

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at  
Chairperson

3:30 ~~am~~/p.m. on February 2, 1984 in room 526-S of the Capitol.

All members were present except:

Representative Justice was excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mike Heim, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes' Office  
Nedra Spingler, Secretary

Conferees appearing before the committee:

Luis Mata, Director, Wyandotte-Leavenworth County Legal Aid Society  
Clark Owen, Sedgwick County District Attorney  
Orin Skiles, Public Safety Director, Ottawa  
Jim Clark, Kansas County and District Attorneys Association  
John Brookens, Kansas Bar Association  
Elizabeth Taylor, Kansas Association of Domestic Violence  
Linda Carol Woody, Kansas Chapter for the National Organization for Women  
Barbara Reinert, Women's Political Caucus  
Barbara Hogberg, Legal Adviser to Shawnee County Sheriff  
Tom Sargent, Detective, Shawnee County  
Johnnie Darr, Sheriff of Sedgwick County  
Representative Dorothy Nichols

The minutes of the meeting of January 30, 1984, were approved.

Hearings were held on HB 2713 and HB 2711.

HB 2713 - An act relating to grounds for arrest.

Representative Wanda Fuller said the bill adds new grounds for arrest for domestic violence cases and was introduced because of concern regarding the growing number of these cases with five million, involving both men and women, being reported nationally. She cited a study conducted in the Minneapolis/Duluth areas of Minnesota where police responding to domestic violence cases were divided into three groups with one making arrests, another mediating, and the third separating the parties. The study determined that the first group had the best results in deterring subsequent batteries. The decline in domestic violence in the Minneapolis/Duluth areas is probably indicative that there are declines in the 33 states that have expanded police powers to arrest although no figures from these states are available. Representative Fuller said another study indicated that 60% of those arrested admitted they are guilty. She had no figures on how many admit to guilt when a complaint was filed versus arrest. She had no opinion as to why the words "personal injury", in line 39, were used instead of "bodily harm".

Representative Dorothy Nichols supported the bill. Her statement is attached (Attachment No. 1).

Luis Mata, Director, Wyandotte-Leavenworth County Legal Aid Society, supported HB 2713 and said his group sees 500 to 600 victims of domestic violence a year, most of whom are women. The Society is not able to help about one-half of them because police cannot arrest the abuser unless they observe the act being committed. Mr. Mata believed making immediate arrests would be the most effective way and tool to combat domestic violence. His statement is attached (Attachment No. 2).

There was discussion regarding the need for followup on arrests, how strictly penalties were imposed, and the possibility that a person who is arrested may go back and do even more harm.

Clark Owen, Sedgwick County District Attorney, supported the bill and said K.S.A. 12-4212 should also be amended to cover law enforcement authorities enforcing the municipal code. He believed there was a gap in present law that creates difficult problems for police answering domestic calls because they are placed in the position of trying to determine probable cause and to predict whether the abuser will do it again. Mr. Owen believed

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HB 2713 would start action to assure prosecution which at present is a difficult and important problem. Too many domestic violence cases are more than a misdemeanor and lead to felony crimes such as homicide. Prosecution laws should be provided so that the abuser will blame the prosecutor and not the victim. He suggested the Committee look at the bonding laws as too many times the abuser is allowed to sign his own bond outright and can go right back to the victim and repeat the offense.

Mr. Owen said most domestic violence cases in Wichita are prosecuted in municipal court. He would like for his office to handle all misdemeanor cases. The complaining witness would sign a confidential affidavit to provide probable cause for the judge, and this record would be a basis for prosecution even if the witness changes her mind.

Orin Skiles, Public Safety Director, Ottawa, supported HB 2713. Although he had no figures from the Ottawa Police Department, he believed the Minnesota study was proof that arresting authority helps police deter domestic violence and assault cases. If police do a good job as mediators on the first call, nothing else happens, but the second call on the same day will be worse.

Jim Clark, Kansas County and District Attorneys Association, said the Association supports HB 2713.

John Brookens said the Kansas Bar Association supports the bill, and he wrote the "personal injury" language in line 39 and would not object if "bodily harm" was substituted. Amendments to expand the bill's provisions to the city code would be offered at a later time.

