

# DOMESTIC VIOLENCE REPORT™

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## New Federal Regs Target Gender Bias

by D. Kelly Weisberg

The Department of Justice (DOJ) recently released new guidance to assist law enforcement agencies to prevent gender bias in the police response to domestic violence and sexual assault.<sup>1</sup> (“Guidance” is a non-binding agency policy statement.) Several agencies collaborated in the production of the 26-page document, including the Justice Department’s Office on Violence Against Women, the Civil Rights Division, and the Office of Community Oriented Policing Services. The guidance incorporated input from police leaders, victim advocates, and civil rights advocates.

The guidance was released a few months after publication of the ACLU’s report (discussed on page 35 of this issue of **DVR**), which found that victims of domestic violence and sexual assault face significant discrimination by police. One of the ACLU’s findings was that police inaction, hostility, and bias were among the primary barriers to victims’ willingness to seek help.

Legal scholars first noted the prevalence of gender bias in the police response to domestic violence over 30 years ago.<sup>2</sup> At that time, critics contended that the police minimized intimate partner violence, failed to hold abusers accountable, and blamed the victim. Gender bias was especially acute for those victims for whom racial and gender-based stereotypes intersected. The inevitable

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## The Secret Epidemic of Police Domestic Violence: How It Affects Us All

by Alex Roslin

In 2009, in Utica, New York, police investigator Joseph Longo, Jr. killed his estranged wife Kristin Palumbo-Longo in their home, stabbing her more than a dozen times. He then stabbed himself to death. One of the couple’s four children discovered the horrifying scene upon coming home from school that afternoon.

Utica’s then-Police Chief Daniel LaBella said the killing was completely unexpected—an incident “no one could have prevented or predicted.” But Kristin’s family filed a \$100-million wrongful death suit saying city and police officials did not do enough about Longo’s troubling behavior before the tragedy.

Kristin had contacted police at least five times in the weeks before she was murdered, saying she feared her

husband might kill her and their kids. But police supervisors discouraged her from making reports or seeking a protection order, according to the lawsuit. In a preliminary ruling, a federal judge agreed that the police actions may have “enhanced the danger to Kristin and amounted to deliberate indifference.” The city settled the suit in 2013, paying the couple’s children \$2 million.<sup>1</sup>

### Staggering Extent of DV But Few Consequences

The murder was not an isolated tragedy. It was unusual only because it was so public and so bloody. Evidence suggests that a staggering amount of domestic violence rages behind

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### About This Issue . . .

We are pleased to present the first of two special issues on Police and Domestic Violence. Articles in this issue address the dual elements of “batterers in blue” and the police response to victims. The two topics are, in reality, intertwined because the police response is influenced by many factors, not least of which is the fact that some abusers are police officers. To achieve safety and ensure justice for victims, it is essential that we hold all abusers accountable, especially those who are charged with the duty to protect.

D. Kelly Weisberg, Editor, *Domestic Violence Report*

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result was that gender bias contributed to victims' reluctance to report incidents of abuse and enhanced the danger to victims.

### Purpose of DOJ Guidance

The DOJ report on gender bias is intended to serve two purposes. First, it aims to examine the manner in which gender bias can undermine the response of law enforcement agencies (LEAs) to domestic violence and sexual assault. Second, it provides a set of basic principles that—if integrated into police policies, trainings, and practices—will help ensure that gender bias does not undermine efforts to keep victims safe and hold offenders accountable.

The guidance is also explicit about what it is *not* intended to do. It is not intended as an operational handbook for responding to and investigating allegations of sexual assault or domestic violence. Moreover, it is not intended to create a private right of action against any law enforcement official or governmental authority.

### Gender Bias: Definition and Examples

In tackling a longstanding and serious problem, the guidance does an excellent job of explaining the consequences of gender bias. Gender bias is defined as “a form of discrimination that may result in LEAs providing less protection to certain victims on the basis of gender, failing to respond to crimes that disproportionately harm people of a particular gender or offering reduced or less robust services due to a reliance on gender stereotypes.” After explaining that gender bias can be conscious or unconscious, the report then provides examples:

- Police officers misclassifying or underreporting sexual assault or domestic violence cases, or inappropriately concluding that sexual assault cases are unfounded;
- Failing to test sexual assault kits;
- Interrogating rather than interviewing victims and witnesses;
- Treating domestic violence as a family matter rather than a crime;
- Failing to enforce protection orders; or
- Failing to treat same-sex domestic violence as a crime.

