domestic Violence Activists*, SAN JOSE MERCURY NEWS (Oct. 11, 2012, 9:16:33 AM PDT), http://www.mercurynews.com/ci_21742674/domestic-violence-advocates-outraged-over-decision-that-lets. In April 2015, Mirkarimi, who was running for re-election, successfully requested that the court expunge his conviction, arguing that he had complied with all of the terms and conditions of his probation. *Judge Wipes Domestic Violence Conviction from Sheriff Ross Mirkarimi’s Record*, NBC BAY AREA (Apr. 20, 2015, 11:59 AM PDT), <http://www.nbcbayarea.com/news/local/Judge-Wipes-Domestic-Violence-Conviction-From-SF-Sheriff-Ross-Mirkarimis-Record-300691441.html>.

officers. One notable exception: in 2005, in response to Crystal Judson Brame's death, Congress enacted the Crystal Judson Domestic Violence Protocol Program as part of the reauthorization of the Violence Against Women Act.²¹³ The program provides training and funding for advocates working with people subjected to intimate partner abuse by law enforcement partners and funds the development and implementation of protocols for handling cases involving officer-involved intimate partner abuse.²¹⁴ But that program has had little impact, at least as measured by funding utilization. For calendar years 2009 and 2010, only about 24 of the 2,290 communities awarded STOP (Services, Training, Officers and Prosecutors) Violence Against Women Formula Grants to States used those monies to fund training, services, or protocols to address intimate partner abuse by law enforcement.²¹⁵ As a result of this individual level focus, the unwillingness of law enforcement organizations on the local and state level to address militarized masculinity or to take affirmative actions to prevent intimate partner abuse goes unchallenged. Law enforcement responds to individual officers with greater or lesser levels of severity,²¹⁶ and law enforcement itself is immune from critique.

What accounts for the failure of advocates and policymakers to examine the prevalence of intimate partner abuse in law enforcement and the militarized masculine context within which it occurs as a systemic issue?²¹⁷ One possible reason is the primacy of law enforcement within domestic violence law and policy. The criminal justice response is the best funded and most developed response to

213. Pub. L. No. 109-162, § 101(b)(3), 119 Stat. 2960, 2973 (codified at 42 U.S.C. § 3796gg).

214. OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, OVW FISCAL YEAR 2014 STOP FORMULA GRANT PROGRAM SOLICITATION 12-13 (2014), <http://www.justice.gov/sites/default/files/ovw/legacy/2014/02/24/stop-2014-solicitation.pdf>.

215. OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, STOP PROGRAM: SERVICES, TRAINING, OFFICERS, PROSECUTORS, 2012 REPORT Pt. B 15 (2014), <http://www.justice.gov/sites/default/files/ovw/legacy/2014/03/13/stop-report-2012.pdf>.

216. See *infra* APPENDIX.

217. Nancy K.D. Lemon, *My Role as an Expert Witness in the Criminal Case and Civil Removal Proceedings Against San Francisco Sheriff Ross Mirkarimi*, 29 BERKELEY J. GENDER L. & JUST. 132, 138 (2014) (calling intimate partner abuse by police officers "a phenomenon that is all too common, but systematically hidden and kept out of public awareness").

domestic violence in the United States, and police officers are at the forefront of that response.²¹⁸ Moreover, in recent years, federal policy and funding have incentivized close collaboration between law enforcement and the non-profit organizations that serve people subjected to abuse.²¹⁹ As Andrea Ritchie writes, focusing on abuse committed by police officers is “dissonant to a society which has invested considerable energy in framing law enforcement agents as protectors rather than as perpetrators of violence against women.”²²⁰ Addressing the problem of intimate partner abuse by law enforcement officers could jeopardize these relationships, threaten significant funding sources for both non-profits and law enforcement, and call into question the wisdom of continuing to rely on law enforcement as the primary means of addressing domestic violence in the United States.²²¹ Society is utterly dependent upon police officers to enforce the laws on domestic violence, weakening the community’s resolve to raise structural issues about the effectiveness of that response.²²²

The primacy of law enforcement in U.S. domestic violence law and policy cannot be overstated. In 1984, the Attorney General’s

218. GOODMARK, *supra* note 9.

219. As Diane Wetendorf writes, “Inter-agency partnerships, coordinated community response projects, coordinating councils, and task forces are now widespread. . . . Since the mid-1990s, grants made under the Violence Against Women Act and Community Oriented Policing Services Office have required advocates, police, and prosecutors to form collaborative relationships. Some of these relationships have built on connections already in place. Others have appeared almost overnight, more funding-driven than community-driven.” WETENDORF, *supra* note 77, at 11. According to a 2004 Department of Justice report, 64% of large local law enforcement agencies reported meeting regularly with non-profits serving people subjected to abuse. BUREAU OF JUSTICE STATISTICS, LAW ENFORCEMENT MANAGEMENT AND ADMINISTRATIVE STATISTICS, 2000: DATA FOR INDIVIDUAL STATE AND LOCAL AGENCIES WITH 100 OR MORE OFFICERS vii (2004).

