

The Agencies of Abuse: Intimate Abusers' Experience of Presumptive Arrest and Prosecution

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Presumptive arrest and prosecution policies are designed to eradicate domestic violence by disrupting abusive relationships and transforming the subjectivities of victimized women and abusive men. Using in-depth interviews with 30 persons arrested and prosecuted for domestic violence, this article examines the power of presumptive policies by exploring how intimate abusers experience them. The study finds that while the police and courts are able to secure arrests and convictions on domestic violence cases, nearly all the respondents in this study understand their punishments as unfair sanctions meted out by an unjust local legal system rather than as the consequences of their own actions. These injustice claims emerge from abusers' group identities as well as the very practices through which the police and courts gain authority over them. These findings demonstrate that the power of the law as a force for social change may be more limited than some have claimed. In addition, they reinforce calls to reform society's response to intimate violence through procedures that can go further in empowering victims and having offenders recognize their responsibility for violence.

Society's campaign against intimate partner abuse¹ has generated a repertoire of innovative legal measures. Orders of protection bar abusers from contacting their victimized partners. Presumptive arrest policies² encourage the police to arrest

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¹ In this article, I use *intimate partner abuse*, *intimate partner violence*, and *domestic violence* interchangeably to refer to abuse within intimate relationships. While intimate partner abuse includes lesbian and gay couples (Letellier 1994; Ristock 2002), my research focuses exclusively on abuse in heterosexual relationships.

² These measures are often referred to as mandatory arrest. The difference in terminology owes to the language of the policies themselves. Mandatory arrest policies dictate that officers "must" arrest when probable cause exists, while presumptive arrest policies dictate that they "should" arrest. I use the term *presumptive arrest* because the police departments in the county where I collected data followed presumptive policies.

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abusive partners. Presumptive prosecution policies³ commit state's attorney's offices to pursue charges against abusers, even if victims do not cooperate (Schneider 2000:92–5).

These legal measures represent a new regime of domestic violence “governmentality” (Merry 1995, 2002). For women who are primarily the victims of abusive relationships, the measures are intended to sever abusive relationships and push women to become individual subjects independent of their abusive partners (Merry 1995). For the men who are predominantly the offenders in abusive relationships, the measures are intended to change their behavior by sending “a clear social message that battering is impermissible” (Schneider 2000:94) and holding them accountable for their actions (Buzawa & Buzawa 1996:178; Herrell & Hofford 1990).

While these initiatives demonstrate the criminal legal system's responsiveness to the battered women's movement (see Mirchandani 2005), presumptive policies have proven controversial among advocates. Supporters contend that the policies provide women security by forcing the criminal justice system to respond to domestic violence (Flemming 2003; Hanna 1996) and relieve them of difficult decisions regarding the arrest and prosecution of their partners (Wanless 1996; Cahn & Lerman 1991). Critics argue that the policies further harm women by taking decisionmaking from them (Ford 2003; Mills 2003) and that they ignore the injustices that minority populations and the poor experience at the hands of the criminal justice system (Coker 2001; Ferraro & Pope 1993; Ferraro & Boychuk 1992).

This debate captures well the dilemmas that presumptive policies present to victims of abusive relationships. However, less attention has been given to the effects of these measures on abusers. A number of statistical analyses have examined how aggressive arrest and prosecution correlate to future reports of offending. But none have contacted batterers to understand how these policies affect them. In this article, I look to fill this gap. Informed by law and society research on the relational nature of legal power, and using interviews with 30 persons arrested and prosecuted under presumptive policies, this article describes how intimate abusers experience presumptive arrest and prosecution.

The study finds that intimate abusers⁴ anchor their experiences of presumptive arrest and prosecution in police investigations

³ These policies are more commonly referred to as mandatory prosecution or no-drop prosecution. I use the term *presumptive prosecution* to establish congruence with my reference to the arrest policies and to reflect the fact that prosecutors retain the discretion to not charge or dismiss cases under these policies.

⁴ How one refers to persons arrested and prosecuted on domestic violence charges is a delicate question. Most of the people participating in this study were reported by their

and plea bargaining. These events draw batterers into distinct arrangements of power. While police officers work to have domestic violence suspects pronounce their abuse during investigations, court officials press them to give up their right to address allegations of abuse during plea negotiations. Suspects respond to these operations of power by either complying with or defying legal authorities, stances that are shaped by their legal consciousness, the tactical force of authorities, and their own understandings of abuse. In the majority of cases, the police and courts are able to structure the outcomes of these encounters in their favor, leaving them with custodial authority over abusers. Regardless of substantive outcomes, however, nearly all the respondents in this study understand their punishments as unfair sanctions meted out by an unjust local legal system rather than as the consequences of their own actions. These injustice claims are most commonly based on group identities. In other instances, though, they are the echoes of legal authorities themselves, who use depictions of an unjust legal system as a tactic for realizing the compliance of criminal suspects.

In the rest of this article, I develop these ideas further. The article is divided into four sections. In the first, I provide an overview of the current literature on the efficacy of aggressive arrest and prosecution against batterers and sociolegal research on the relational nature of legal power. The second section reviews the data and methods used in this study. The third section presents respondents' description of their experiences with presumptive arrest and prosecution. In the fourth section, I conclude the article with a discussion of the significance of these findings.

Literature Review: The Efficacy of Arrest and Prosecution Against Intimate Abusers and the Relational Nature of Legal Power

Research investigating the impact of aggressive arrest and prosecution policies on intimate abusers has primarily consisted of quantitative studies using quasi-experimental research designs. These experiments compare future reports of offending for abusers arrested and prosecuted under proactive policies with those of abusers experiencing other legal interventions, such as police

partners to have been violent. It makes sense then to refer to them as intimate abusers. However, some of these respondents were not found guilty by the criminal justice system. Thus from a legal perspective, calling them abusers is not justified. In this article, I mostly refer to the participants as suspects. By doing so, I do not look to diminish their actions or silence the voices of their partners. Appendix C reports the range and severity of violent acts that these respondents are reported to have committed. Instead, I use the term *suspects* to convey the fact that these research participants are experiencing legal encounters through which their status as batterers is determined.

mediation, issuance of citations, or traditional prosecution. Interesting to note, this research has found that the efficacy of arrest and prosecution against batterers differs.

The arrest experiments sponsored by the National Institute of Justice in the 1980s found that arrest deterred white, employed, married men, while it escalated violence among black, unemployed, single men (Sherman 1992). Conversely, no research has found that aggressive prosecution policies deter intimate abusers (Davis et al. 2003; Dugan et al. 2003; Buzawa et al. 1999; Ford & Regoli 1993). In fact, studies have observed that new violence was less likely when victims had the opportunity to drop charges (Ford & Regoli 1993) and when offenders were not prosecuted or were prosecuted without receiving court supervision (Buzawa et al. 1999).

These studies provide much-needed measures of intimate abusers' behavior following arrest and prosecution. But they are not designed to explain the operations of power that would account for such results.⁵ For instance, the studies do not identify which elements of arrest and prosecution affect abusers, which leaves them unable to explain the connection between criminal justice actions and offenders' behavioral outcomes (Dobash & Dobash 2000). In addition, because the studies do not consult abusers to determine how these sanctions affect them, researchers have begun to call for research that examines "how assailants experience the criminal legal system" (Fleury 2002:203; see also Maxwell et al. 2002:72–3). In this article, I look to provide a more comprehensive view of the power of presumptive arrest and prosecution by answering the following question: How do intimate abusers experience presumptive arrest and prosecution?

To approach this question, I take guidance from ethnographic sociolegal research that highlights the relational nature of legal power (Ewick & Silbey 2003; Sarat & Felstiner 1995). This scholarship emphasizes power not as "a thing that can be possessed," but as a "probabilistic social relationship whose consequences are contingent upon the contributions of . . . those who turn out to be more powerful (superordinate) and those who turn out to have been less powerful (subordinate)" (Ewick & Silbey 2003:1333). Power, in this sense, is an "unstable and evanescent" phenomenon (Sarat & Felstiner 1995:vii).