According to the report, gender bias compromises law enforcement's ability to “ascertain the facts, determine whether the incident is a crime, and develop a case that supports effective prosecution and holds the perpetrator accountable.”

### Eight Principles

Based on illustrative brief case studies, the DOJ report advises law enforcement agencies to incorporate various principles into their policies, training, and supervision protocols, including the following:

1. Recognize and address biases, assumptions and stereotypes about victims.
2. Treat all victims with respect and employ interviewing tactics that encourage a victim to participate and provide facts about the incident.
3. Investigate sexual assault or domestic violence complaints thoroughly and effectively.
4. Appropriately classify reports of sexual assault or domestic violence.
5. Refer victims to appropriate services.
6. Properly identify the assailant in domestic violence incidents.
7. Hold officers who commit sexual assault or domestic violence accountable.
8. Maintain, review and act upon data regarding sexual assault and domestic violence.

The document recommends that LEAs incorporate these principles in clear *policies* about the proper handling of sexual assault and domestic violence crimes; *training* about these policies and about effective responses to sexual assault and domestic violence crimes more generally; and *supervision protocols* and systems of accountability to ensure that officers responding to sexual assault and domestic violence crimes act in accordance with these policies and trainings.

### Critical Commentary: Strengths

The DOJ report reveals several strengths and a few shortcomings. First, the concrete suggestions on the importance of recognizing gender bias are excellent. Despite the report's explicit focus on gender bias in *policing* and the *specific crimes* of domestic violence and sexual assault, most of the guidelines are so important that

they would improve the handling of any crime and the performance of any actor in the criminal justice system. For example, the report urges LEAs to treat all victims with respect; to employ interviewing tactics that encourage victims to provide all the facts; to investigate complaints thoroughly and effectively; to appropriately classify reports of offenses in a manner that would allow offenses to be fully investigated; to refer victims to appropriate services; to properly identify assailants; to avoid under-investigating and undercharging; to allow the presence of victim advocates, and to ensure victims access to translation services. These sound recommendations would significantly improve the treatment of all victims in the criminal justice system.

Second, the report offers valuable suggestions to improve the law enforcement response specifically for victims of sexual assault. Case studies focus on women raped at a party, women raped after a night of drinking, prostitutes raped by a client, women with a past history of rape, and women whose rape kits were never submitted for testing. The report urges sensitive treatment of sexual assault victims in the investigative process. The guidelines are particularly useful in their emphasis on the need for adoption of a “trauma-informed approach”—taking into account the victim's trauma by gently interviewing rather than interrogating her and not blaming the victim for the sexual assault. These suggestions would vastly improve the investigation of sex crimes.

Third, the report sheds valuable light on gender bias in the response to “hidden victims” of intimate partner violence. These victims (such as gay and lesbian victims, transgender victims, victims of color) often are particularly reluctant to disclose their victimization and face an enhanced likelihood of gender bias because of their multiple marginalization. (See Weisberg, “Hidden Victims and Hidden Offenses,” 21[1] *DVR* 1 (Oct/Nov 2015).) The DOJ report exposes stereotypes that cause officers to doubt these victims' credibility, such as assumptions that transgender persons

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are unlikely to be raped, that prostitutes cannot be raped, or that persons of certain ethnicities or races are more promiscuous. Recognition of these misconceptions is an important step in reducing gender bias in the treatment of these victims.

Fourth, the report makes several valuable points regarding the investigation of domestic violence. The report suggests specific practices that would improve the handling of complaints. For example, the report urges law enforcement first responders to separate the offender and victim when they investigate the crime. This police practice is important not only to properly investigate the crime but also to protect the victim. The report discourages the practice of mutual arrests and emphasizes instead the importance of identifying the predominant aggressor. Dual arrests occur when police confront conflicting accounts of abuse or equivocal physical evidence. The practice of dual arrest has received considerable critical commentary<sup>3</sup> because such arrests often lead to negative consequences for victims, thereby enhancing the victim's danger.

#### **Critical Commentary: Weaknesses**

Despite the strengths of the report, however, the report reflects some serious weaknesses. Two omissions are the failure to advocate an understanding of lethality factors in intimate partner violence and also the failure to strongly recommend that LEAs use evidence-based lethality assessments in the investigative process in order to prevent the escalation of partner assaults to homicides. Such risk assessments are beginning to be used in this country<sup>4</sup> and are a standard part of police practice in the United Kingdom, as Dr. Evan Stark will discuss in a forthcoming article in a later issue of **DVR**.