220. Ritchie, *supra* note 28, at 142.

221. The reluctance created by this synergistic relationship was manifest when a number of service providers serving people subjected to intimate partner abuse declined to comment for or participate in a radio broadcast on the issue. *Midday with Dan Rodricks: Domestic Violence Among Police Officers*, WYPR 3:50–4:16 (Oct. 10, 2013), <http://programs.wypr.org/podcast/domestic-violence-among-police-officers-thursday-october-10th-12-1-pm>.

222. Deborah Weissman makes a similar argument about how “[t]he dependency of the state on transnational economic actors weakens government incentives” to address the abuse of women in Ciudad Juárez, Mexico. Deborah M. Weissman, *The Political Economy of Violence: Toward an Understanding of the Gender-Based Murders of Ciudad Juárez*, 30 N.C. J. INT’L L. & COM. REG. 795, 847 (2005).

Task Force on Family Violence framed domestic violence as a criminal justice issue and strongly recommended expanding the criminal justice response to domestic violence.²²³ Task force member and former prosecutor (now Judge) Jeanne Pirro articulated the Task Force's position: "We believe [domestic violence] is a criminal problem and the way to handle it is with criminal justice intervention."²²⁴ Although the first developments in domestic violence law were civil, in the form of protection orders, changes to the criminal law soon followed.²²⁵ States passed laws creating substantive crimes of domestic violence, enhancing sentences for assaults committed against intimate partners, permitting warrantless arrests in domestic violence cases, and mandating the arrest of those who perpetrated intimate partner abuse.²²⁶ Significant resources were also focused on developing and implementing policies favoring the prosecution of these offenses, even when the victims of these crimes were unwilling to cooperate.

Necessarily, police are at the center of a criminal justice focused response. Police serve as first responders to emergency calls for assistance, police determine whether probable cause to arrest exists, police make arrests in cases involving intimate partner abuse, police gather evidence that can be used during prosecution, and police serve as witnesses in domestic violence trials. Any person subjected to abuse and hoping for a successful criminal prosecution of his or her partner is utterly dependent upon the police for that outcome. Enforcement of existing criminal law and policy requires advocates and people subjected to abuse to maintain strong, positive, collaborative working relationships with police officers—relationships

223. WILLIAM L. HART ET AL., ATTORNEY GENERAL'S TASK FORCE ON FAMILY VIOLENCE: FINAL REPORT (1984).

224. *Id.* at 11.

225. Goodmark, *supra* note 34.

226. JEFFREY FAGAN, THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS 4–5, 8–9 (1986); Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1857–60 (1996); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Law and Policy*, 2004 WIS. L. REV. 1657, 1668–75 (2004). Ironically, mandatory arrest policies grew in part out of a concern that police officers "may harbor personal attitudes about violence in the family that diverge from police policy that deems such violence criminal." Barbara Fedders, *Lobbying for Mandatory-Arrest Policies: Race, Class, and the Politics of the Battered Women's Movement*, 23 NYU REV. L. & SOC. CHANGE 281, 290 (1997).

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that could be undermined by close scrutiny of the relationships of individual police officers, the failure of law enforcement agencies to adopt or enforce policies on domestic violence, or the culture of masculinity that pervades a police department.²²⁷

The Violence Against Women Act encourages additional linkages between police and advocates that may make advocates reluctant to publicize the issue of intimate partner abuse by police officers. The ideological commitment to treating domestic violence as a crime was bolstered by the significant federal funding for police, prosecutors, and courts, and for collaborations between those groups and advocates, provided through the Violence Against Women Act. VAWA's two largest grant programs, the Grants to Encourage Arrest Policies and Enforcement of Protection Orders and the STOP grant, require just this kind of collaboration. The Department of Justice's Office on Violence Against Women, which administers the grants, provides the following descriptions for the programs:

[The] Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program encourages state, local, and tribal governments and state, local, and tribal courts to treat domestic violence, dating violence, sexual assault, and stalking as serious violations of criminal law requiring the coordinated involvement of the entire criminal justice system.²²⁸

The STOP Program promotes a coordinated, multidisciplinary approach to enhancing advocacy and improving the criminal justice system's response to violent crimes against women.²²⁹

The programs explicitly require collaboration between law enforcement and advocacy groups as a condition of funding. The Arrest Program mandates formal collaborations between law

227. Law professor Julie Goldscheid suggests that this concern with maintaining relationships may preclude advocates from challenging police underenforcement of criminal domestic violence laws generally; advocates may be unwilling to jeopardize relationships with police officers who they might need to intervene on behalf of a client at some point in the future. Julie Goldscheid, *Rethinking Civil Rights and Gender Violence*, 14 GEO. J. GENDER & L. 43 (2013).