Elizabeth Taylor gave a statement (Attachment No. 3) for the Kansas Association of Domestic Violence in support of the bill. She believed, if a man is arrested and taken away, it would give the victim extra time to get away and escape further retaliation.

Linda Carol Woody, Kansas Chapter for the National Organization for Women, supported HB 2713 but requested the Committee to consider strengthening it by changing "may" to "shall" in Section 1, line 22. She gave figures from the Minnesota study which indicate a 92% conviction rate because most plead guilty, and there was a drastic reduction in repeat calls. She believed the figures from Minnesota mandated that arrests be made. Six states have mandated arrests. Background information concerning her remarks is in Attachment No.3A.

Barbara Reinert said the Women's Political Caucus supports HB 2713 and strengthening the discretion of police rather than changing "may" to "shall" and mandating arrests.

HB 2711 - An act relating to prostitution.

Representative Anita Niles, sponsor, noted the efforts in some counties in attempts to eliminate massage and rap parlors. She believed HB 2711 would assist in getting convictions by providing that anyone, not just the prostitute, taking something of value for service would be guilty of a Class B misdemeanor with the same penalty to apply to the patron also. She said the main intent of the bill was not to make the crime of prostitution the same for prostitutes and patrons, but the main thrust was the new language on lines 25 and 26. Representative Niles objected to a suggestion to drop the penalty level for prostitution and patronage to a Class C misdemeanor.

Barbara Hogberg, legal adviser to the Shawnee County Sheriff, supported the bill, noting problems in prosecuting these cases in Shawnee County where one person takes the money and another person performs the service. She said the bill may not address the additional problem of proving an actual exchange of something of value. She supported the same penalty for prostitutes and patrons and objected to lowering the penalty to a Class C misdemeanor. Society is the victim of prostitution because it spreads disease and is linked with other crimes. The same criminal element profits from prostitution.

Tom Sargent, detective, Shawnee County, supported the Class B penalty. Presently, under Class C, prostitutes are out of jail before the police report is written. He knew of no arrests of patrons because the prostitutes won't testify against them.

Johnnie Darr, Sheriff of Sedgwick County, gave a statement (Attachment No. 4) supporting HB 2711. Prostitution is involved with organized crime, and the legislature should either put teeth in the law or forget about it. He recommended a mandatory jail sentence of 30 days for the first conviction, 60 for the second, and 120 days for the third to apply to

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both prostitutes and patrons. He believed that getting tough was the only way to eliminate prostitution.

The question was raised if the Sedgwick County jail had space for extra inmates that would result from a mandatory sentence and if the public was willing to build new jails to accommodate them. Sheriff Darr said, although the Sedgwick County jail was full for males, it still had room in the women's section. He believed the public was willing to pay for additional facilities, if necessary, as he gets many complaints about prostitution.

The meeting was adjourned at 5:00 p.m.

STATE OF KANSAS

*Attachment No. 1*  
*2-2-8*

DOROTHY NICHOLS  
REPRESENTATIVE, FOURTEENTH DISTRICT  
229 1/2 S MAIN  
OTTAWA, KANSAS 66067



TOPEKA

HOUSE OF  
REPRESENTATIVES

ROOM 182-W

296-7585

COMMITTEE ASSIGNMENTS  
MEMBER LABOR AND INDUSTRY  
LOCAL GOVERNMENT  
COMMERCIAL AND FINANCIAL  
INSTITUTIONS

Attachment # 1

On Thursday, H.B. 2713, an act concerning criminal procedure relating to arrest, was heard. This would allow an officer to make an arrest if a person has intentionally inflicted personal injury to another person. In cases of domestic violence an officer could arrest the offending person, thus removing them from the scene for a cooling off period. As it is now, an officer can make an arrest only after someone signs a complaint. Often times an officer is called in and by the time he arrives everything is lovely. After he departs violence and abuse erupt again. The action allowed by the bill could break the cycle of violence in a family before it gets too deeply embedded into a lifestyle, thus preventing battered and abused spouses and children, a "hell on earth".

*Atch. 1*

COMMENTS BY LUIS MATA, DIRECTOR OF THE WYANDOTTE-LEAVENWORTH  
COUNTY LEGAL AID SOCIETY, INC., CONCERNING HOUSE BILL NO. 2713

STATEMENT OF THE PROBLEM:

Under current Kansas law, as specifically set out in K.S.A. 22-2401, a police officer responding to a domestic violence call cannot make an arrest unless he has witnessed the assault, or unless he can predict that the violence will continue if the assailant is not arrested.

