The Dangers of Dangerousness Assessment

by Evan Stark, Ph.D., MSW*

Editor's Note: *Evan Stark is a sociologist and prolific author whose many years of studying and writing about the psychological and social dynamics underlying intimate partner abuse culminated in the publication of his 2007 masterpiece,* Coercive Control. *The book's title reflects Dr. Stark's central notion of coercive control as DV perpetrator's internally-driven compulsion to control not just his victim's behavior but her thinking and feeling, as well; he wants to dominate her mind, body, and soul. Due to a large extent to Dr. Stark's scholarship, the term coercive control has become a part of the lexicon of researchers and practitioners in the field of interpersonal violence. With this body of work as backdrop, here Evan Stark casts a critical eye to the widely accepted procedure called Dangerousness Assessment, which some have hailed as a life saver for battered women whose male partner is potentially homicidal. He discusses the rationales for using the methodology, which may be of critical value in some cases but, according to Dr. Stark, misses the bigger picture as far as the kinds of abuse most victims suffer on a daily basis. He goes on to demonstrate how the lion's share of this kind of non-lethal but exceedingly harmful violence is generally driven by coercive control.*

This comment[1] responds to two related claims made in recent **DVR** articles, that preventing partner homicides (or potentially fatal violence) should be a major goal of community efforts to limit domestic

* Evan Stark is a forensic social worker, advocate and researcher. He is Professor Emeritus of Public Health, Public Affairs and Administration, and Women's and Gender Studies at Rutgers University in New Jersey. His recent books include *Coercive Control: How Men Entrap Women in Personal Life* (Oxford, 2007); *Violence Against Women in Families and Relationships* (4 Volumes), (edited with E. Buzawa) (Praeger, 2009); and *Responding to Domestic Violence: The Integration of Criminal Justice and Human Services* (Sage, 2012) with E. Buzawa.

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[1] The author thanks Andrew Klein and Chris O'Sullivan for comments on earlier drafts of this article.

violence, and that this goal is best pursued by using "dangerousness assessment" (DA), alternately termed a "lethality screen," to allocate scarce justice resources (such as electronic monitoring or enhanced sanctions). My argument is that partner homicide (and severe violence generally) are very poor windows through which to assess domestic violence and that redirecting scarce resources based on DA is not only unwise but counterproductive. At best, it will have a very limited and no measureable effect on partner fatality or severe violence and no effect at all on the prevalence of partner abuse in communities. It is likely that redirecting resources to support women the DA identifies as high risk or to identify and manage so-called "high risk" offenders (as the **DVR** articles propose) will lead to an actual rise in coercive control, the most common and devastating form of partner abuse. The major reasons to reject DA are that the elements of abuse it identifies as high risk factors are sufficiently harmful in themselves to justify an aggressive response that includes significant sanctions regardless of their future consequences. So are the facets of coercive control the DA minimizes or ignores. I remain agnostic about other claims in the articles, such as the wisdom of adapting GPS tracking.

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The most widely used DA tool was developed by Campbell and her colleagues (2003) from a retrospective comparison of fatal and nonfatal cases involving partner abuse and refined in samples of near fatal violence.[2] Nothing I say is meant to minimize the elegance, originality and importance of this work, which I regularly use to show the risk faced by victimized women who kill their abusive partners. What concerns me is how it is being applied. According to a recent review in the *New Republic,* for example, the DA has been adapted by nearly all of Maryland's police departments and to one degree or another in l4 other states and the District of Columbia.[3]

The DA was originally designed to help educate victims about their risk of being killed, though it is only slightly better at predicting fatal or near fatal violence than victims themselves.[4] If it has yet to be shown that the

[2] For example, see J.C., Campbell, D. Webster, J. Koziol-McLain, C.R. Block, D.W. Campbell, M.A. Curry, F.A. Gary, et al. (2003). "Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study," American Journal of Public Health, 93(7), 1089–1097.

[3] T. Stelloh (2012). "Fighting Back: Has One State Discovered a Simple Way to Combat Domestic Violence?" New Republic, April 20. This article suggests that the DA may be responsible for a 40% drop in partner homicides in Maryland since 2007 and a for reduction in half of the DV homicides in Washington, D.C. since 2009.

[4] J.C. Campbell, D.W. Webster & N. Glass (2009). "The Danger Assessment: Validation of a Lethality Risk Assessment," Journal of Interpersonal Violence, 24, 653.