Despite the contingent nature of power, patterns of social interaction do become entrenched over time. And those who exercise

⁵ In addition, researchers have noted methodological limitations in the arrest studies, including their failure to consider victims' perspectives on the efficacy of arrest (Zorza 1994) and their reliance on official records over victim reports to measure recidivism (Niemi-Kiesilainen 2001).

hegemony do so by “drawing upon the symbols, practices, statuses, and privileges that have become habitual in social structures” (Ewick & Silbey 2003:1334), such as the “rules” through which courts process cases and transform participants’ voices (Conley & O’Barr 1990) and the “knowledge of, stature in, and connections to the local community” that court authorities possess (Yngvesson 1989). Still, the substantive outcomes and interpretive meanings of legal encounters are never fixed, and common people possess the capacity to exercise “resistance” in their encounters with legal authorities (Ewick & Silbey 1998, 2003; Merry 1995; Sarat 1990).

Abusers’ experience of presumptive arrest and prosecution presents a particularly salient case for studying the power of law. Distinct from the contexts examined in the aforementioned studies, domestic violence law represents an effort to harness the force of the criminal legal system in order to counter the force of another set of hegemonic social relations, men’s control over women. By examining abusers’ interactions with legal authorities and the meanings that these legal encounters have for them, this study provides a look not only at the power of the law, but also at the potential of the law to serve as a force for progressive social change.

Data and Methods

The data presented in this article is drawn from 30 hour-long, semi-structured interviews I conducted with persons arrested and prosecuted for domestic violence in Centralia County,⁶ a Midwestern county home to a large state university and three small cities. Centralia County proved an ideal site for this study. Each of the county’s major police departments follows a presumptive arrest policy, and the county state’s attorney’s office pursues a presumptive prosecution policy.

I completed the interviews as part of a larger research project on presumptive arrest and prosecution, which included ride-alongs with a local police department and observations and interviews with prosecutors and defense attorneys at the Centralia County criminal court. The timing of respondents’ participation was a major consideration in this study. I sought to interview batterers before their enrollment in batterer intervention programs (BIPs)—the typical site for recruiting batterer research subjects (Ptacek 1988; Hearn 1998; Eisikovits & Buchbinder 2000; Dobash et al. 2000)—since these programs comprise a separate site of governmentality whose specific purpose is to change men by

⁶ This name is fictitious. The names of places and persons in this research have been changed to protect participants’ anonymity.

instilling “new forms of masculinity”⁷ (Merry 2001:16). In an effort to avoid “contaminating” my sample with persons who had been instructed on how to understand their violence in BIPs, I arranged to have the county jail provide invitation letters to arrestees following their release from jail. I also mailed invitation letters to suspects following the termination of their court cases.⁸ I initially paid participants \$25 per interview. Given an initial low response rate, I increased the amount to \$40.

Aside from sex,⁹ the respondents participating in this research were a heterogeneous group in terms of age, race, employment, marital status, and criminal history (see Table 1 for a summary description of the group and Appendix A for information on individual participants). To determine the severity of respondents’ violence, I referenced the police reports associated with their cases, using Straus et al.’s (1996) Revised Conflict Tactics Scale (CTS2) as a basis for measurement (see Appendix B). Table 2 shows that the physical violence reported by victims is predominantly severe (17 of 26 victims), with injuries reported by 14 victims (for a summary of each respondent’s violence, see Appendix C).¹⁰

The work of interviewing domestic batterers is challenging because they are evasive in discussing their violent pasts (Ptacek 1988; Anderson & Umberson 2001). In addition, masculine subjects may view an interview as threatening and react by minimizing their participation (Schwalbe & Wolkomir 2001). Anticipating this, I put respondents in charge of data production by having them construct narratives (Riessman 1993) describing their experiences with the criminal justice system. To investigate the question “How do intimate abusers experience presumptive arrest and prosecution?” I asked participants to narrate their encounters with legal

⁷ I had originally intended to include treatment programs as part of this research. However, detailing the operations of power present in therapy groups as well as the outcomes in abusers’ subjectivities would have doubled the length of the research. Such a project is surely needed, but it deserves its own dissertation-length investment of time and resources.

⁸ Despite these efforts, two of the participants (Gary and Aaron) were attending partner abuse classes at the time of their interviews. In addition, given that many respondents had prior domestic violence convictions (see Table 1), it is possible that they too had received some counseling. Because the interviews focused on their experiences of presumptive arrest and prosecution, I do not have an estimate of how many had done so.

⁹ Of the 30 persons interviewed for this research, 27 were male. I intentionally recruited male participants for the study, since men commit violence against their intimate partners more frequently than women and their violence is more harmful. Nevertheless, I did include three women arrested for domestic battery in this study in an attempt to illuminate the experiences of women arrested and prosecuted under presumptive policies.

¹⁰ Less psychological aggression is reported, but it should be noted that police look for, and are more likely to record, evidence of physical violence in making an arrest decision. As such, these data most likely underreport the incidence of psychological aggression.

Table 1. Respondents' Social Background and Criminal Histories

Variable	Values
Sociodemographic	
Age	31.1 (mean), 9.19 (s.d.)
Sex	
Male	90.0% (27/30)
Female	10.0% (3/30)
Race	
African American	56.7% (17/30)
European American	36.7% (11/30)
Latino	6.7% (2/30)
Employment	
Unemployed	30.0% (9/30)
Employed	60.0% (18/30)
Disability	10.0% (3/30)
Marital	
Married, Cohabiting	16.7% (5/30)
Divorced/Separated	6.7% (2/30)
Cohabiting	33.3% (10/30)
Single	43.3% (13/30)
Criminal History ^a	
Total Criminal Cases	
1	7.4% (2/27)
2–3	33.3% (9/27)
4–6	33.3% (9/27)
7+	25.9% (7/27)
Total DV Cases	
1	51.9% (14/27)
2	18.5% (5/27)
3	14.8% (4/27)
4	11.1% (3/27)
5+	3.7% (1/27)

^aI was unable to gather the criminal records of three of the participants. Therefore, the values presented here are calculated from 27 respondents.

authorities at different points in the criminal justice process and to offer their assessments of these encounters. More specifically, I followed a script containing the following questions: “What happens when the police arrive? What are they doing? What happens

Table 2. Respondents' Violence: Source of Conflict, Severity, and Injuries in Most Recent Domestic Violence Cases

Domestic Violence Variable	Percentages ^a
Severity	
Physical	
None	7.7% (2/26)
Minor	23.1% (6/26)
Severe	65.4% (17/26)
Psychological	
None	57.7% (15/26)
Minor	15.4% (4/26)
Severe	26.9% (7/26)
Injuries	
None	46.2% (12/26)
Minor	38.5% (10/26)
Severe	15.4% (4/26)

^aI was unable to gather the police reports of four of the participants. Therefore, the values presented here are calculated from 25 respondents.

when you are brought to jail? What are the guards and other inmates doing? What happens at court? What has your defense attorney been doing with the case? How has the criminal justice system treated you?" When necessary, I used "probes" (Goodman 2001:314) to have respondents discuss elements of their legal encounters in greater detail.

To analyze the interview data, I conducted a narrative analysis to identify the "events and characters" that interviewees discussed and the ways in which they ordered these events "temporally" and "structurally" (see Ewick & Silbey 1998 and 2003:1341, for a discussion of these narrative elements). In other words, I examined respondents' stories to determine what events they focused on, how they remembered these events unfolding, and why they believed these events happened.

Findings

Domestic violence arrests and prosecutions expose intimate abusers to a diverse range of power operations. During the typical arrest, law enforcement officers will enter a residence, separate suspected batterers from their victims, interrogate them to determine probable cause, and place them in state custody (Guzik 2003). During domestic violence prosecutions, suspects are made to appear before court to hear criminal charges read against them, have no-contact orders placed against them, are admonished by judges to abide by the orders, are offered plea bargains requiring partner abuse counseling, and are pushed by their defense attorneys to accept the plea bargains (Guzik 2007).