Since most of the assailing husbands will cease their violence when they realize that the police have been summoned, and will tell the police that the fight is over and that no more fighting will take place, the police officer responding to the call will find himself unable to arrest the husband or to remove him from the home. At best, the police officer will extract a promise from the offending husband to quit fighting with the victim--a promise which the husband will readily make. However, as soon as the police officer departs, the husband invariably resumes the assault, often with greater anger and violence towards the wife, who is punished for having called the police. This scenario, which occurs all too frequently, not only breeds disrespect for the law and the police, but contributes to the cycle of domestic violence which entraps many women and their children.

THE SOLUTION TO THIS PROBLEM:

At the Wyandotte-Leavenworth County Legal Aid Society, Inc., our number-one priority is domestic violence cases. Approximately 35% of the cases that we handled in 1983 involved divorces where we documented domestic violence, or protection from abuse cases where the client had been a recent victim of domestic violence. Due to limited resources, however, we are forced to turn down about 50% of the domestic violence victims we interview. For these women who are not able to obtain a civil restraining order through our office or through private counsel, and who cannot afford to leave the home and seek safe shelter elsewhere, their only remaining source of assistance in preventing domestic violence will be the police officer who responds to the call for help.

When a battered wife calls the police, it is an act of desperation. She expects immediate response and protection. In interviewing our domestic violence clients, we find that the majority of them have called the police when they have been assaulted by their husbands. We also find that the police do make a good-faith effort to assist the victim by making the offending husband cool off, but that in most cases, the police will inform the victim that an arrest cannot be made since the assault did not occur in their presence.

It is my opinion, from having interviewed many domestic violence victims and from talking to a number of police officers, that the police officer who arrives at the scene of

a domestic violence assault wants to get involved, and assist the victim, but that he feels that he does not have the legal authority to make an arrest under our present statutes.

Amending K.S.A. 22-2401 so that an arrest can be made if the offender has intentionally inflicted personal injury to another person will not cure our current domestic violence crisis. But it will assist many victims who are currently unable to defend themselves from physical abuse. In this regard, I would like to mention that a recent study conducted in Minneapolis by the Police Foundation suggests that "arrest is the most effective way for the police to deter violence in domestic assault cases." I have attached a copy of the news release, and I will be happy to forward to you a copy of the report as soon as I receive a legible copy from the Police Foundation.

Respectfully,

*Luis Mata*

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Luis Mata, Director  
Wyandotte-Leavenworth County  
Legal Aid Society, Inc.  
905 North 7th Street  
Kansas City, Kansas 66101  
(913) 621-0200

Dated: February 2, 1984

News Release

Police Foundation

For Immediate Release

1709 K Street NW  
Suite 400  
Washington DC 20006  
Phone (202) 939-1460

STUDY SAYS ARREST  
DETERS DOMESTIC VIOLENCE

MINNEAPOLIS--The preliminary results of an experiment conducted in Minneapolis suggest that arrest is the most effective way for the police to deter violence in domestic assault cases.

The experiment was funded by the National Institute of Justice and was conducted by the Police Foundation in cooperation with the Minneapolis Police Department.

The experiment tested three police responses to simple domestic assault: arresting suspects; ordering suspects to leave the residence for eight hours; or providing informal mediation to persons involved in a violent domestic dispute.

Researchers tracked the behavior of suspects for six months as a way of determining which of the three responses was most effective in deterring further violence.

The principal measure used in the experiment--whether the suspect was caught using violence in a domestic situation again within six months--"suggests that arrested suspects manifested significantly less violence than those ordered to leave and less violence than those who were advised but not separated," according to a report on the experiment.

The authors of the report caution that their analyses of the results are preliminary and that not all of the data have been analyzed.

B



Anthony V. Bouza, chief of police of Minneapolis said: "This experiment shows the critical importance of the police seeking new answers to old questions through research. Now, at least in terms of domestic assaults, we have more than just a hunch to go on."

Patrick V. Murphy, Police Foundation president, said, "In this experiment, the Minneapolis Police Department has broken new ground in police research. For the first time, a police department has systematically controlled arrest practices and citizen encounters in order to learn more about the deterrent effects of arrest on crime. The police world is indebted to Chief Bouza and his department for this effort."