DA has prognostic validity, however, this is the least important function it serves for courts or police. In the face of cuts, courts are looking to DA as a way to ration scarce justice resources in abuse cases that is consistent with institutional imperatives and community norms favoring protection. Family Courts are turning to the DA to help distinguish "real" domestic violence from cases that only involve "high conflict" and so to help reconcile pressure from Fathers' Rights groups and legislation favoring "joint" custody with administrative or legislative dictums to consider domestic violence in custodial decisions. There is also growing pressure on criminal courts, in part because attrition from domestic violence incidents and arrests to punishment is well over 95% and repeat offenders are no more likely to be punished or to be punished more severely than abusers arrested for the first time.[5] DA offers a framework for a more aggressive response, particularly if it is integrated into the practice of coordinated or integrated domestic violence courts, dedicated prosecution, and standardized assessment protocols in medical or legal settings.

The alternatives to rationing via some form of dangerousness assessment are to grade sanctions based on repeat offenses and statutory reform that would significantly raise the overall criminal profile of domestic violence and so enhance sanctions overall. The first option is ethically suspect. Statutory reform has caught on in the human rights community and made headway in England, France, Scotland, Spain, Turkey, and some other countries. But it seems politically untenable at the moment in the U.S., largely because of cost, because it would require a major shift of justice resources away from drug-related offenses and because, as Congressional opposition to VAWA and "equal pay" reveal, "real" sexual equality remains more controversial here than elsewhere.

The adaptation of DA by police is more complicated. In states like Connecticut and New Jersey, where a broad range of domestic violence and family offenses result in arrest but almost all cases are nolle-prossed or dismissed and/or referred for counseling, DA offers a way to increase the proportion of domestic violence offenders treated as felons, a prospect favored by prosecutors, or referred for service. By contrast, in Massachusetts, New York, and other states that apply a higher standard of violence and so already sanction a higher proportion of the smaller group arrested, adapting DA expands the pool of offenders. This effect has less to do with the items in the DA than with how it defines severe violence (e.g. "strangulation" now includes any case where an offender put his hands on the victim's neck) and the lowered cut-off point it sets for defining offenders as "high risk." These functions of DA are only consistent with the goals of the advocacy movement if the cases it identifies as high risk are in fact the most serious.

[5] This has been demonstrated most dramatically for England by M. Hester (2006). "Making It Through the Criminal Justice System: Attrition and Domestic Violence," Social Policy and Society, 5(1), 1-12. I review similar evidence of attrition for the U.S. in E. Stark (2007). *Coercive Control: How Men Entrap Women in Personal Life.* Oxford, NY, pp. 60–66.

ABUSE-RELATED FATALITIES AND NEAR FATALITIES TOO RARE TO BE BASIS FOR A USEFUL INTERVENTION TOOL

In 2009, according to data compiled by the Violence Policy Center, approximately 989 of the estimated 14.5 million U.S. women in abusive relationships were killed by husbands, partners or former partners, fewer than 20 per state, with most states having far fewer.[6] This means that, in a given year, there will be no abuse-related fatalities in 99% of U.S. communities and that an abused woman has approximately one chance in 12 thousand of being killed by her partner. This data illustrates the absurdity of taking fatality as an end point of prevention efforts or of claiming, as does the recent article on DA in the *New Republic*, that changes in partner homicides demonstrate the efficacy of DA.[7] These numbers also offer a sobering corrective to advocacy groups that dramatize the seriousness of violence against women by publicizing partner homicides. While "near" or "potentially" fatal domestic violence can be extracted from police or medical files, they cannot be reliably counted, let alone monitored.[8]

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Once we have eliminated fatality or near fatality as a useful point of departure for prevention efforts, the utility of the DA stands or falls on the relation between the risk factors it identifies and the victim/offender populations its application selects for support/sanction and the pool of serious abuse cases. The DA asks one question about "control" and identifies a number of unmodifiable situational factors (unemployment, jealousy, separation, whether a child is the male partner's own, etc.) that appear to enhance risk. But its major focus is on severe violence (e.g. strangulation, the presence or use of weapons, threats to kill and sexual violence), and stalking. Is it likely that identifying and managing cases involving the severest forms of violence will reduce the most serious forms of abuse? Of course, a number of more common outcomes that are arguably more typical of serious cases could serve as the window through

[6] Stark, *supra* note 5. Violence Policy Center (2011). *When Men Murder Women: An Analysis of 2009 Homicide Data. See* S. Catalano, M. Rand, E. Smith & H. Snyder (2009). Female Victims of Violence. *Available at http://bjs.ojb.usdoj. gov/index.cfm?ty=pbdetail&iid=2020. This is probably an underestimate and reflects the way in which "partners" is defined.*

[7] For example, Stelloh, *supra* note 3, claims use of DA may be responsible for the dramatic 40% decline in partner homicides in Maryland since 2007. Between 2007 and 2010, partner homicides of women in Maryland dropped from 21 (29% of the 85 female homicide deaths) to 15 (22% of 69 deaths), a difference of just six cases, hardly enough to signify a trend.