228. *Grant Programs*, U.S. DEP'T OF JUSTICE, 3, <http://www.ovw.usdoj.gov/ovwgrantprograms.htm> (last visited Mar. 3, 2015).

229. OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, FY 2016 CONGRESSIONAL BUDGET SUBMISSION 12 (2015), http://www.justice.gov/sites/default/files/jmd/pages/attachments/2015/02/02/30._office_on_violence_against_women_ovw.pdf.

enforcement and nonprofit, nongovernmental service providers, who must be involved in both the development and implementation of grant funded activities.²³⁰ An applicant's STOP planning committee must include representatives of state domestic violence coalitions, law enforcement, prosecutors, state and local courts, and victim service providers, among others.²³¹ Given the substantial federal resources made available through these two programs (\$245 million authorized for fiscal year 2015),²³² the incentives to create and maintain collaborative relationships between law enforcement and service providers are significant.

Additionally, the Violence Against Women Act has encouraged closer ties between law enforcement and advocates through its support for the development of Coordinated Community Response programs.²³³ First developed in Duluth, Minnesota, coordinated community responses generally include law enforcement (police, prosecutors, probation), advocates for people subjected to abuse, counselors, and courts and focus on "developing and implementing policies and procedures that improve interagency coordination and lead to more uniform responses to domestic violence cases."²³⁴ Notwithstanding equivocal research on the effectiveness of such interventions,²³⁵ STOP grant funds can be used to support "formal

230. OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, OVW FISCAL YEAR 2014 GRANTS TO ENCOURAGE ARREST POLICIES AND ENFORCEMENT OF PROTECTION ORDERS PROGRAM SOLICITATION 14 (Jan. 7, 2013).

231. *Id.* at 19.

232. OFFICE ON VIOLENCE AGAINST WOMEN, *supra* note 229, at 14, 49.

233. Brenda K. Uekert, *The Value of Coordinated Community Responses*, 3 CRIMINOLOGY & PUB. POL'Y 133, 134 (2003) (explaining that most coordinated community response programs emerged as a result of VAWA funding).

234. Melanie Shepard et al., *Enhancing Coordinated Community Responses to Reduce Recidivism in Cases of Domestic Violence*, 17 J. INTERPERSONAL VIOLENCE 551 (2002); *see also* Laura F. Salazar et al., *Examining the Behavior of a System: An Outcome Evaluation of a Coordinated Community Response to Domestic Violence*, 22 J. FAM. VIOLENCE 631 (2007). A coordinated community response often includes pro or mandatory arrest policies, support and advocacy for people subjected to abuse, pro-prosecution policies, monitoring of probation, enhanced civil remedies, and system-wide monitoring. Shepard et al., *supra*, at 551–52; *see also* Salazar et al., *supra*, at 632.

235. *See, e.g.*, Joel H. Garner & Christopher D. Maxwell, *Coordinated Community Responses to Intimate Partner Violence in the 20th and 21st Centuries*, 7 CRIM. & PUB. POL'Y 525, 528–30 (2008) (summarizing studies). At least one study has found that coordinated community responses can be problematic for women if the law enforcement personnel are "hostile to the goals of the project." In one Georgia county that implemented a coordinated

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and informal statewide, multidisciplinary efforts . . . to coordinate the response of state law enforcement agencies, prosecutors, courts, victim services agencies, and other state agencies and departments to violent crimes against women.”²³⁶

The Violence Against Women Act has also provided support for Family Justice Centers, which bring together a number of community actors, including law enforcement and providers of domestic violence services, in a single, centralized location.²³⁷ Introduced in San Diego, California, Family Justice Centers have been touted as providing many of the same benefits as coordinated community response programs, but with the added benefit of being a “one stop shop” for people subjected to abuse.²³⁸ Family Justice Centers emphasize the importance of the law enforcement response, seeing pro or mandatory arrest policies and aggressive prosecution as essential in combatting domestic violence.²³⁹

Most recently, law enforcement and advocates for people subjected to abuse have partnered on the development of lethality assessment programs. Lethality assessment programs provide law enforcement with risk assessment tools to measure the level of danger that a person subjected to abuse may be experiencing.²⁴⁰ The assessment involves a standard set of questions asked in a particular

community response, the arrest rates among women increased significantly; researchers posited that the cause was a sheriff who “felt that women provoked their abuse and were often the primary offenders.” Salazar et al., *supra* note 234, at 639.