When asked to describe what happens in their interactions with the police and county court, however, the persons participating in this study neglected to mention many of these operations. The power operations that did register, meanwhile, tended to vary by individual respondent. In their encounters with the police, for instance, Adam and Tom described having officers respond to the scene with guns drawn, while Betty noted the shame of being arrested in front of her mother's house, where the neighbors could see. In court, Carl recounted the challenge of abiding by his attorney's advice to remain silent while listening to what he believed was the state's misrepresentation of the facts of his case, while Walter remembered being admonished by a court peace officer after arriving late to a pretrial hearing.

Amongst this variability, common elements did appear in respondents' stories. When describing the police, for instance, participants gravitated toward discussing officers' investigation of their cases. When describing court, they tended to focus on the

plea bargain agreements offered by the state.¹¹ These elements, police investigations, and plea bargain agreements represent the core events of these respondents' legal experiences. In the following three subsections, I review suspects' accounts of these events, focusing on how they described these events unfolding and how they evaluated their experiences.

Intimate Abusers and Police Investigations

Police investigations represent a critical moment in the state's response to intimate partner abuse. By receiving and responding to reports of domestic violence, the police play a key role in disturbing the boundaries between private and public spheres that enable abusive relationships. In investigating these reports, the police decide whether to further this breach by bringing suspected abusers into the state's custody.

If clear evidence of intimate abuse is present (serious injuries, violation of an order of protection), the police's investigation of domestic violence reports can be a straightforward and somewhat unremarkable process. In cases where such evidence is absent, however, the police need to question the parties in the dispute as well as any witnesses in order to establish probable cause. In these instances, police investigations involve domestic violence suspects in a particular type of power relationship in which they are called upon by the state, as represented by law enforcement officers, to provide an account of the events that have led to a report of abuse.

In their descriptions, suspects reported responding differently to the police's request for information. For the most part, suspects explained that they simply complied with the police by offering accounts of conflicts with their partners. John noted, "They asked, 'Did anybody get hurt?' I basically told them that I all I did was push her off because she was trying to get in my face."

By contrast, some respondents reported different types of actions that defied the police's request for information. Bob and Eric, for instance, admitted lying to the police. "They started asking questions and stuff," Eric remembered, "And I was lying. I was trying to lie and say I didn't do nothing to her." Dave, Frank, and

¹¹ Ten of the 30 persons interviewed for this research had not had their cases adjudicated at the time of our interview. The interviews were completed in the time between the arraignment and disposition of their cases. Of these cases, one was dismissed and seven ended in plea bargain convictions, a fact that reinforces the centrality of plea bargains in prosecuting domestic violence cases in Centralia County. I was unable to determine the disposition of the other two cases. These cases still do represent a limitation in the data, since these respondents as a group did not have as full an experience of presumptive prosecution as did the others. Nevertheless, six of the 10 did have prior domestic violence convictions. Further, all these respondents were in the midst of defending themselves from criminal prosecution. As a result, each was able to provide meaningful insight into the experience of being prosecuted for domestic violence.

Nic, meanwhile, said that they refused to answer the police's questions. Dave said, "Her version of the story was that I grabbed her by the neck. And my version was, well, I didn't say anything to the police." Kevin and Ed, finally, recounted attempts to contravene the police investigation altogether by fleeing the scene.

These responses of *compliance* and *defiance* resemble what Ewick and Silbey (1998) describe as standing "before," "with," and "up against" the law. Suspects who reported complying with the police's investigation can be seen as yielding before the authority of the law, while those who defied the police can be seen as playing with or opposing the law. And like Ewick and Silbey's categories, these responses tended to correspond to different legal consciousness on the part of suspects. On the one hand, those suspects with little criminal legal experience complied with the police's investigation. In addition, some explicitly mentioned trusting the police. Carl, who reported complying with the police, explained that he "was born willing to give them information." On the other hand, nearly all of those defying the police had past experience with the criminal justice system.

Although suspects' responses to the police reflected different experiences with the law, they were not mere extensions of their legal consciousness. From the start, these responses were also shaped by the relations and tactics of power that the police use to conduct investigations. Kevin, for instance, reported fleeing the police following an argument with his girlfriend. Using Kevin's girlfriend's cell phone, the police called him to discuss the situation:

I'm constantly telling the officer [over the phone] that I was innocent. I called the police. But he said he just had her side of the story because she's there present, and I'm just over the phone. So, he kind of lured me back to the house. He said that I wasn't actually going to get locked up. He said it was possible that I could, but that he [was] going to weigh the circumstances. So, that's what got me back at the house (Kevin).

In this scene, the officer used the same "persuasion" tactic that Leo (1996) finds detectives using to have suspects waive their Miranda rights, that "there are two sides to every story" and that the police will only have the victim's side of the story unless the suspect cooperates (1996:66). The police possess a repertoire of such tactics that they use in different situations to cool down heated suspects, make silent suspects talk, and direct the speech of talkative suspects in particular directions (Guzik 2003). The tactic used here proved successful. The officer was able to move Kevin from defiance to compliance and, accomplishing this, was able to interrogate and later detain him.

Suspects are of course not powerless in the face of such tactics. They possess their own capacity for legal agency, which they continue to exercise throughout their legal encounters. Ed, the other respondent who fled the scene before the police arrived, experienced many of the same tactics described by Kevin. "Well, they told me that I better come down to the police station so they can talk to me. They were telling me over the phone that they weren't going to lock me up or incarcerate me." Unlike Kevin, though, Ed did not comply with the police but maintained his defiant stance. "I told him, 'if I touched her then she needs proof of that.' And I told him I didn't have nothing else to say, that I wasn't going to incriminate myself."

In addition, those who yielded to the authority of the police by complying with their investigations did not simply submit themselves to the law and admit guilt. Instead, in nearly every instance, they provided accounts of violence that diminished their responsibility. Domestic violence researchers in the past have found that abusive men modify their role in situations of abuse by denying their violence, minimizing its severity or harm, excusing its occurrence, justifying its occurrence, or describing it as self-defense (Anderson & Umberson 2001; Eisikovits & Buchbinder 2000; Dobash & Dobash 1998; Hearn 1998; Ptacek 1988). Such stories are integral to abusers' efforts to fashion and reinforce definitions of a nonviolent self (Dobash & Dobash 2000:162; Ptacek 1988:145).

In fulfilling the police's request for information, suspects offered similar types of stories that reduced their culpability for violence. Some suspects, like Victor, denied having committed abuse. "They said, 'We got a report [of abuse].' I told them, 'We was fighting, but there was no physical contact. There wasn't nothing.' . . . I told them they had it wrong." Others justified or minimized their actions. In his case, Mike admitted having grabbed his partner, but only so that he could get out the door to end their dispute. "I was talking to him, explaining to him everything that had happened, that I pulled her by the legs in order to get out the door, but other than that I didn't put my hands on her." Most commonly, suspects described their actions as acts of self-defense. As John told the police, "All I did was push her off because she was trying to get in my face." These examples reveal how abusers' tactics for preserving their sense of a nonviolent self morphed during police investigations into legal arguments affirming their innocence.

It goes without saying that suspects' acts of defiance and stories of diminished culpability failed to avert arrest. Of the persons participating in the study, only Ed and Walter were not arrested on the day they were reported to have committed domestic

violence.¹² Nevertheless, even if the substantive outcomes of these encounters are one-sided, suspects' narratives demonstrate how the power of law is constructed interactively by both suspects and legal authorities. What's more, these descriptions reinforce Hull's (2003) insight that legal consciousness should be understood as a "layered phenomenon," consisting of "behavioral" and "cognitive" "layers" that operate somewhat separately of one another. Batterers' compliance with or defiance of police investigations does not result solely from their legal experience or understanding of the law, but also from the tactical force of authorities as well as their own understandings of abuse.