The experiment examined 328 simple assault cases occurring between March 1981 and August 1982, of which 252 fit the systematic assignment criteria. "Despite the practical difficulties of controlling an experiment and interviewing crime victims in an emotionally charged, violent social context, the experiment succeeded in producing an internally valid sample of 252 cases with complete social outcome measures and an apparently unbiased sample of responses from victims in the cases," according to Sherman and Berk.

Copies of the authors' report may be obtained by writing the Police Foundation, 1909 K Street, N.W., Suite 400, Washington, D.C. 20006. The Police Foundation is a nonprofit, independent institution dedicated to fostering innovation and improvement in American policing. The foundation was established in 1970 by the Ford Foundation.

April 6, 1983

The authors, Lawrence W. Sherman, director of research for the Police Foundation and associate professor of criminology at the University of Maryland, and Richard A. Berk, professor of sociology at the University of California, Santa Barbara, say:

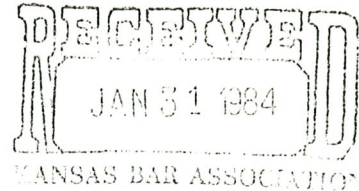
"The findings suggest that in most cases, arrest may be the most effective approach, and separation may be the least effective approach. It would probably be a mistake, however, to conclude that arrest should be mandatory in all cases of simple domestic assault."

Sherman and Berk add that the results of the experiment indicate "that police should reverse their current practice of rarely making arrests and frequently separating the parties" in simple domestic assault cases. A simple domestic assault case is defined as an assault that does not constitute a life-threatening event.

In their report, the authors note that "some police, like labeling theorists in sociology, argue that arresting people for minor acts of domestic violence will only increase the seriousness and frequency of the violence. Some feminist groups, like some deterrence theorists, argue that arresting suspects of domestic violence will reduce the suspects' use of violence." The results of the \$320,000 Minneapolis experiment are consistent with the views of deterrence theorists, but the authors stress that the data do not necessarily support police always making an arrest in a domestic assault case.

"One of the most troubling and difficult jobs the police have is dealing with the tragedy of violence in the family," according to James K. Stewart, director of the National Institute of Justice and a former Oakland, Ca., police detective inspector. "The Minneapolis experiment has provided us with sound information about what the police may be able to do to reduce that violence. For this, we are particularly grateful to the Minneapolis police officers who volunteered their time and energy to make this experiment a success."

Attachment 3  
2-2-84



RESOLUTION

Attachment # 3

WHEREAS, the Kansas Association of Domestic Violence Programs has always supported the principle that no person should be subjected to spouse abuse;

WHEREAS, it has become clear that many law enforcement officers are failing to make arrests in domestic violence situations because they have not witnessed the actual assault;

WHEREAS, law enforcement officers have a legal and moral obligation to protect innocent victims from spouse abuse;

WHEREAS, the Kansas Association of Domestic Violence Programs believes that more protection would be available to victims of domestic violence if K.S.A. 22-2401 and K.S.A. 12-4211 were amended to make it clear that a law enforcement officer has probable cause to make an arrest in a misdemeanor battery situation if said battery results in physical injury to the victim of such battery;

NOW, THEREFORE, BE IT RESOLVED: that the Kansas Association of Domestic Violence Programs does hereby support amendments to K.S.A. 22-2401 and K.S.A. 12-4211 so that victims of domestic violence will not be denied police assistance in arresting the abusive spouse when physical injury has occurred; and further that

The Kansas Association of Domestic Violence Programs shall actively support and assist those legislators and groups who sponsor such amendments to K.S.A. 22-2401 and K.S.A. 12-4211.

Dated this 8th day of October, 1983 at the KADVP Annual Meeting, Great Bend, Kansas.

Kansas Association of Domestic Violence

By: Georgia Hesselrode  
President

Atch. 3

Attachment # 3A  
2-2-84

# Police Foundation

1909 K Street NW  
Suite 400  
Washington DC 20006  
Phone (202) 833-1460

Francis W. Sargent  
Chairman of the Board

Patrick V. Murphy  
President

October 24, 1983

RECEIVED

Attachment # 3A

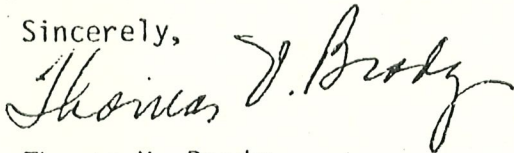
OCT 31 1983

I.C.A.D.V.