236. OFFICE OF VIOLENCE AGAINST WOMEN, *supra* note 215, Pt. A, at 4. Additional federal funding for coordinated community responses was provided by the Center for Disease Control. Joanne Klevens et al., *Exploring the Links Between Components of Coordinated Community Responses and Their Impact on Contact with Intimate Partner Violence Services*, 14 VIOLENCE AGAINST WOMEN 346, 347 (2008).

237. OFFICE OF VIOLENCE AGAINST WOMEN, *supra* note 230, at 12. In addition to law enforcement and domestic violence service providers, a Family Justice Center could include prosecutors, probation officers, medical professionals, civil legal services providers, clergy, and representatives from other community based agencies. *Id.*

238. Casey Gwinn et al., *The Family Justice Center Collaborative Model*, 27 ST. LOUIS UNIV. PUB. L. REV. 79, 83 (2007). President George W. Bush spurred the growth of the Family Justice Center movement through his President’s Family Justice Center Initiative, which in 2004 made more than \$20 million available to communities seeking to develop the programs. *Id.* at 88. Funding for Family Justice Centers was added to VAWA in 2005. *Id.* at 90.

239. *Id.* at 89.

240. DEP’T OF CRIMINAL JUSTICE SERVS. (VA.), REVIEW OF LETHALITY ASSESSMENT PROGRAMS (LAP) 2 (2013).

order; the responses help law enforcement to determine the level of danger and make appropriate referrals.²⁴¹ Originally based on the danger assessment tool created by Professor Jacquelyn Campbell,²⁴² the stated goal of lethality assessment is to provide people subjected to abuse with some understanding of their current risk levels and to connect high-risk individuals with domestic violence services.²⁴³ In addition, lethality assessment is explicitly designed to increase collaboration between law enforcement and domestic violence service providers.²⁴⁴ Partnering agencies are encouraged to enter into memoranda of understanding detailing the various roles and responsibilities within the collaboration.²⁴⁵ The program relies to some extent on the development of relationships between law enforcement and service providers;²⁴⁶ creating a successful program requires convincing police officers of the value of these partnerships and decreasing disincentives to calling domestic violence service providers at the scene. While other system actors may be involved in

241. *Id.* Lethality screens are conducted by first responders, typically police officers, at the scene of a call involving intimate partner abuse. If the person subjected to abuse screens at a high level of danger, the police officer contacts a partner domestic violence agency to engage in immediate safety planning and service provision. Although the protocols do not require that the person subjected to abuse speak with a counselor, Maryland officers are advised to strongly encourage the person to speak with a counselor, and are instructed to ask the person multiple times if they are willing to speak with a counselor. Margaret E. Johnson, *Balancing Liberty, Dignity, and Safety: The Impact of Domestic Violence Lethality Screening*, 32 CARDOZO L. REV. 519, 537 (2010). If the person speaks with a counselor, they are encouraged to seek services from the domestic violence program. If the person opts to work with the program, the program conducts a more detailed Danger Assessment and provides more comprehensive safety planning. DEP'T OF CRIMINAL JUSTICE SERVS. (VA.), *supra* note 240, at 3.

242. Johnson, *supra* note 241, at 524.

243. *Id.* at 532.

244. *What is LAP?*, MD. NETWORK AGAINST DOMESTIC VIOLENCE, <http://mnadv.org/lethality/what-is-lap/> (last visited Mar. 3, 2015); *see also* DEP'T OF CRIMINAL JUSTICE SERVS. (VA.), *supra* note 240, at 13–14; Johnson, *supra* note 241, at 539; *Lethality Assessment Program: The Maryland Model Can Save Lives*, MARYLAND NETWORK AGAINST DOMESTIC VIOLENCE, http://www.ncdsv.org/images/MNADV_LethalityAssessmentProgramTheMarylandModel.pdf (last visited Mar. 3, 2015) (quoting advocate Meg Kuhne: “Big relationship building [between advocates and police officers] went on at the training!”).