Intimate Abusers and Plea Bargain Agreements

The plea bargain represents a core feature of the modern criminal legal system that enables courts to process heavy caseloads (Alschuler 1968, 1975, 1976). In domestic violence cases, plea bargains can take on added importance. As Mirchandani (2005) explains in her observation of a specialized domestic violence court in Salt Lake City, by routinizing the court's processing of domestic violence cases, plea bargains allow judges the time to confront and challenge offenders' patriarchal beliefs in the court setting (2005:409). As such, the plea bargain serves as a linchpin in the domestic violence court's union of social control and social change functions.

Interestingly, plea bargains have a different significance in Centralia County. Here, the state relies on them not only to process domestic violence cases efficiently, but also to secure convictions in the first place. As Matt, a state's attorney responsible for prosecuting domestic violence cases, explained to me, his office faces a conservative local community that produces juries disinclined to domestic violence convictions. "It's that attitude that it's the Midwest," he noted, "the attitude that family problems should stay in the family, until they get to a certain point. If the jury believes it hasn't gotten to that point, then leave them [suspects] alone." To hold abusers accountable for their violence, then, the state's attorney's office believes it needs defendants to plead guilty.

To have suspects plea, the prosecutor's office attempts to make plea bargains more appealing to defendants than trials. In some situations, the attractiveness of plea bargains is inherent. As Matt explained, "If the defendant is sitting in jail, and he can't bond out, and you offer him a plea to a misdemeanor domestic battery and

¹² Ed, who was able to avoid a domestic violence arrest by fleeing, was later apprehended by the police on a drug arrest and charged with domestic battery. Walter, meanwhile, who claimed he could not remember the incident for which he was charged, received a court summons in the mail.

he gets out of jail tomorrow, he's going to take it." In other instances, the state looks to heighten the appeal of plea bargains by "overcharging" its domestic violence cases both horizontally (by increasing the number of charges on a particular case) and vertically (by charging cases higher than circumstance would seem to warrant) (Alschuler 1968:85–6). Matt revealed, "If there is the possibility of filing a felony, I will file a felony no matter what and then I will file a count two, misdemeanor domestic battery." The state then offers defendants a plea bargain to the misdemeanor domestic violence charge, which almost always includes partner abuse counseling as a condition of the sentence.

This framework for prosecuting domestic violence cases involves suspects in a power relation quite distinct from that of police investigations. While suspects are pressed during the police investigation to answer allegations of violence, they are here pressed to give up their right to answer the state's charges that they committed abuse. In this context of power, suspects again respond in one of two ways. They either *comply* with the court's push to have them accept plea bargains, or they *defy* the court by taking their cases to trial.

As in police investigations, defendants' reactions to plea bargains are influenced by both their legal consciousness and the tactical power of the state. With plea bargains, however, the degree to which legal consciousness is bound together with socioeconomic status becomes more pronounced. That is, for suspects who could not afford to bond out of jail, appraisals of plea bargain agreements were as straightforward as Matt described. Of the 13 respondents participating in this study who could not bond out of jail, only Ann did not sign a plea deal. Other study participants, meanwhile, based their responses to plea offers by considering the costs of conviction, whether the potential costs of trying their cases or the certain costs of a domestic violence conviction spelled out in the plea agreement. Ralph, for instance, who had had a few friends end up in jail on "domestics," said, "I don't want to end up in jail like them, so I'm just going to plea." Quinn, on the other hand, a former police officer arrested for a violation of an order of protection against his wife,¹³ reflected on how a domestic violence conviction would affect his life. "Do you realize how bad this [a domestic violence conviction] makes you look?" he asked. "You can never own a firearm. Employers won't hire you. And

¹³ Police officer-perpetrated domestic violence is a significant, but understudied, phenomenon. Johnson (1991) finds that the rate of domestic violence among police officers far exceeds that among the general population, though the research methods used in Johnson (1991) have been critiqued (see Kappeler 1999). I thank an anonymous reader for bringing the Kappeler article to my attention.

when the cops pull you over, that V of OP¹⁴ is going to pop up. And that's going to affect how they handle you. I know, we used to do that all the time." With his past experience as a law enforcement officer on his mind, Quinn believed that he had to try his case in order to preserve the benefits that persons without criminal records enjoy in society.

In addition to weighing the costs of conviction, defendants also arrived at decisions on plea bargains by assessing the strength of their cases. In these instances, suspects most often appraised their cases based on the stance of their victimized partners. Suspects who believed that their victims would not cooperate with the state evaluated their cases strongly and rejected plea bargains. In his case, Mike was facing domestic violence charges that were four years old. Describing his thinking on his case, he asserted:

Oh, I knew it was going to be dismissed, man. Some of that shit in there is three and four years old, you know what I mean? Mine is an old case, OK. I knew that Ayanna [ex-girlfriend] ain't living here. How you going to subpoena her? Her auntie stays in Texas, she's a low-life nobody. These are the people that were there that night. I knew they weren't going to get in touch with them.

Knowing that the state was unlikely to subpoena the main witnesses against him, Mike was confident about his case ("I knew it was going to be dismissed"). As a result, he decided to set it for trial and indeed had it dismissed.

While Mike acted on the basis of given circumstances (he said his ex-girlfriend had moved away), other suspects believed that the prospects of their cases could be swung in their favor if they could have their victims support them. Isaac, for instance, said that he knew "a lot of guys" whose "fiancée's been going up to the state's attorney [to] tell them that she ain't coming to court, she ain't testifying, and she ain't coming to no civil court, nothing. And she telling them that it was a mistake, they was mad and angry at each other." Thus while the state uses the law to disrupt abusers' relationships and push them to plead out their cases, these suspects saw their chances to defy the state contingent upon re-establishing influence over their partners and having them speak to the court on their behalf.

Respondents' ability to control their victimized partners was affected, however, by the web of power relations in which they found themselves during domestic violence prosecutions. In nearly every case it prosecutes, the Centralia County state's attorney's office has the court issue no-contact orders that forbid suspects from contacting their victims. According to their narratives, de-

¹⁴ *V of OP* and *VOP* stand for *violation of order of protection*.

fendants seldom abided by these court orders. Nevertheless, most were aware that violating the orders could land them in further trouble with the law.

In these contexts of diminished power, abusers transformed rather than severed their forms of influence over their partners. Their narratives evidenced different strategies for effecting this end. One way they did this was by trying to be nice. Carl explained that he received this counsel from his attorney, an officer of the court whose formal responsibility it is to uphold the authority of the court. "He said," Carl remembered, "'You're not supposed to have contact with her, but remain on good terms with her and, hopefully, I can get her to sign an affidavit saying that she doesn't want any further legal action. It was just all a misunderstanding.'"

A second tactic suspects used was attempting to generate or play upon feelings of regret from their partners about their arrests. Nic, for example, described violating the no-contact order with his wife:

The last thing I wanted was for the cops to show up while I was at her apartment or she was at mine. I would remind her. I'm like, "Look, remember, you know you don't want to go and deal with these people. You don't want to have an interview with you know and have to deal with that. Part of that is that if the cops come here and I'm anywhere near you, you're not going to jail, I'm going to jail." You know, and she would calm down.

The strategy Nic described for violating the no-contact order clearly builds upon traditional gender roles and expectations. Assuming the role of patriarch, Nic felt it necessary to "remind" his spouse of her supposed uneasiness about legal authorities ("you don't want to go and deal with these people"). He then brought up the fact that he could get arrested for seeing her, which cast him as a potential victim ("you're not going to jail, I'm going to jail"). Implicit here is the expectation that she, rather than he, would have to sacrifice (both her voice and security) for the unity of the family. In doing so, he reported being able to control her during arguments ("she would calm down").