[8] The same fact, that fatal abuse cases are rare, provides an important rationale for Domestic Violence Fatality and Near Fatality Review Boards. The importance of these Boards lies in the use of dramatic cases to open a window to case handling and systems. issues.

which to retrospectively identify high risk cases, including suicidality, PTSD, or entrapment. Looking through these windows reveals a different catalogue of high risk factors, and hence targets different populations.

FATAL AND SEVERE ABUSIVE VIOLENCE AGAINST WOMEN HAVE SIGNIFICANTLY DECLINED OVER THE LAST THREE DECADES

At first glance, targeting severe and fatal violence appears effective. In fact, over the last four decades, fatal and severe partner violence against women has already dropped more than 40%, a trend that is continuing. This drop is directly attributable to the opening of shelters, policies mandating arrest, and the ready availability of Orders of Protection.[9] While these interventions are not formally predicated on the types of violence identified by the DA, as a practical matter, there is considerable evidence that police, courts, child welfare, hospitals, and even shelters already prioritize cases that involve injury, strangulation, sexual violence, threats to kill, the presence and/or use of weapons, and/or stalking.[10] Adapting the DA formalizes, and so could enhance, these preventive effects. Some versions of the DA also give weight to the frequency of violence, violence during pregnancy, and to substance use, factors whose inclusion could help target services even more effectively. Because the crime of domestic violence in the U.S. is universally equated with a proximate assault or threat, however, there are serious practical as well as constitutional problems raised by basing assessment or sanctions on historical, situational, or relationship factors other than those that prompted arrest or police contact. Meanwhile, including other "risks" identified by the DA, such as whether a partner is unemployed or is the biologic parent of a child in the home, invites the application of racial and class prejudice in ways that override any benefits in interdiction.

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[9] Stark, *supra* note 5. Violence Policy Center, *supra* note 6. Catalano et al., *supra* note 6. For a summary of these data for 1993-2008, *see* opdv.state.ny.us/statistics/nationaldvdata/ nationaldvdata.pdf. Based on the evidence from the National Crime Victim Survey (NCVS), researchers from the National Institute of Justice (NIJ) conclude that domestic violence has decreased by over 40% since 1993. Because of the way the NCVS collects its data, however, few researchers accept the NCVS as definitive and many interpret its findings to mean only that the most severe forms of domestic violence have declined.

[10] We summarize the basis for intervention in E. Buzawa, C. Buzawa, & E. Stark (2012). *Responding to Domestic Violence: The Integration of Criminal Justice and Human Services*. Thou sand Oaks, CA: Sage Publications.

HAS REDUCING THE SEVEREST FORMS OF PARTNER VIOLENCE LED TO A REDUCTION IN THE MOST PREVALENT AND SERIOUS FORMS OF PARTNER ABUSE—OR ACTUALLY CAUSED THESE TO RISE?

It is now widely recognized that the same interventions that have caused a reduction in severe and fatal violence against women (40%) have led to far greater reductions in severe and fatal female violence against abusive men (over 70%), with the largest differences in those communities of color that take greatest advantage of shelter, arrest, and court orders. Where abusers and their victims were equally likely to die in a fatal encounter when the domestic violence revolution began, today a female victim is more than twice as likely to die at the hands of an abusive partner than he is at hers. Since women tend to kill partners when they see no other way to keep themselves or their children safe, the ready availability of shelters, arrest, and court protections has sharply curtailed their violence against men. Men tend to kill women when they experience a loss of control due to separation. Because available protections for women are typically short-term and only a tiny proportion of abusers are sanctioned, interventions have been far less effective in the long-term for women.