245. DEP'T OF CRIMINAL JUSTICE SERVS. (VA.), *supra* note 240, at 7.

246. Achieving law enforcement buy-in has been a challenge for lethality assessment programs. *Id.* at 6–7. The need for law enforcement to actively engage makes it even more important that domestic violence service providers work with law enforcement as seamlessly as possible.

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lethality assessment programs, the core relationship upon which the program is built is the relationship between law enforcement and domestic violence service providers.²⁴⁷

In theory, all of this collaboration between law enforcement and domestic violence service providers is a positive development. Such partnerships recognize both the expertise of victim service providers in shaping law and policy responses to domestic violence and the need to ensure that the law enforcement response to intimate partner abuse is not the only option provided to people subjected to abuse. In its evaluation reports on the STOP grant, the Office on Violence Against Women touts the improved collaboration between law enforcement and other system actors as one of the benefits of the program.²⁴⁸ In practice, though, such collaborations have also led to what one advocate characterized as “co-optation and collusion.”²⁴⁹ Through collaboration, domestic violence service providers develop personal and professional relationships with law enforcement officers that make it difficult to criticize their behavior.²⁵⁰ Such criticism not only has the potential to jeopardize those personal relationships, but could also affect the assistance provided to clients.²⁵¹ Moreover, given that federal funding prioritizes law enforcement, and that victim services funding comes through programs with an explicit law enforcement focus, advocates may find it difficult to raise issues without imperiling their funding. As one advocate noted, “[Y]ou don’t bite the hand that feeds you. If the state’s attorney is signing your paycheck, you’re not gonna’ stand up in a public meeting and say that prosecutors are failing to do their job.”²⁵² It would be equally difficult for advocates required to collaborate with police agencies in order to qualify for federal grants to stand up and say that

247. *Id.* at 10 (explaining that Maryland’s LAP requires, at minimum, a partnership between law enforcement and domestic violence service providers).

248. *See, e.g.*, OFFICE ON VIOLENCE AGAINST WOMEN, *supra* note 215, Pt. A at 19-21; OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUSTICE, STOP PROGRAM: SERVICES, TRAINING, OFFICERS, PROSECUTORS 2010 REPORT 22-23 (2010).

249. Diane Fleet, Assistant Director, Greenhouse 17, Remarks (May 15, 2014) (on file with author).

250. *Id.*

251. *Id.*

252. Amy Lehrner & Nicole E. Allen, *Still a Movement After All These Years? Current Tensions in the Domestic Violence Movement*, 15 VIOLENCE AGAINST WOMEN 656, 665-66 (2009).

police officers are abusing their partners and that law enforcement agencies are doing little to address the problem. As a result of the interrelationship between law enforcement and domestic violence service providers, advocates who might otherwise call attention to problematic police behavior—like intimate partner abuse among police officers—may be silenced.²⁵³ The voices that have traditionally called the state to account for its failure to address domestic violence have not challenged the failure of law enforcement organizations to prevent or respond to domestic violence among its officers or raised the larger question of how police culture creates a climate that fosters intimate partner abuse.

It would be hard to imagine a policy response to domestic violence in the United States that did not centralize the role of law enforcement. But that same reliance on law enforcement to combat domestic violence has created significant barriers to addressing the violence that law enforcement officers commit. Whether those barriers can be overcome is addressed below.

CONCLUSION

A number of concrete policy proposals to respond to the problem of intimate partner abuse among police officers come to mind. Increased law enforcement training on officer-involved domestic violence is one possibility. Indeed, in the last forty years, scholars have repeatedly called for increased training of police officers to improve various facets of the law enforcement response to domestic violence.²⁵⁴ This Article makes no such call. Hundreds of millions of federal dollars have already been committed to the training of police officers on domestic violence, with equivocal

253. *Id.* at 666 (noting that some agencies and leaders “pull their punches” to avoid imperiling their funding).

254. See Daniel J. Bell, *Domestic Violence: Victimization, Police Intervention, and Disposition*, 13 J. CRIM. JUST. 525, 533 (1985) (calling for increased training of police officers in 1985); Chad D. Bernard, Comment, *Crime; Domestic Violence—Law Enforcement Officer Training*, 27 PAC. L.J. 545, 546–47 (1996) (explaining that better police training would lead to better outcomes for domestic violence calls in 1995); Raymond I. Parnas, *The Police Response to the Domestic Disturbance*, 1967 WIS. L. REV. 914, 957 (advocating for increased police training in 1967); Amy M. Zelcer, *Battling Domestic Violence: Replacing Mandatory Arrest Laws with a Trifecta of Preferential Arrest, Officer Education, and Batterer Treatment Programs*, 51 AM. CRIM. L. REV. 541, 555–56 (2014) (arguing that officer training would improve effectiveness of arrest law in 2014).

results for people subjected to abuse. 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.