Thank you for your request for the results of the Police Foundation experiment testing police responses to domestic violence. I am enclosing an executive summary of the preliminary findings of that experiment. The Police Foundation is scheduled to publish by the fall a final report of the experiment and your name has been put on the list to receive a copy of the report.

Again, thank you for your interest in the foundation's work.

Sincerely,



Thomas V. Brady  
Director of Communications

TVB/sb  
enc.

Atch. 3A

Police Responses to Domestic Assault:

Preliminary Findings

(An Executive Summary)

by Lawrence W. Sherman+  
Police Foundation and University  
of Maryland, College Park

and

Richard A. Berk  
University of California  
Santa Barbara

\*This paper was supported by Grant #80-IJ-CX-0042 to the Police Foundation from the National Institute of Justice, Crime Control Theory Program. Points of view or opinions stated in this document do not necessarily represent the official position of the U. S. Department of Justice, the Minneapolis Department, or the Police Foundation.

We wish to thank the Minneapolis Police Department for its cooperation, especially the police officers who volunteered to conduct the experiment. We also wish to acknowledge the work of Project Manager Nancy Wester and the data collection staff she supervised.

+Please direct all inquiries to Lawrence W. Sherman, Police Foundation, 1909 K Street N.W., Washington, D.C. 20006, (202) 833-1460.

A POLICE FOUNDATION WORKING PAPER

## Abstract

Does punishment deter criminals? Or does it just make their behavior worse?

Nowhere is the debate over these questions more evident than in police responses to domestic violence. Some police, like labeling theorists in sociology, argue that arresting people for minor acts of domestic violence will only increase the seriousness and frequency of the violence. Some feminist groups, like some deterrence theorists, argue that arresting suspects of domestic violence will reduce the suspects' use of violence.

With the support of the National Institute of Justice, the Police Foundation and the Minneapolis Police Department tested these hypotheses in a field experiment. Three police responses to simple assault were systematically assigned: arrest, "advice" or informal mediation, and an order to the suspect to leave for eight hours. The behavior of the suspect was tracked for six months after the police intervention, with a variety of measures. Preliminary analysis of the official recidivism measures suggests that the arrested suspects manifested significantly less violence than those who were ordered to leave, and less violence than those who were advised but not separated.

Other interpretations of the results are possible. But if this one is correct, it suggests that police should reverse their current practice of rarely making arrests and frequently separating the parties. The findings suggest that other things being equal, arrest may be the most effective approach, and separation may be the least effective approach. Since other things are not usually equal, however, it would probably be a mistake to conclude that arrest should be mandatory in all cases of simple domestic assault.

## The Policy Problem

For many years, police have been reluctant to make arrests in response to domestic violence, one of the more common situations they face. Parnas' (1972) qualitative observations of the Chicago police found four categories of police action in these situations: negotiating or otherwise "talking out" the dispute, threatening the disputants and then leaving, asking one of the parties to leave the premises, or (very rarely) making an arrest. Parnas offers ten different reasons why police avoid making arrests, one of which is an explicit labeling theory formulation: the offender, angered by his arrest, may cause more serious harm to the victim upon his return to the family home.

The reluctance of police to make arrests for this offense is reported in many other cities. Surveys of battered women who tried to have their domestic assailants arrested report that arrest occurred in 10% (Roy, 1977:35) or 3% (see Langley and Levy, 1977:219) of the cases. Surveys of police agencies in Illinois (Illinois Law Enforcement Commission, 1978) and New York (Office of the Minority Leader, 1978) found explicit policies against arrest in the majority of the agencies surveyed. Despite the fact that violence is reported to be present in one-third (Bard and Zacker, 1974) to two-thirds (Black, 1980) of all domestic disturbances police respond to, police department data show arrests in only 5 percent of those disturbances in Oakland (Hart, n.d., cited in Meyer and Lorimer, 1977:21), 6 percent of those disturbances in a Colorado city (Patrick, Ellis, and Hoffmeister, n.d., cited in Meyer and Lorimer, 1977:21) and 6 percent in Los Angeles County (Emerson, 1979).