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There is another paradoxical outcome of focusing on severe and fatal violence that has been less often noticed, that the declines in these forms of abuse have been matched or even surpassed by sharp increases in the incidence of so-called "minor" violence against women: slaps, punches, kicks, and other abusive assaults that rarely cause injury. The substitution of minor for severe violence would be a welcome change were it not for the fact that the rise in low-level violence signals the replacement of traditional forms of domestic violence with coercive control, the most devastating form of partner abuse. Coercive control is a strategic course of oppressive conduct that is typically characterized by frequent, but low-level physical abuse and sexual coercion in combination with tactics to intimidate, degrade, isolate, and control victims. As we have come to appreciate what victimized women meant when they insisted "violence wasn't the worst part," it has become clear that an estimated 60% to 80% of those who seek outside assistance are experiencing this pattern of abuse rather than the types of physical and psychological abuse to which most interventions respond. Injury, sexual violence, and fatality remain important consequences of coercive control. But they typically play a secondary role in eliciting its major consequences, hostage-like levels of fear combined with a state of *entrapment* and *subordination* that is almost always grounded in material exploitation, deprivation, and regulation, i.e., "control." In coercive control, a victim's vulnerability to severe or fatal

violence has less to do with the level of violence used than her incapacity to effectively resist or escape abuse due to structural dependence, isolation, and control. As importantly, in as many as one case of coercive control in four, paralyzing fear, subjugation, and dependence, are elicited with little or no physical abuse.[11]

If the emphasis on severe violence has afforded limited protection to abused women, it may also be responsible, at least in part, for the sharp rise and even the normalization of low-level violence in abusive relationships. This possibility was anticipated by British feminist Francis Power Cobbe over a century ago. Cobbe (1878) argued that if laws targeted only the most severe violence against women, they would raise the level of violence considered "acceptable," causing "minor" acts of violence to rise.[12] This appears to be exactly what has happened. Indeed, men arrested but not sanctioned for multiple acts of abusive violence commonly report that abuse has no consequences.[13]

If the sharp rise in the use of routine but low-level violence in abusive relationships has elicited little notice, this is because these acts are either ignored or fall on the very low end of most assessment protocols, including the DA. In fact, of course, it has been well-known for decades that low-level violence comprises well over 99% of abusive incidents and well over 90% of the incidents reported where we would expect to find the most serious injuries, in hospital Emergency Rooms and when police make arrests, for instance.[14] The significance of abusive violence for victims lies not in its physical valence, but in the frequency or ongoing nature of virtually all of the partner assaults that come to the attention of courts, police, child welfare, or shelters, with somewhere between 30% to 35% involving "serial" abuse, where partners are assaulted several times a week or more for a period lasting between 5.5 and 7.2 years. The cumulative effect of this ongoing pattern has gotten little notice in the criminal justice literature because our laws subdivide partner abuse into discrete episodes. Since the vast majority of these episodes are trivial from a medical or criminal justice standpoint, the current framework makes most partner abuse appear trivial. In states like Connecticut and New Jersey where even low-level assaults result in arrest, domestic violence has been turned into a second-class misdemeanor for which no one goes to jail. In states like Massachusetts where the bar is set higher, the vast majority of abuse cases elicit no response at all.

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[11] M. Piispa (2002). "Complexity of Patterns of Violence Against Women in Heterosexual Partnerships," Violence Against Women, 8(7), 873-900. C. W. Lischick (2009). "Divorce in the Context of Coercive Control," in E. Stark and E. Buzawa, eds., *Violence Against Women in Families and Relationships, Vol. 2.* Santa Barbara, CA: Praeger, 191–224.

[12] Francis Power Cobbe (1878). "WifeTorture in England," Contemporary Review, 32, 55–87.

[13] Hester, *supra* note 5.

[14] For example, see E. Stark & A. Flitcraft (1996). *Women at Risk: Domestic Violence and Women's Health.* Thousand Oaks: CA. Sage Publications. Connecticut police identified injuries requiring referral for medical care in only 3% of the abuse incidents to which they responded by making an arrest. Connecticut State Police, *Annual Report on Family Violence Intervention Unit*, November 1991, p. 4.

DA reproduces this process of rendering the typical pattern of abuse invisible in plain sight by disaggregating the ongoing pattern into discrete episodes ("strangulation" gets so many points, stalking, so many, and so on) rather than grasping them in their interrelated whole as victims and their children are experiencing them and by basing assessment (and so intervention) on probable harms (repeat assault, e.g.) rather than the harms already inflicted.

THE LEVEL OF CONTROL IN A RELATIONSHIP PREDICTS SUBSEQUENT HARM

Ironically, the best evidence for making "control" and "domination" the center of assessment comes from the same well-designed, multicity study by Glass and Campbell (2004) that forms the basis for the DA. This research showed that, given the presence of a gun and the threat of separation, the level of control in an abusive relationship leads to a nine-fold increase in the risk that a woman will be killed by an abusive partner.[15] By contrast, the level, nature, frequency, or duration of the violence highlighted by the DA was not predictive. Meanwhile, Beck & Raghavan (2010) show that the presence of control before separation predicts physical and sexual violence after separation, but that the presence of prior physical assault does not.[16] In these analyses, control is a proxy for entrapment, which can be measured much more accurately by instruments that tap a victim's subjective experience, such as the Women's Experience of Battering (W.E.B.) scale than by the DA, which asks just one general question about control.[17] The same principle that misguided assessment prior to the understanding of coercive control drives implementation of the DA: when women are interviewed, they are directed to "talk about the violence."