Lethality assessment seeks to identify the most dangerous cases of intimate partner violence and the most violent perpetrators. Elimination of gender bias by police depends on understanding the red flags that have predictive significance for homicides. Two case studies in the DOJ report relate assaults that contain high lethality indicators for female victims—one case involving a choking incident and another case

involving a victim who was both physically and sexually assaulted by her partner. Although mentioning these factors in passing, the report fails to register the significance of these specific factors as indicators of dangerousness.

In the first of these case studies, a male perpetrator calls 911. When police arrive, the caller has a deep facial scratch. The female victim, while visibly shaken, “appears to be physically unharmed, although she claims that her boyfriend tried to strangle her.” The investigating officer responds by citing the female as the predominant aggressor and arrests her. The DOJ guidelines use this example to emphasize the importance of properly identifying the assailant and evaluating certain

reform enhancing sentences for strangulation attempts.<sup>7</sup>

Regrettably, the DOJ report fails to identify choking as a lethality indicator, to highlight proper investigative techniques in such cases, and to recommend that victims be referred for medical treatment to address the serious short/long-term health consequences of these assaults—despite the fact that victims commonly lack visible injuries. The report should have urged all LEAs to require officer training on strangulation. Such training, widely available through the National Training Institute on Strangulation Prevention, is intended to enhance the knowledge and skills of law enforcement professionals who work with these victims. The National Institute

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factors to aid in the identification of the predominant aggressor (such as which party has a documented history of domestic violence, which party has defensive injuries, whether protective orders exist, and which party has a criminal history of violence to others).

Unquestionably, it is important to offer guidelines for identifying predominant aggressors. Yet, the report omits any recognition of the significance of the choking incident. Between 30-60% of domestic violence victims are strangled by their partner during an assault.<sup>5</sup> Traditionally, police minimized the significance of choking cases. We now know that non-fatal strangulation is one of the most lethal forms of domestic violence and constitutes a risk marker for homicide. (See **DVR**'s special issue on strangulation, 19[6] **DVR** 81 (Aug/Sept 2014)). The founders of the National Strangulation Training Institute warn: “When the victim says ‘he choked me, alarm bells should go off and red flags should be waving for every professional in the case.’”<sup>6</sup> In recognition of the seriousness of this offense, 38 states have enacted law

also offers an excellent strangulation investigation checklist (available at [www.strangulationtraininginstitute.com](http://www.strangulationtraininginstitute.com)) that should become a part of the standard police investigative process.

In a similar vein, the DOJ report fails to register the significance of another lethality indicator—forced sex. One case study in the report recounts the story of a 25 year old woman who informs police that her ex-boyfriend physically and sexually assaulted her. The DOJ discussion then veers away to emphasize the importance of submitting rape kits for testing. The discussion misses the opportunity to raise awareness of the need to understand the lethality of sexual assault in the context of DV.

Physical violence and sexual violence often co-occur in intimate partner victimization. From one-third to one-half of battered women report sexual assaults.<sup>8</sup> Forced sex, like non-fatal strangulation, has high predictive significance as a lethality marker. A domestic violence victim's risk of homicide is increased by 9.9 times (relative to other domestic violence

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victims) if the abuser ever tried to choke the victim and by 7.6 times if the abuser ever forced the victim to have sex.<sup>9</sup> The DOJ guidance fails to reflect the important lessons learned from scholarship on lethality assessment. The guidance should have recommended that law enforcement receive training on lethality assessment, the specific lethality factors of forced sex and strangulation, and should have encouraged the use of evidence-based lethality assessments to better safeguard victims and hold abusers accountable.

Finally, the DOJ report misses an opportunity to hold “batterers in

They are protected by the police code of silence.

The problem of officer-involved DV has been the target of policy formulation since 1999. In that year, the International Association of Chiefs of Police (IACP) promulgated a model policy on police DV that was revised in 2003. Yet, as Leigh Goodmark and Alex Roslin explain in this issue, few police departments ever enacted the IACP zero-tolerance policy. Moreover, few police departments thoroughly investigate police DV or discipline offenders. Secrecy further limits accountability because no comprehensive data exist to hold law enforcement agencies accountable by shedding light on the problem

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blue” accountable. Admittedly, the report exhorts LEAs to hold those officers accountable who commit DV or sexual assault. The report recommends that law enforcement agencies should “develop policies and practices” aimed at addressing cases of police abusers. Specifically, it suggests that whenever an allegation is made that an officer has engaged in such conduct, the agency should open an internal investigation and refer allegations of officer misconduct to the local prosecutor’s office. This advice falls short as the sum total of the DOJ recommendations on holding police batterers accountable.