The best available evidence on the frequency of arrest is the observations from the Black and Reiss study of Boston, Washington and Chicago police in 1966, reported in Black (1980:182). Police responding to disputes in those cities

made arrests in 27% of violent felonies and 17% of the violent misdemeanors. Among married couples (Black, 1980:158), they made arrests in 26% of the cases, but tried to remove one of the parties in 38% of the cases.

The apparent preference of many police for separation rather than arrests of the suspect has been attacked from two directions over the last fifteen years. The original attack came from clinical psychologists, who agreed that police should rarely make arrests (Potter, 1978:46; Fagin, 1978:123-124) in domestic assault cases, but who wanted the police to mediate rather than separate. A highly publicized demonstration project of teaching police special counseling skills for family crisis intervention (Bard, 1970) failed to show a reduction in violence, but was interpreted as a success nonetheless. By 1977, a national survey of police agencies with 100 or more officers found that over 70 percent of them reported a family crisis intervention training program in operation. While it is not clear whether these programs reduced separation and increased mediation, evaluations of some of them reported a decline in arrests (Wylie, et al, 1976), which many programs adopted as a specific goal (University of Rochester, 1974; Ketterman and Kravitz, 1978):

By the mid-1970s, police practices were attacked from the opposite direction by feminist groups. No sooner had the psychologists succeeded in having many police agencies treat domestic violence intervention as "half social work and half police work" than feminists began to argue police put "too much emphasis on the social work aspect and not enough on the criminal" (Langley and Levy, 1977:218). Widely publicized lawsuits in New York and Oakland sought to compel police to make arrests in every case of domestic assault, and state legislatures were lobbied successfully to reduce the evidentiary requirements needed for police to make arrests for misdemeanor domestic assaults. Some legislatures have even passed statutes requiring police to make arrests in these cases.



The feminist critique was bolstered by a study that suggested the seriousness of police interventions in these cases (Police Foundation, 1976). It found that in the two years prior to the occurrence of a sample of domestic homicides, police had intervened in disputes involving 85% of the victims at least once and in 54% of the cases five or more times. But it is impossible to determine from the cross sectional data whether making more or fewer arrests would have reduced the homicide rate after police intervention.

In sum, police officers confronting a domestic assault suspect faces at least three conflicting options, urged on them by different groups with different theories. The officers' colleagues might recommend forced separation as a means of achieving short-term peace. The officers' trainers might recommend mediation as a means of getting to the underlying cause of the "dispute" (in which both parties are implicitly assumed to be at fault). The local women's organizations may recommend that the officer protect the victim (whose fault, if any, is legally irrelevant) and enforce the law to deter such acts in the future. If the officers take sociology courses, they will conclude that labeling theorists imply mediation would be the response least likely to provoke further violence, with separation a mild label and arrest a severe label likely to engender secondary deviance. The officers' reading of the deterrence doctrine would be exactly opposite: arrest would cause the greatest discomfort, separation the next greatest, and mediation the least discomfort, so they should deter subsequent violent acts in that descending rank order of effectiveness.

#### The Original Research Design

In order to shed some empirical light on these conflicting recommendations, the Police Foundation and the Minneapolis Police Department agreed to conduct a

classic experiment. The design called for systematic use of arrest, separation, and some form of mediation, with a six month follow-up period to measure the frequency and seriousness of violence after each police intervention. The systematic use of these treatments, unlike a cross-sectional survey of police actions and subsequent violence, is much more effective in holding other factors constant. With sufficient numbers of cases, the social characteristics of the suspects in all three treatment groups should be very similar. The only difference between them should be due to the police actions, not to pre-existing differences in the average group tendencies to commit violence.

The design only applied to simple (misdemeanor) domestic assaults where both the suspect and the victim were present when the police arrived. The experiment included only those cases in which police were empowered (but not required) to make arrests under Minnesota state law: the police officer must have probable cause to believe that a cohabitant or spouse had assaulted the victim within the last four hours. Cases of life-threatening or severe injury, usually labeled as a felony (aggravated assault), were excluded from the design.