Old research confirms the current anecdotal evidence (the articles that appear in the media almost daily about domestic violence committed by police officers²⁵⁵) that intimate partner abuse by police officers is a serious problem. New data are essential in helping to make the case that the limited policy efforts that have been made over the last forty years to address intimate partner abuse by police officers have been insufficient. Understanding that all such research is likely to be flawed in some way (either through the necessity of using self-report or partner reports or because the research relies on official reports of intimate partner abuse made to law enforcement authorities) and that police officers and their partners are far more likely to underreport abuse, such research would at least provide a baseline for understanding the extent of the problem.²⁵⁶

Moreover, every law enforcement agency in the United States could adopt a specific policy for handling claims of domestic violence perpetrated by police officers. In theory, such policies send a message to the partners of abusive officers that their requests for help will be taken seriously and that police will “hold our own accountable and make the law keep its promise and protect victims of domestic

255. See Conor Friedersdorf, *Police Have a Much Bigger Domestic-Abuse Problem Than the NFL Does*, ATLANTIC (Sept. 19, 2014), <http://www.theatlantic.com/national/print/2014/09/police-officers-who-hit-their-wives-or-girlfriends/380329/>; see also *infra* Appendix; Stinson & Liederbach, *supra* note 60, at 609 (finding 324 cases of officer-involved domestic violence reported by news sources from 2005–2007). Stinson and Liederbach found case disposition data for about half of the cases: of that half, 65% were convicted of one or more of the offenses charged. *Id.* at 613.

256. Another creative (albeit anecdotal) solution for documenting intimate partner abuse by police is to create a database tracking such incidents. The Legal Aid Society of New York City has created such a database to track accusations of wrongdoing against officers in the New York Police Department. Leon Neyfakh, *The Bad Cop Database*, SLATE (Feb. 13, 2015, 11:43 AM), http://www.slate.com/articles/news_and_politics/crime/2015/02/bad_cops_a_new_database_collects_information_about_cop_misconduct_and_provides.html.

violence.”²⁵⁷ In 2003, the International Association of Chiefs of Police (IACP) promulgated a model policy for responding to intimate partner abuse by police officers. The policy adopts a “zero tolerance” stance on officer involved intimate partner abuse and sets forth procedures for prevention and training, early warning and intervention, incident response, victim safety and protection, and post-incident administrative and criminal decisions.²⁵⁸ Lieutenant Mark Wynn argues that such policies are essential for law enforcement; when asked whether he believed every police department in the country should adopt a policy, he answered, “You can’t police without it.”²⁵⁹

Nonetheless, the vast majority of law enforcement agencies in the United States are policing without such policies. Few agencies have adopted the comprehensive IACP policy.²⁶⁰ Moreover, in a 2006 study, psychologist Kimberly Lonsway found that only 29% of the agencies that she surveyed had any kind of policy on officer-involved domestic violence.²⁶¹ Lonsway explains that the 29% figure may be artificially high, because responding agencies might be referring to their general domestic violence policies, rather than any specific policy on officer-involved domestic violence. In addition, Lonsway’s response rate to a written one-question survey was low (almost 40% did not respond). She argues that it is likely that few of the agencies that chose not to respond actually have a policy; in fact, in a follow-up phone call to nonrespondents, a number of agencies told researchers that they did not understand what kind of policy was being described “and several even laughed at the question.”²⁶² Two

257. Moughty, *supra* note 69.

258. INT’L ASS’N OF CHIEFS OF POLICE, DOMESTIC VIOLENCE BY POLICE OFFICERS: A POLICY OF THE IACP (2003).

259. Moughty, *supra* note 69; *see also* Yoav Gonen, *NYPD needs to crack down on cops convicted of domestic violence*, N.Y. POST (June 29, 2015, 12:01 AM), <http://nypost.com/2015/06/29/nypd-needs-to-crack-down-on-cops-convicted-of-domestic-violence/> (describing report by Commission to Combat Police Corruption finding police officers underpunished in almost 10% of cases and calling for presumption of termination upon “clear and convincing evidence of a prior physical domestic history”); Miller, *supra* note 102, at 36 (explaining the need for clear departmental policy outlining what “zero tolerance” actually means).

260. Lonsway, *supra* note 19, at 402.

261. *Id.* at 407.