A third way in which the men in this study tried to exercise influence over their partners was through family members. For instance, respondents commonly related having mothers and sisters intervene on their behalf with their partners:

Well, my girlfriend right now, we talk but it's through my mother. They basically put a no-contact on me, so I usually contact my mother to see if she can basically get a hold of her, because I know guys who have their girlfriends say, maybe it was something then, right there on the day it was happening, that made her call the police. Maybe she was scared or something, but it wasn't really

that serious. So I've tried to get her to write letters or to get in touch with the state's attorney to tell him what happened, that it really wasn't as serious as she made it up to be (John).

Such interactions represent a transformation of the gender politics at play in presumptive arrest and prosecution. While the state is using the police and courts to intervene in abusive intimate relationships to re-inscribe gender relations, these mothers, who embody localized notions of femininity in person, intervene to re-construct these relationships. John hoped that his mother would be able to have his partner realize that she "made [the violence] up" and contact the state's attorney.

Suspects' efforts to influence their victimized partners met with varying levels of success. Both Tom and Victor reported having their partners show up at court on their behalf, helping them to defy the state and eventually beat their cases. Women's efforts to terminate their relationships with abusive partners, however, sometimes disrupted men's efforts to control them. With his attorney out of town on vacation, Carl said he was delegated with the task of getting in touch with his ex-girlfriend to make sure that she had contacted the state's attorney's office and notified them of her unwillingness to testify. When meeting her, however, he got into another fight:

Obviously, when someone throws you in jail, you don't want to be around them anymore. So, she had to schedule a meeting with the victim's coordinator. My attorney told me to call her and ask her if she could go and talk to the victim's coordinator. He was going to go on vacation, so it kind of fell on me. I said I would call her. So, we got into an argument, and she went and did everything against what she said she was going to do. She was just out to get me.

Unable to avoid getting into another argument with his ex-girlfriend, Carl lost what he thought would be her support on his case. As a result, he moved farther from trying his case and closer to accepting a plea bargain. And in the process, new meanings were constructed around the experience. His ex-girlfriend's refusal to do what he said and go to the state's attorney's office, a sign of her desire to be independent from him, was interpreted by Carl as a sign that "she was just out to get me."

Apart from the support of their victims, domestic violence suspects also molded their responses to plea bargains in relation to another base of power in the court setting: their defense attorneys. As past law and society research indicates, defense attorneys possess their own propensities for plea bargaining cases. While a minority of defense attorneys are "gamblers" (Skolnick 1974:95) or "mavericks" (Mather 1979:124) who maintain an adversarial stance

with the prosecutor's office, most are "cooperative" attorneys (Skolnick 1974:97) willing to cooperate with the state's attorney's office by moving their defendants to plea-bargain.

For some respondents, consultations with defense attorneys moved them from defying the court to complying with it. Carl, who thought the state's case against him was ridiculous, noted that he nevertheless pled his case out. Asked why he would admit guilt to charges he thought were spurious, he explained:

It was happening during the changeover of state's attorney—Nolan, who [was] on his way out, and the new girl was coming in. She was a female and she was going to crack down on domestic violence. My attorney just thought that maybe it was best for me to do this and get it over with.

Carl's attorney's depiction of the state's attorney's office is a tactic calculated to establish "client control" (Blumberg 1967). As Sarat and Felstiner's (1995) study of attorney–client relations in divorce cases reveals, attorneys rely on a repertoire of such tactics (defining "the legally possible," conjuring up a "parade of horrors," casting themselves as the "dean" of the bar) in order to move clients toward settling their cases (1995:26–52, 57). In the example above, Carl's attorney was able to move him to a plea deal by changing his perception of the fairness of the court process. Carl did not know that the outgoing state's attorney was an enthusiastic supporter of the presumptive prosecution policy. In this vacuum of knowledge about the local legal community, his attorney was able to sketch out a set of "circumstances," an outgoing male state's attorney and an incoming female state's attorney, that could be seen to increase the risk involved with trying the case.

Unlike Carl, other respondents were less susceptible to being influenced by client control tactics because they simply distrusted their defense attorneys. Some, based on past experiences, noted entering the court process skeptical of their attorneys' allegiance to them, while others explained that they came to distrust them over the course of their current case proceedings. Wise to the propensity of defense attorneys to plea-bargain, these defendants were nevertheless reliant on them to represent their cases at court. In response, defendants reported resorting to their own control tactics in order to direct the actions of attorneys whom they did not trust.

Walter, for example, was confident about his case because his ex-partner had called the police to drop the charges. His public defender, however, continued to seek a plea bargain for him:

On one occasion, she actually made it seem like it [the plea offer] was some good news or something. "Good news for who? You or me? It would be good news for you, because you ain't got to deal

with this case no more.” You know what I’m saying? And I told her, “No. I’m not taking that. Take it to trial. And I mean that.”

In this scene, Walter passed through the client control techniques of his attorney (“she actually made it seem like it was some good news”) in order to assert control over his case.

Suspects’ efforts at controlling their attorneys, like those aimed at their victims, met with different results. Tom, interestingly, claimed that he was only able to convince the public defender to set his case for trial upon proving to him that his partner would support him. “He was telling me, ‘You don’t want to go to trial if she with the attorneys.’ . . . I told him, ‘No, she out there [in the hallway] with me now. She said she going to tell them [the state] that she told the police that I didn’t hit her . . . So he went out there and he talked to her and he was like, ‘OK.’”

Steve, in contrast, who wanted to try his case despite the objections of his defense attorney, recounted arriving late for a pretrial hearing in which the attorney was to announce the case ready for trial. From this error, the lawyer shifted her position on the case and began pushing a plea bargain on him in order to quash the arrest warrant the judge had just issued for his failure to appear in court.

She [the public defender] just come over and whisper to me, she tell me, “You already got a warrant out for five thousand dollars,” and she says, “You know in the past, he don’t take them back.” So, I took that plea because I was late for court and she had me thinking that he was going to lock me up. So, that’s what happened to me. I made my decision to take that plea because I did not have \$500 there.

In a position where he believed he had to plea in order to avoid arrest, Steve switched from defying to complying with the court’s wishes to have him sign a plea bargain.

The substantive outcomes of respondents’ court encounters varied more than those of their police encounters. Once again, the state was able to structure outcomes in its favor. Twenty-three of the respondents participating in this study pled guilty to domestic violence charges that required them to undergo counseling. Nonetheless, each of those suspects who refused to comply with the court’s plea bargain arrangements experienced a favorable case outcome, either having their cases dismissed or winning verdicts in their favor at jury trials.

Like the police narratives, respondents’ plea bargain narratives depict the power of the law against intimate abusers as an interactive construction involving both legal authorities and suspects. Once again, suspects’ compliance with and defiance of the law are layered phenomena, shaped by their legal consciousness (evalua-

tions of the costs of convictions, assessments of their cases, familiarity with defense attorneys), the strategic force of the state (incarceration, overcharging, client control tactics), and their own abusive behavior (violation of no-contact orders, new forms of controlling behavior). Distinctly, however, the power of the law in the criminal court setting does not take shape through a single axis (e.g., the suspect-police officer axis), but through multiple axes involving suspects, the state's attorney office, defense attorneys, and victims. In this sense, power in the court setting is more dispersed.

The Meaning of Domestic Violence Arrests and Prosecution

In addition to giving the state custodial authority over intimate abusers, domestic violence arrests and prosecutions are intended to teach batterers that abuse is wrong. In discussing their experiences with the criminal justice system, a few respondents revealed connections between their criminal punishments and increased responsibility for violence. Mike, for example, explained that he realized "after all the shit I've been through" that, even though he just pulled his partner by her legs, "it's just something I shouldn't have did." In his quote, "all the shit" refers specifically to the long court process that he experienced before seeing the charges against him dismissed.

For most of the respondents, however, even those who recognized the wrongness of their actions, the lesson of punishment was different. Rather than triggering inward reflections by abusers on the wrongness of their behavior, arrests and prosecutions triggered outward reflections on the wrongness of legal authorities' actions. Overwhelmingly, the respondents in this study believed that they had been mistreated by the police and courts.