The predominantly minority female research staff was then supposed to contact the victims\* for one long interview, and telephone followup interviews every two weeks for 24 weeks. The interviews were designed to measure the frequency and seriousness of victimizations caused by the suspect after the police interventions. We even planned to interview the offenders, although without much optimism about a high response rate. The research staff were also to gather data on offense reports or arrest reports that mentioned the suspect's names during the six month followup, as well as police cars dispatched for domestic disturbances to the victim's address.

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\* of whom 57% were white, 23% were black, and 18% were Indian in the randomized subset analyzed below.

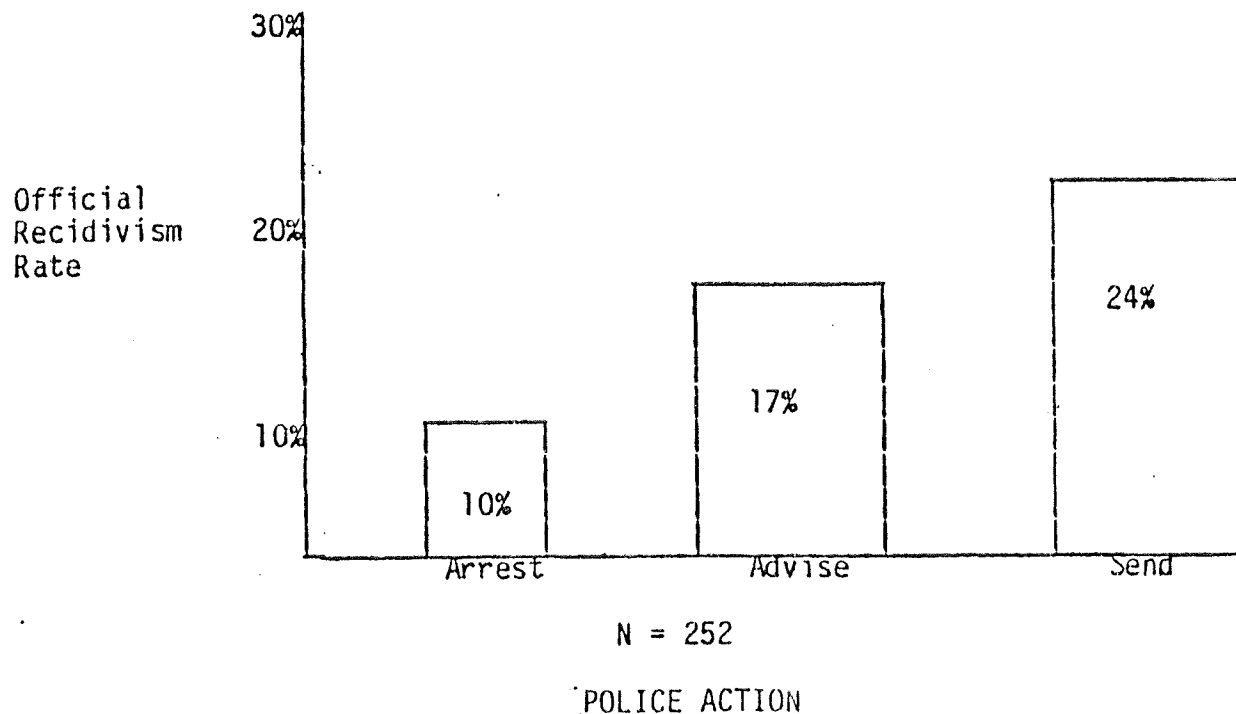
The implementation of the research design entailed slippage from some aspects of the original plan, but remained remarkably close to achieving the overall structure of the design.

Results

This preliminary analysis examines two of the possible outcome measures. One is a "failure" of the suspect to survive the six month followup period without having police generate a written report on the suspect for domestic violence, either through an offense report, an arrest report, or a subsequent report to the project research staff of a randomized (or other) intervention by study officers. A second measure comes from the initial interviews, in which the research staff asked the victims what happened when the couple was alone again without the police present.

TABLE 2

Six-Month Official Recidivism Rate For Domestic Violence Suspects By Police Action For Randomized Subset



The official recidivism or "failure" data demonstrate a strong difference between suspects arrested and suspects ordered to leave the residence for eight

hours, as Table 2 shows. The "sent" suspects were almost two and a half times more likely to generate a new official report of domestic violence than the arrested suspects, a difference that is statistically significant. The differences between advise and send, and between advise and arrest could have been obtained by chance. But additional analyses of these differences makes all of them close to being statistically significant.