262. *Id.* at 408.

provisions, which Lonsway describes as “the bare minimum for any policy on officer-involved domestic violence,”²⁶³ were most likely to appear in the policies that did exist: a provision requiring that a supervisor be immediately notified to respond to an incident of officer-involved domestic violence and a mandate that officers self-report being named in a protective order proceeding.²⁶⁴ Lonsway notes that most policies are silent as to the method of reporting officer-involved domestic violence, the need to seize weapons from officers, and the investigation of claims of officer-involved domestic violence²⁶⁵—provisions that might provide the partners of officers with greater certainty and comfort around asking police for assistance. Where policies do exist, they may also be so vague as to be functionally useless; as psychologist Laurence Miller notes, “Many agencies endorse a ‘zero tolerance’ policy with regard to violent behavior, but as with most such behavioral concepts, ‘zero’ is not necessarily always an absolute quantity.”²⁶⁶ Such policies could both govern law enforcement behavior and send a message to communities that intimate partner abuse by law enforcement is seen as a serious problem worthy of the department’s attention.²⁶⁷

Few law enforcement agencies currently have policies on officer-involved domestic violence. As a result, even when officers are convicted of domestic violence offenses, there is no guarantee that they will be removed from their positions. In their study of officer-involved domestic violence cases reported by the media, Professors Philip M. Stinson and John Liederbach found that fewer than half of the officers who were convicted of domestic violence offenses lost their jobs either through termination or resignation.²⁶⁸ Similarly, the *New York Times* analyzed publicly available data on complaints of police misconduct in Florida and found that complaints involving domestic violence caused officers to lose their jobs less frequently

263. *Id.* at 416–17.

264. *Id.* at 416.

265. *Id.* at 417.

266. Miller, *supra* note 102, at 36.

267. See, e.g., Jacqueline M. Mazzola, *Honey, I’m Home: Addressing the Problem of Officer Domestic Violence*, 27 J. CIV. RTS. & ECON. DEV. 347, 363 (2014) (outlining a proposed policy for police officers in New York State).

268. Stinson & Liederbach, *supra* note 60, at 613.

than most other types of complaints.²⁶⁹ In theory, strict and certain application of the IACP's model policy, or any similar policy²⁷⁰, should deter other officers from continuing their abusive behavior.²⁷¹ But the potential for negative consequences has not proven a strong deterrent to domestic violence generally, and there is reason to doubt that enacting policies will necessarily decrease the rates of officer-involved domestic violence. And if those policies call for the dismissal of officers who are committing acts of violence against their partners, the punishment may make their partners less safe, not more, by jeopardizing the officer's livelihood.²⁷²

At bottom, the fundamental question is how much impact any of these policy proposals will have without changing the context within which police officers work—the realm of militarized masculinity. Policing has always been a hypermasculine environment; militarization has only intensified the hypermasculine attributes of law enforcement. The increasing presence of women in law enforcement has not changed the hypermasculine context of police

269. Sarah Cohen et al., *Departments are Slow to Police Their Own Abusers*, N.Y. TIMES (Nov. 23, 2013), <http://www.nytimes.com/projects/2013/police-domestic-abuse/>. The study found that 28% of officers accused of domestic violence were still in their jobs a year later, as opposed to one percent of those who failed drug tests and seven percent of the officers named in theft complaints. *Id.*

270. For example, the San Francisco Police Department recently adopted a policy barring anyone convicted of a domestic violence offense from serving as a police officer. Jonah Owen Lamb, *New Rules Bar Domestic Violence Offenders from SF Police Ranks*, S.F. EXAMINER (Oct. 20, 2014), <http://www.sfexaminer.com/sanfrancisco/new-rules-bar-domestic-violence-offenders-from-sf-police-ranks/Content?oid=2909655>.

271. Ken White described the problem of police misconduct as analogous to broken windows, asking: "If tolerating broken windows leads to more broken windows and escalating crime, what impact does tolerating police misconduct have?" White continues, "We're not pursuing the breakers of windows. If anything, we are permitting the system steadily to entrench their protected right to act that way. We give them second and third and fourth chances." Ken White, *Broken Windows and Broken Lives*, POPEHAT (Dec. 4, 2014), <https://www.popehat.com/2014/12/04/broken-windows-and-broken-lives/>.

272. Moreover, recent research on the handling of police misconduct complaints reveals that even when officers are fired from their positions as a result of misconduct, strong police unions often help officers to get their jobs back through post-dismissal arbitration processes. The cases documented by Conor Friedersdorf of *The Atlantic* include that of a Pittsburgh police officer who was accused of slapping an ex-girlfriend so hard that he dislocated her jaw. Conor Friedersdorf, *How Police Unions and Arbitrators Keep Abusive Cops on the Street*, ATLANTIC (Dec. 2, 2014), <http://www.theatlantic.com/politics/archive/2014/12/how-police-unions-keep-abusive-cops-on-the-street/383258/>.

work.²⁷³ The hypermasculine environment of policing is extremely resistant to change and fosters a climate within which violence against women or against those who are feminized is not only tolerated, but used to assert one's own status as a hegemonic male. Without fundamentally changing the cultural context within which police officers do their jobs, intimate partner abuse among officers is unlikely to decrease.