In the case of the police, for instance, nearly all the participants described some aspect of their interactions with the police as unjust. Usually, they claimed that the police did a poor job investigating their cases. For example, Ed complained that the police "don't investigate them like they should . . . Like the officer never goes out and does a reinvestigation, you know, to see if her story is going to match up." Here, Ed touched upon the theme of procedural justice (Tyler 1990). Interestingly, he was not saying that the police had no right getting involved in his personal affairs. Indeed, with the criminal histories he (and many of the other respondents) had, he was accustomed to law as an integrated part of daily life. Instead, he would have preferred more, rather than less, police action on his case.

In terms of the court, most of the respondents cited elements of its case handling that struck them as unjust. Many interviewees

complained that the court system, and by extension the legal system, was impersonal and insensitive to people's individual circumstances. In doing so, they identified elements of the criminal justice "process" that Feeley (1979) contends represent the true "punishment" for defendants. Walter, for instance, bemoaned that in court, "there's no consideration for the other person," and the money and time from work they lost by attending court dates. In addition, many respondents, similar to sociolegal scholars portraying the "practice of law as confidence game" (Blumberg 1967:15), described the court as a close-knit group of professionals who were uninterested in the lives of individual defendants. Frank noted, "I have to come to the conclusion that they all sit around in a bar and have nachos and chips and trade each other lives. 'I give you this guy for that guy, and you let him off, now I will give you this guy.'"

In addition to identifying *how* they believed legal authorities mistreated them, respondents also offered rationales for *why* they were treated this way. For instance, male respondents typically believed they were victims of gender bias at the hands of either individual officers or laws and policies designed to protect women. This is not completely unexpected. As Eisikovits and Buchbinder (2000) and Anderson and Umberson (2001) note in their studies of abusive men, abusers who are arrested view themselves as victims of either police officers or domestic violence laws that are biased against men. Participants in this study presented similar views. With regard to the former, men often noted that officers seemed to have "talked to the lady more and tried to get more information from her" (John). With regard to the latter, the participants described the law as "all just women's agenda" (Peter) and "strictly for a woman" (Walter).

Despite the primacy of gender as a framework for claiming injustice, respondents also interpreted their experiences through other, nonprivileged group identities. A wealth of sociolegal research has demonstrated that race plays a key role in how citizens perceive the criminal justice system, with African Americans consistently expressing greater distrust of legal authorities than whites (Weitzel 2000; Wortley et al. 1997; Hagan & Albonetti 1982). The African Americans participating in this study commonly perceived race as a factor in the police's handling of their cases. Henry, for instance, specified a specific interaction, favorable treatment by a black officer and unfavorable treatment by a notorious white officer, as evidence that he had been unfairly treated due to his race:

This black officer was telling me, "Hey, I understand, just go ahead and get your clothes and all and leave." But this white officer came, he said, "No." He said, "Put those handcuffs back on him," just like that . . . I knew the white officer who told him to put that handcuffs back on me. The only reason I knew him . . .

I don't know him, I just knew of him because I'd seen his picture on the TV and I heard a lot of conflict about what he help [*sic*] did.

In this account, Henry's personal encounter with the local police was woven together with that of his community. The white officer's picture had been on television, and he was known in the African American community to treat people unfairly. For African American men, then, with prior contact with the police in Centralia County or with ties to community members, family members, and friends with such contact, their arrest for domestic battery represented not a just punishment for being abusive against their partner, but the exercise of unjust power against them by racist police officers.

Other respondents interpreted the criminal justice system's handling of their cases in terms of money. Quinn, the former cop, believed that domestic violence cases simply serve to enrich the state and lawyers. "It's all status and money," he noted, "I mean, there are guys out there who deserve to be arrested. But there's a lot of guys being arrested who don't deserve to be, couples who are trying to work things out. But it's about money. They want their money." Such comments express a certain class consciousness on the part of suspects, similar to that of people who stand "up against" the law (Ewick & Silbey 1998) and interpret their legal experiences in terms of resources. These respondents, for whom hiring a defense attorney, appearing in court, and abiding by their sentences represented significant financial costs, believed the criminal justice system punished them not to stop their abusive behavior, but to get their money.

Finally, some respondents believed their past criminal records prejudiced the authorities' handling of their cases. Ann believed her involvement in past domestic violence cases automatically identified her to the police as the aggressor in her current case. She explained, "I had a couple of priors to that with domestics, but once you're pegged in Plainsville, you're pretty well screwed." Again, these respondents, like the others citing unjust treatment by the police and courts, believed that they were punished not for what they did, but for who they are.

Respondents' belief that their punishments were unfair arose not simply from group identities, but from the tactics of power used by the police and courts as well. That is, in describing aspects of their experiences with domestic violence law that struck them as unjust, respondents frequently echoed the statements that police officers, jail guards, and defense attorneys used to render them compliant with policing and court setting power:

The police came up, and for some reason they kept trying to feed me this line that someone has to go to jail on a domestic battery call. You know what I mean? That's what they kept telling me. I'm like, "Well, you know, I moved her by her legs" (Mike).

She [the public defender] said that they [the state] don't drop the charges, and most of the time they take the female side . . . she got to the point with, "Well, it's just how it goes. Well, how long you lived in Centralia County?" (Steve).

Each of these ideas is patently false. But each is calculated to effect a certain reaction from the suspect. Mike's case is an example of aggressive "theme-building" (Guzik 2003), where the police sought to compel him to talk by repeatedly explaining that someone has to be arrested on a domestic call. Steve's case, meanwhile, is an example of "client control." Significant to note, the way in which both comments effect compliance is by sending the message to suspects that nothing they did was necessarily wrong, but that some aspect of the local legal system (departmental policy, state law, the state's attorney's office) is simply strict or unjust. In the process, the suspects came to see themselves as victims of the law.

Discussion

This study has highlighted the diverse operations of power defining domestic abusers' experience of presumptive arrest and prosecution. In the face of police requests to speak about their alleged violence and court pressure to give up their right to address allegations, domestic violence suspects respond through legal performances that fluctuate between compliance and defiance and are interactively shaped by their legal consciousness, legal authorities' tactics of power, and their own abusive behavior. As the substantive outcomes of respondents' legal encounters make clear, the police and courts are able to structure these interactions in their favor, leaving abusers under their administrative authority. Notably, domestic violence arrests and plea bargain convictions disrupt many abusers' attempts to explain away their violence during police investigations and to re-establish control over their victimized partners during plea negotiations. However, while these legal actions give the state a hold over batterers, they do not deliver strong messages about their abusive behavior. The majority of respondents in this study understand their arrests and court encounters as undeserved sanctions motivated by an unjust local legal system. These injustice claims emerge not only from abusers' group identities, but also from the very practices through which the police and courts gain authority over them.

Though this study presents a fresh perspective on the power of presumptive arrest and prosecution against intimate abusers, it possesses different limitations. First, it offers only a partial view of the lessons that abusers take away from their legal encounters. It does not report, for instance, whether batterers change their abusive conduct following their arrest and prosecution. It is of course possible that the punishments that respondents endured, even if viewed as injustices, nonetheless altered their behavior. This study, relying on interviews with batterers who misrepresented their abuse by denying, minimizing, justifying, and excusing it, cannot provide a reliable answer to that question. Future studies that include partner reports of abusers' behavior are required to fill this gap.

Second, even if this study provides a rich mapping of the operations of power that engage domestic violence suspects during arrests and prosecution, it still provides only a truncated view of the governmental apparatus through which the state manages intimate partner abuse. Omitted is a consideration of partner abuse counseling, a central pillar in the current regime of domestic violence governmentality (Merry 1995). Court officials hope that counseling will change batterers' abusive behavior, and they pattern plea bargain agreements to ensure that offenders receive treatment (Mirchandani 2005). Somewhat discouraging to note, few studies have found that these programs work (Jackson et al. 2003; see Dobash et al. 2000 for a more positive assessment). But a deeper examination of their operation is necessary to more fully understand the power and efficacy of the state's response against intimate abusers.