IN WHATEVER FORM, PARTNER ABUSE TYPICALLY INVOLVES A COURSE OF CONDUCT THAT MERITS AGGRESSIVE INTERVENTION, INCLUDING INCARCERATION

Even without the added elements of coercive control, chronic physical abuse has a cumulative effect on a victim's physical, psychological, and social security that matches the harms caused by the most serious violations of law and morality in our society. When the elements of coercive control are present, material deprivation, isolation, degradation, exploitation, and regulation are added to chronically high levels of fear and physical suffering. Elsewhere

[15] N.J. Glass & J.C. Campbell (2004). "Risk for Intimate Partner Femicide in Violent Relationships," 9 DVR 30–33, [Joan: need months & yr]

[16] C.J.A. Beck & C. Raghavan (2010). "Intimate Partner Abuse Screening in Custody Mediation: The Importance of Assessing Coercive Control," Family Court Review, 48(3), 555–565.

[17] P. Hall-Smith, I. Tessaro & J. Earp (1990). "Women's Experiences With Battering: A Conceptualization From Qualitative Research," Women's Health Issues, 5, 173–182. P. Hall-Smith, J.A. Earp, & V. De-Vellis (1995). "Measuring Battering: Development of the Women's Experience With Battering (WEB) Scale," Women's Health: Research on Gender, Behavior and Policy, 1(4), 273–288.

in the world, it is widely recognized that economic violence, psychological violence, social violence, and physical violence are part of a piece. These harms violate basic civil and liberty rights, including the rights to economic independence, freedom of speech, movement and association, and the right to decision-making without duress or constraint. From this vantage, the "seriousness" of abuse has as much or more to do with what an abusive partner keeps a woman from doing for herself as it does with what he does *to* her. To consider what level of interdiction is justified by these harms, imagine how we would expect the State to respond if a stranger in our community assaulted one or more of our neighbors dozens or even hundreds of times, even if these assaults were relatively minor when considered separately, or held a stranger as a virtual hostage. If a man has done any or many of the things that lead to receiving a high risk score on the DA, if he has threatened his partner with a weapon or threatened to kill her, beaten her up or strangled her, forced her into sex, stalked her and so on, he has committed many serious crimes for which he should be held accountable. Imagine too what response would be forthcoming if men were the primary targets of this level of humiliation, torment, and subjugation. In these cases, would we worry about "future" risk or take decisive action to remove the offender from our society?

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DA ADDS LITTLE TO THE MIX OF AVAILABLE INTERVENTIONS

Re-offense is a near certainty in cases of partner abuse that come before criminal or civil justice. Simply assuming future risk yields far fewer "false negatives" (i.e., cases which are mistakenly classified as low risk) than the DA or any other assessment scale based on probability. DA gives women's perception of their risk only a minor role in assessment and takes no account of the cumulative effects of multiple tactics in an ongoing process of subjugation. Claims by Campbell *et al.* (2009) to the contrary, the DA exacerbates the proportion of false negatives because of its mistaken emphasis on individual behavioral facets of abuse instead of the patterned constraint typical of the most devastating cases. Moreover, given the cumulative and wide-ranging effects of domestic violence and coercive control, the current responsibility of an offender for the abuse he has already inflicted is a far sounder basis for intervention than the future risk he poses.

The DA is the culmination of three decades during which the violence men used to dominate women in personal life became the focus of intervention, rather than the domination itself or the inequality at its base. This approach has saved thousands of lives and protected millions of women and children in the short-term, no mean achievement. But it does not and cannot

address the heart of male partner abuse in which violence is one among many means of control and often neither the most important nor the most salient to victims. By reframing partner abuse in terms of future risk of severe or fatal violence, the DA masks the dynamic reflected in coercive control and minimizes the liberty harms it inflicts on the possibility for women to be full persons. The ideal response would be to remodel our statutes to anticipate the combination of these crimes into a single course of devastating conduct and raise the profile of the harms they cause to reflect their cumulative effects on women's rights and liberties. In lieu of these reforms, we should hesitate to embrace tools, no matter how well intentioned, whose major function is to rationalize a level of normative tolerance for coercive control that is inconsistent with women's equality and liberation as well as their long-term safety.