As several articles in this issue of *DVR* reveal, officer-involved DV is common and especially dangerous to victims. For example, as Alex Roslin states in this issue, victims face unimaginable barriers to finding help, safety, and justice. Victims cannot expect help from 911. Police abusers know how to hurt a victim and to harm victims without leaving visible signs. Officers have ready access to guns. They know the location of shelters so the victim has nowhere to hide. They have training and tools to locate a victim if she attempts to flee.

of officer-involved DV or the sanctions imposed in such cases.

The DOJ guidelines regarding accountability for police abusers are disappointing. The report missed a golden opportunity to encourage LEAs to enact and also to enforce the IACP zero-tolerance policy. DV victims and advocates have been waiting for years to hold batterers in blue accountable. Recommendations regarding adoption and enforcement of the IACP policy would send a message that LEAs are taking seriously the need to address gender bias in policing.

The Department of Justice has an important role to play in combating domestic violence. The DOJ report has opened a national dialogue on police and DV. But, until law enforcement becomes more responsive and accountable, domestic violence will continue to be a leading cause of injury and death among women in this country.

Despite its shortcomings, the DOJ guidance is a landmark policy statement. It constitutes the first time that the DOJ has provided guidance to law enforcement agencies (LEAs) about the importance of eliminating gender-bias in policing in domestic

violence and sexual assault, and the first time it has provided specific recommendations to improve police practices in the investigation of these crimes. By these guidelines, the Department of Justice has recognized that the issue of gender bias in policing in cases of domestic violence and sexual assault is a high priority for all law enforcement agencies in the country to address.

#### *End Notes*

1. Dept. of Justice, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence (Dec. 2015). Available at [www.justice.gov/ovw/identifying-and-preventing-gender-bias](http://www.justice.gov/ovw/identifying-and-preventing-gender-bias).
2. See, e.g., Joan Zorza, “The Criminal Law of Misdemeanor Domestic Violence, 1970-1990,” 83 J. Crim. L. & Criminology 46 (1992).
3. See, e.g., Eve S. Buzawa & Carl G. Buzawa, *Criminal Justice Response* 133-138 (3d ed., 2002). Many states now have enacted primary aggressor statutes that respond to law enforcement’s inability or unwillingness to distinguish victims from offenders. The statutes authorize police to arrest only the “primary” or “predominant” aggressor.
4. Va. Dept. of Criminal Justice Services, Review of Lethality Assessment Programs (Oct. 2015). Available at [www.postandcourier.com/tilldeath/assets/d1-25.pdf](http://www.postandcourier.com/tilldeath/assets/d1-25.pdf) (reviewing programs in 10 states and localities).
5. Cited in Gael B. Strack, Casey Gwinn, Gerald W. Fineman & Michael Agnew, “Investigation and Prosecution of Strangulation Cases,” 19[6] *DVR* 83 (Aug/Sept 2014).
6. Gael Strack & Casey Gwinn, “Strangulation and Domestic Violence: The Edge of Homicide,” 19[6] *DVR* 81, 93 (Aug/Sept. 2014).
7. Melissa Jeltsen, “Ohio Legislators Introduce Bill to Make Strangulation A Felony Crime,” Huffington Post, Oct. 14, 2015. Available at [http://www.huffingtonpost.com/entry/ohio-strangulation-bill-monica-weber-jeter\\_561e7d44e4b050c6c4a3ad8c](http://www.huffingtonpost.com/entry/ohio-strangulation-bill-monica-weber-jeter_561e7d44e4b050c6c4a3ad8c).
8. Jennifer A. Bennice & Patricia A. Resnick, “Marital Rape: History, Research & Practice,” 4 *Trauma, Violence & Abuse* 228, 234 (2003); NISVS, 2010 Summary Report, at 41 (reporting that 8.7% of female partners experience rape and also physical violence).
9. Jacquelyn C. Campbell et al., “Assessing Risk Factors for Intimate Partner Homicide,” *NIJ Journal*, no. 250. Available at <https://www.ncjrs.gov/app/publications/abstract.aspx?ID=196547>.

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