These limitations aside, the findings of this research offer important contributions to both law and society and domestic violence research. With regard to the former, a number of recent sociolegal studies highlight the expansion of the legal system from an institution primarily focusing on social control to one embracing social change as well. On the issues of drug abuse (Nolan 2003), juvenile delinquency (Kupchik 2004), mental health (Goldkamp & Irons-Guynn 2000), and domestic violence (Mirchandani 2005), justice is "reinventing" itself. Courts' traditional technocratic focus on procedural issues is giving way to a new therapeutic orientation emphasizing offender treatment and change, which is reflected in both the language of court officers and its interventions with deviant and criminal subjects (see Mirchandani 2005 and Nolan 2003 for somewhat contrasting appraisals of this process).

In the domestic violence context, judges, prosecutors, and defense attorneys adhere to a feminist perspective on the patriarchal nature of intimate partner violence and adapt their interactions with abusers in order to promote offender accountability. Judges

admonish offenders in the court, while prosecutors and defense attorneys collaborate to have defendants plead guilty and get placed into counseling (Mirchandani 2005). Aspects of the court process that have traditionally been seen as “the punishment,” the time and costs demanded for court appearances, take on a rehabilitative hue in this new setting (Mirchandani 2005:403). From these studies, one not only sees a new model of justice emerging, but a new potential for the law as a force for individual and social change.

Using the experiences of intimate abusers arrested and prosecuted under presumptive policies, this study finds that the power of the law as a force for social change may be more limited than some have claimed. In Centralia County, the state is able to gain custodial authority over intimate abusers. That is, it can detain them, impose no-contact orders against them, convict them, and sentence them to counseling. But it is unable to have them take responsibility for their actions.

One is reminded here of Foucault’s (1979) distinction between “juridico-discursive” power, in which authorities inform subjects of what they can or cannot do (Foucault 1979:82–5), and “strategical” power, which operates through a “multiplicity of force relations” that shape and transform the subjectivities of those whom authorities target (Foucault 1979:92–3). In Centralia County, the state, within the framework of presumptive policies and through the various tactics it employs to condition suspects’ compliance with authority, is able to gain and exercise juridical power over intimate abusers. Law enforcement and court officers can make suspects talk, place them in detention, have them appear before court, compel them to give up their right to contest charges and sign their guilt, and sentence them to therapy. But the state is unable to establish strategical power, or what post-structuralist theorists call *subjectifying power*, over them. That is, the same legal authorities cannot “govern the souls” (Rose 1991) of abusers in order to transform the abusive subjectivities from which their violence is thought to emerge.

In addition to sketching the boundaries of law’s power, this article bears insight into the forces that oppose its subjectifying power. First, for instance, opposition to the meaning-making power of the law springs forth from intimate abusers’ understanding of violence. Advocates of aggressive criminal justice interventions against domestic violence reason that punishments, by disrupting abusers’ efforts to deny, minimize, excuse, and justify their behavior, will force them to face the truth of their actions. One reason this does not happen, however, may be that batterers actually believe their explanations of violence. As a result, it is perhaps not surprising that abusers resist the meanings that authorities look to

impute to their punishments. Arrest and prosecutions provoke a certain crisis for these respondents. They do not believe they have done anything wrong, but they are nonetheless being punished. And from this incongruity injustice claims emerge.

Second, opposition to the law emerges from the diverse subject positions of domestic violence suspects as well. While the intimate abuser, domestic batterer, or wife-beater has emerged as a unified subject in the popular imagination, persons who commit intimate abuse occupy a variety of subject positions in the social world. And through these multiple positions, the respondents in this study defined their legal experiences of injustice. The injustices that African Americans and the working class (Brooks & Jeon-Slaughter 2001; Wortley et al. 1997; Hagan & Albonetti 1982) experience and perceive in the criminal justice system thus check the meaning-making power of the law.

Of course, the subject position from which most respondents based their injustice claims was gender. The majority of the male respondents believed that the police, courts, or laws were biased against men. Rather than reflecting the consciousness of traditionally disadvantaged groups and classes, these claims represent the disquietudes of a historically privileged group (i.e., men) as it witnesses the further dismantling of its architecture of advantage. In rearranging the boundaries between “private” and “public” space that have buttressed men’s violence against women in intimate relationships, domestic violence law represents another instance of a larger “crisis of masculinity” through which men begin to perceive themselves as “the *real* victims in American society” (Kimmel 1996:305; emphasis in original). Regardless of its merit, the sense of victimization expressed by the abusers in this study is again important as it counters the subjectifying power of the law.

Third, community also plays a role in refracting the meaning of punishments. In recent work, Sampson and Bartusch (1998) and Weitzer (2000) highlight how neighborhoods can serve as “cognitive landscapes” shaping individuals’ perception of deviance and trust in legal institutions. The legal narratives in this study suggest different ways in which community influences individuals’ feelings of criminal injustice. On the one hand, communities carry or are imputed with a reputation that then colors people’s legal experiences in those locales. Tom’s mother, who lives in a major city, explained to him and his victimized partner “how those cops are down there” in more rural Centralia County. On the other hand, communities also serve as the stages upon which the events shaping people’s collective experiences take place. And people tie their personal experiences with the law to these larger experiences in order to define their legal encounters. Carrie, for instance,

explained to me why she felt her probation sentence was “all just about money”:

I know that it was in the paper they wanted to rebuild the clock of the courthouse or whatever. Ever since then the police are doing different stuff, you know, as far as trying to make more money. Like last week they stopped, oh, three hundred and something people on the corner of Columbia and Neal doing . . . I'm not sure what it's called, public safety search or something. *That's an African American neighborhood?* Yeah. And basically what they were doing was checking to see if you have your seat belt on, checking to see if you have a driver's license and insurance. And if you don't have it, they ended up arresting 60 people just that day.

In this cognitive landscape, where the courthouse is restoring its iconic clock tower and the police are stepping up a public order campaign specifically in a black neighborhood, Carrie's own experience with the law takes on a new meaning.

Finally, the power of law to serve as a force of social change is inhibited by itself. More specifically, the means by which the law is able to gain juridical power over domestic violence suspects are inimical to establishing subjectifying power over them. The control tactics that police officers and defense attorneys employ to have suspects cooperate with investigations and accept plea bargains ricochet to alter the meaning of punishment. Similarly, the strong-arm tactics (having suspects sit in jail, overcharging cases) that the state's attorney's office relies on to secure convictions become the substance of abusers' injustice claims.

These points are also important to the ongoing debate on the value of presumptive policies in the fight against domestic violence. In recent years, the voices of opponents who criticize the policies for disempowering victims (Mills 2003) and inflicting additional harm upon poor and minority communities (Maguigan 2003) have been increasing. These findings, based in the narratives of abusers, support these critical assessments of presumptive policies. Presumptive policies fail to fulfill their promise of increasing abusers' responsibility for violence. Significantly, this failure derives in large measure from abusers' experiences as members of traditionally disadvantaged groups and communities and the tactics of legal authorities. In addition, presumptive prosecution and no-contact orders fail to insulate victims from abusers' controlling behavior. Instead, abusers report using different tactics (playing nice, manipulating feelings of remorse, mobilizing female family members to pressure victims) during criminal prosecution in order to control their partners. The involvement of female family members in abusers' efforts to dissuade victims from supporting criminal sanctions against them is particularly worrisome. Further research

is needed to identify the reasons female family members get involved (Do they not think violence against women is an important issue? Do they simply want to insulate sons and brothers from the police and state?) and the effects of their involvement on victims' future reporting (Are they dissuaded from calling the police in the future?).