Which brings us back to the question of criminalization of intimate partner abuse. Over the last several years, a number of scholars have critiqued the criminal justice response to intimate partner abuse. Those scholars have argued that the criminal justice response is ineffective,²⁷⁴ that it focuses disproportionately on people of color and low income people,²⁷⁵ that it ignores the larger structural issues that drive intimate partner abuse,²⁷⁶ and that it robs women of autonomy and ignores women's needs.²⁷⁷ This Article adds another critique to that list—that the environment of militarized masculinity within law enforcement fosters a culture that is disdainful of women at best and actively abusive at worst. In that climate, the high rates of intimate partner abuse among police officers are unsurprising. Criminalization of domestic violence cannot succeed as a policy when those enforcing the laws are significantly more likely than the general population to commit the

273. See generally MILLER, *supra* note 151.

274. GOODMARK, *supra* note 9. One rejoinder to that contention is that the United States has never fully implemented the criminal justice response; in some jurisdictions with mandatory arrest laws, for example, advocates continue to decry the failure of police to make arrests notwithstanding the requirement that they do so. Victoria Frye et al., *Dual Arrest and Other Unintended Consequences of Mandatory Arrest in New York City: A Brief Report*, 22 J. FAM. VIOLENCE 397 (2007). It is worth asking, however, whether policies like mandatory arrest will ever be fully implemented by police officers who abuse their own partners or condone the behavior of their fellow officers.

275. Donna Coker, *Shifting Power for Battered Women: Law, Material Resources and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009 (2000); BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* (2012).

276. Deborah M. Weissman, *Law, Social Movements, and the Political Economy of Domestic Violence*, 20 DUKE J. GENDER L. & POL'Y 221 (2013); Deborah M. Weissman, *The Personal is Political—and Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387.

277. Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. ST. U. L. REV. 1 (2009); Johnson, *supra* note 241, at 519.

crime in question.²⁷⁸ The failure to confront this question will mean that protection from intimate partner abuse will continue to elude not only the partners of police officers, but anyone who is abused and who has the misfortune to be visited by an abusive officer after calling 911 for assistance.²⁷⁹

Across the country, people are raising their hands in memory of Michael Brown, asking police to refrain from unjustified shootings of unarmed citizens.²⁸⁰ In the homes of police officers across the country, their partners have their hands up as well, asking the officers with whom they are or have been intimately involved to refrain from abusing them. Police misconduct and misuse of force are rampant; public discussions of these issues and potential solutions are being held in classrooms, by the media, and in workplaces and homes across the United States. That larger conversation must include how to address the needs of the intimate partners of police officers, who face in private what others are experiencing in public. The militarization of policing, made visible in the tanks and assault rifles on the streets in Ferguson,²⁸¹ is already part of the conversation, but we must also consider the impact of militarized masculinity on law enforcement and particularly, how militarized masculinity creates the context for officer-involved intimate partner abuse. And that conversation must confront the reality that criminalizing domestic violence cannot be an effective policy response when those policing the crime and those committing it are often the same person.

* * *

278. Or, as Conor Friedersdorf argues in *The Atlantic*, “There is no more damaging perpetrator of domestic violence than a police officer, who harms his partner as profoundly as any abuser, and is then particularly ill-suited to helping victims of abuse in a culture where they are often afraid of coming forward.” Friedersdorf, *supra* note 115.

279. Yale Law Professor Stephen Carter writes, “Every act of enforcement [of the law] includes the possibility of violence.” Stephen L. Carter, *Law Puts Us All in Same Danger as Eric Garner*, BLOOMBERG VIEW (Dec. 4, 2014, 10:56 AM), <http://www.bloomberglaw.com/articles/2014-12-04/law-puts-us-all-in-same-danger-as-eric-garner>.

280. See, e.g., HANDS UP UNITED, <http://www.handsupunited.org/> (last visited Jan. 19, 2016).

281. *Why Ferguson, Mo., Looked Like a War Zone This Week*, CBS NEWS (Aug. 15, 2014, 6:44 AM), <http://www.cbsnews.com/news/ferguson-missouri-response-shows-police-use-of-military-equipment/>.

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