

Domestic violence laws pummel men

By Jeffery M. Leving
and Glenn Sacks

The OJ Simpson 1994-1995 double murder trial and the recent controversy leading to the cancellation of Simpson's book mean different things to different people. For some, they are a symbol of America's racial divide. For others, they reflect the problems in our judicial system. Yet the most important and enduring aspect of the Simpson case is one which is rarely discussed—its dramatic effect on domestic violence policies, particularly in California.

In 1995 and 1996, California passed nearly two dozen domestic violence-related bills and doubled its funding for domestic violence programs. Some of these new laws and initiatives improved the domestic violence system, some were questionable, and some have been very harmful.

SB 591 mandated that all law enforcement agencies implement mandatory/presumptory arrest policies which virtually require officers to make arrests when responding to domestic violence calls. SB 1944 introduced the

"dominant aggressor" doctrine as a way of encouraging officers to arrest men, not women. Many California District Attorneys adopted "no drop" prosecution policies.

These three were a direct and understandable outcome of the Simpson case. In the late '80s, police had come to Simpson's home on 911 calls for eight separate incidents before finally arresting him. Simpson received little punishment, and many later concluded that if the system had been tougher on him, perhaps the killings could have been prevented.

These policies have led to large numbers of arrests and prosecutions in cases where it is questionable whether the men actually committed any abuse. In a report in the California legal publication *Daily Journal* detailing attorneys' frustration with these policies, Pacifica criminal defense attorney Dave McDonald explains that now "[Domestic violence] is a political hot potato... The Legislature is saying, 'Prosecute, prosecute, prosecute'... They prosecute everything." John Digiacinto, head of the San Mateo County Bar

Association's Private Defender Program, asserts, "There are cases of pushing and shoving that are treated like the crimes of the century."

Reflecting the questionable nature of many of these arrests and prosecutions, the *Daily Journal* report explains that many "victims" do not want their husbands or boyfriends prosecuted. Digiacinto criticizes the system's "craziness [with] spouses calling in complaining because [the defense lawyer] can't get the case dismissed."

Certainly there are instances where the defendant really did batter his wife and she later recants her previous allegations. However, many prosecutors refuse to acknowledge that sometimes women want the charges dropped because the "violence" never happened, was marginal, was mutual, or was actually perpetrated by the woman. The report notes:

"Domestic violence units have adopted aggressive policies, refusing to drop the cases even when the victim refuses to cooperate."

Another outgrowth of the Simpson case has been an explo-

sion in domestic violence restraining orders, as new laws and services have made the orders easier to obtain. According to Attorney General Bill Lockyer, there are a quarter million domestic violence-related restraining orders currently active in California—one for every 50 adult males in the state.

Restraining orders can be a useful tool to help protect battered women. However, a recent article in the *Family Law News*, the official publication of the State Bar of California Family Law Section, explains:

"Protective orders are increasingly being used in family law cases to help one side jockey for an advantage in child custody... [the orders are] almost routinely issued by the court in family law proceedings even when there is relatively meager evidence and usually without notice to the restrained person."

These orders often do not even involve an allegation of violence—according to the Judicial Council of California, the "abuse" needed to get a restraining order can be "spoken" or "written." Yet in the wake of the Simpson case it became politi-

cally difficult for judges to deny them.

When a restraining order is issued, the man is booted out of his own home and can be jailed if he tries to contact his own children, even though he has never been afforded the opportunity to defend himself. The subsequent hearings to determine whether the orders will be made permanent are often conducted in an assembly line fashion with little due process. Under California's AB 840, also passed in the wake of the Simpson case, these orders can be considered findings of abuse, making the restrained person ineligible for joint custody of his children after divorce.

The Simpson case pushed the domestic violence system way out of balance, stacking it unfairly against men. Now that the case is being revisited, it's time to rethink the laws and policies it helped create.

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