But if this study offers a critical assessment of presumptive measures, the alternatives to mandatory interventions seem unclear. The most often-mentioned alternatives carry their own limitations. That is, while the clearest way to empower victims is through resources (financial and housing assistance) that would enable them to better manage their situations of violence (Schneider 2000; Coker 2001; Merry 1995), the political will to realize such a vision seems woefully absent. And while alternative adjudication procedures, such as restorative justice (Pennell & Burford 2002; Strang & Braithwaite 2002), would circumvent the court system and place the victim at the center of the justice process, allowing the victim to confront the abuser and pronounce the harm the abuser has caused, one wonders what outcomes would result from integrating communities and families unsympathetic to domestic violence victims more deeply in the justice process. In conclusion, then, what appears clear is that the promise for effective social change against domestic violence depends not on swinging the police and courts against this enduring social problem, but on building a base for more progressive change by continuing to convince communities across society that domestic violence is a serious problem.

Appendix A. Pseudonyms and Sociodemographic Characteristics

Name	Sex	Age	Race	Employment	Marital Status	Total Cases	Total DV
1. Ann	F	43	European American	Unemployed	Single	4	4
2. Betty	F	42	African American	Unemployed	Cohabitating	10	3
3. Adam	M	47	Latino	Custodian	Married	2	1
4. Bob	M	35	European American	Disability	Single	3	1
5. Chris	M	46	African American	Unemployed	Cohabitating	13	6
6. Dave	M	38	European American	Disability	Single	4	4
7. Eric	M	21	European American	Painter	Cohabitating	5	2
8. Frank	M	31	European American	Carpenter	Single	5	3
9. Gary	M	22	European American	Gas Station	Cohabitating	4	3
10. Henry	M	53	African American	Unemployed	Single	5	1
11. Isaac	M	24	African American	Unemployed	Single	10	2
12. John	M	25*	African American	Fast Food	Cohabitating	1	1
13. Kevin	M	24	African-American	Fast Food	Cohabitating	2	1
14. Larry	M	58	European American	Disability	Cohabitating	11	2
15. Mike	M	36	African American	Cook	Cohabitating	4	1
16. Nic	M	29	Latino	Public Works	Married	3	1
17. Oscar	M	43	African American	Construction	Married	2	1
18. Pete	M	45*	European American	Employed	Married	—	—
19. Quinn	M	32*	European American	Construction	Separated	—	—
20. Ralph	M	28*	African American	Factory	Single	—	—

Appendix A. (Continued)

Name	Sex	Age	Race	Employment	Marital Status	Total Cases	Total DV
21. Steve	M	43	African American	Hotel	Married	2	2
22. Tom	M	20	African American	Gas Station	Cohabiting	3	1
23. Victor	M	23	African American	Unemployed	Single	10	4
24. Walter	M	32	African American	Employed	Single	7	1
25. Aaron	M	26	African American	Unemployed	Single	2	1
26. Brett	M	38	African American	Factory; Teacher's Aide	Single	5	3
27. Carl	M	42	European American	Cook; Real Estate	Single	1	1
28. Doug	M	41	European American	Mechanic; Real Estate	Separated, Cohabiting	3	2
29. Ed	M	25	African American	Unemployed	Single	11	1
30. Carrie	F	21	European American	Unemployed	Married	4	1

*I was unable to fix the person's age. These numbers reflect an estimate of the person's approximate age.

Appendix B. The Revised Conflict Tactics Scale (CTS2): Physical Assault, Psychological Aggression, and Injury Scale Items (Straus et al. 1996)

Physical Assault Scale Items	
Subscale	Item
Minor	Threw something at my partner that could hurt
Minor	Twisted my partner's arm or hair
Minor	Pushed or shoved my partner
Minor	Grabbed my partner
Minor	Slapped my partner
Severe	Used a knife or gun on my partner
Severe	Punched or hit my partner with something that could hurt
Severe	Choked my partner
Severe	Slammed my partner against a wall
Severe	Beat up my partner
Severe	Burned or scalded my partner on purpose
Severe	Kicked my partner
Psychological Aggression Scale Items	
Subscale	Item
Minor	Insulted or swore at my partner
Minor	Shouted or yelled at my partner
Minor	Stomped out of the room or house or yard during a disagreement
Minor	Said something to spite my partner
Severe	Called my partner fat or ugly
Severe	Destroyed something belonging to my partner
Severe	Accused my partner of being a lousy lover
Severe	Threatened to hit or throw something at my partner
Injury Scale Items	
Subscale	Item
Minor	Had a sprain, bruise, or small cut because of a fight with my partner
Minor	Felt physical pain that still hurt the next day because of a fight with my partner
Severe	Passed out from being hit on the head by my partner in a fight
Severe	Went to a doctor because of a fight with my partner
Severe	Needed to see a doctor because of a fight with my partner, but I didn't
Severe	Had a broken bone from a fight with my partner

Appendix C. Severity of Violence and Injuries in Current Cases

Name	Reported Severity of Conflict Tactics	Reported Injuries ^a
1. Ann	Minor Physical (throws chair at ex-boyfriend)	None
2. Betty	Severe Physical (strikes partner in head with phone)	None

Name	Reported Severity of Conflict Tactics	Reported Injuries ^a
3. Adam	Severe Psychological (threatens wife with knife)	None
4. Bob	Severe Physical (chokes ex-girlfriend)	None
5. Chris	Severe Psychological (threatens to hurt girlfriend)	Scratch on her neck Bite mark on his chest
6. Dave	Minor Physical (pushes girlfriend to ground) Severe Psychological (makes her swear not to call police)	Redness on her neck
7. Eric	Severe Physical (chokes ex-girlfriend) Severe Physical (chokes and hits girlfriend in the head)	Bump on her forehead
8. Frank	Severe Psychological (stalking, property destruction)	None
9. Gary	Severe Physical (kidnapping) Minor Psychological (calls partner a "bitch" and a "whore")	Victim transported to hospital for neck pain (S)
10. Henry	Severe Physical (chokes girlfriend) Severe Psychological (threatens brother with knife)	None
11. Isaac	Severe Physical (hits brother with butt of knife) Severe Physical (beats up girlfriend)	Severe bruise on her arm Marks on her cheek
12. John ^b	N/A	N/A
13. Kevin	Severe Physical (repeatedly punches then bites partner)	Her lip is bloody Bite on her shoulder
14. Larry	Severe Psychological (threatens to kill if she calls police) Severe Physical (repeatedly punches partner in head)	Bruises on her face Her nose is swollen (S)
15. Mike	Minor Physical (grabs partner by the legs)	None
16. Nic	Severe Physical (throws partner to ground and kicks her)	Red mark on her back
17. Oscar	Severe Physical (drags partner by hair and stomps on her)	Abrasion on her lip
18. Pete ^c	—	—
19. Quinn	—	—
20. Ralph	—	—
21. Steve	Minor Psychological (calls partner a "bitch" and "whore")	None
22. Tom	Minor Physical (tackles partner to the ground) Severe Physical (slams partner against wall, holds her to floor)	Bite mark on his hand
23. Victor	Minor Psychological (yells at partner)	None
24. Walter	Severe Physical (hits partner in head with fists and phone)	None
25. Aaron	Severe Physical (slams partner against wall)	Swelling on her cheek. She goes to the hospital. (S)
26. Brett	Severe Physical (chokes partner)	None
27. Carl	Minor Psychological (insults partner's dress) Minor Physical (strikes partner across face)	None
28. Doug	Severe Psychological (threats to kill her; disables her car)	Her neck is red and sore Scratches on his face
29. Ed	Minor Physical (grabs partner by neck) Minor Physical (pushes victim)	Large bruise on her back
30. Carrie	Severe Physical (stabs partner with box cutter)	Severe cut. He goes to the hospital. (S)

^a(S) in the injury column denotes "severe" injuries, as defined by Straus et al. (1996).

^bNo police report was available for this case.

^cI conducted shorter interviews with these three men immediately following their appearances in court and did not have the opportunity to record their personal information. These shortened interviews focused primarily on their experiences with the criminal justice system.

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