An obvious rival hypothesis to the deterrent effect of arrest is that arrest incapacitates. If the arrested suspects spend a large portion of the next six months in jail, they would be expected to have lower recidivism rates. But the initial interview data show this is not the case: of those arrested, 43% were released within one day, another 43% were released within one week, and only 14% were released after one week or had not yet been released at the time of the initial victim interview. This much incarceration is nowhere close to eating up 60% of the time at risk of the send group, which is what would be required to explain away the differences as an incapacitation effect. We can therefore eliminate incapacitation as an explanation of the differences in six-month recidivism rates.

### Discussion

How much should one make of these results? Several cautions are clearly required before reaching any policy conclusions, yet there are reasons to place some confidence in these results regardless of the cautions.

One caution is that this paper only presents two measures of recidivism. We have yet to analyze several other measures. One is the followup interviews of the victims, reporting the frequency and seriousness of the violence they suffered over six months, much of which may not have come to the attention of

the police. Another measure is the record of police cars dispatched to the victims' addresses for domestics or related calls for service over the six month followup period. Since all measurement is imperfect, multiple measures pointing to the same conclusions strengthen confidence in the conclusion. If these additional measures of six month recidivism show the same differences across police actions, then we can be much more confident that the differences are real. If they do not show the same pattern, then the interpretation of the results will become less certain. But since the first cut at the followup interview data shows the same pattern as the official recidivism data, we are optimistic that the measures will not be inconsistent.

A further caution is that the "advise" category is a catchall, done in different ways by different officers. Some of them give threats and leave. Others sit down and talk. Others refer the couple to counseling, women's shelters, or the police chaplain. Depending on how it is done, it is still possible that some advising may be more effective than arrest, or even less effective than send, in reducing the risks of subsequent violence.

Despite all the cautions, it is clear that the recidivism measure is lowest when police make arrests. And in many ways, it is the most important measure in the study. It is also the measure that has been used to evaluate most programs for reducing individual criminal behavior. So it is not totally incautious to assume that we do have some reliable differences in violence in the three categories.

What of the policy implications of these findings? We should be very cautious in jumping to policy recommendations from these data. Even when the analysis is complete, it will still only be one experiment. In the physical sciences, many replications--sometimes hundreds--would be needed before reaching a policy conclusion. Moreover, it is still possible that the other measures of recidivism may be inconsistent with the police report data presented here.

Nonetheless, public policy cannot always wait for perfect information, and must rely on the best available facts, even if they turn out later to be wrong. Whether by subsequent analysis of these data, or by subsequent replications, it is possible that further study could lead to different conclusions. Hence, policy-makers should never assume studies "prove" anything; studies merely provide one more piece of information.

This preliminary analysis apparently suggests that, other things being equal, police should arrest suspects for simple domestic assault rather than sending them out of the residence, or even (perhaps) advising the couple. This implication is weakened by all the cautions we have noted. But it is strengthened by the nature of the recidivism measure. Assuming that those offenders who are more aggressive to the police are also more aggressive to their spouses, these findings probably show how to deal with that most aggressive group of "tough cases." Even if the other measures show different patterns for the full range of offenders, these findings could still hold true for what are possibly the most serious cases. We can check this by analyzing the other measures while controlling for criminal records, sample size permitting.

Other things are not equal, of course. Police actions may always have different effects on different people, depending on the maze of factors that influence human behavior. Just as there is no replacement for a doctor's diagnostic judgment, there may be no replacement for a police officer's judgment. Both doctors and police can be wrong, but their use of judgment may be preferable to an automatic rule that applies to every case of lymphatic cancer or spouse assault.

No matter how reliable these findings, there may still be cases in which arrest will backfire. We will try to say more about that in subsequent reports. But the last policy implication that should be drawn from this analysis is that arrests for simple domestic assault should be made mandatory. It may be reasonable to recommend from these findings that police should make more arrests and fewer sends. The data do not necessarily support a recommendation of always making an arrest.

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## FINDINGS OF DULUTH CRIMINAL JUSTICE INTERVENTION MODEL

Duluth, Minnesota has coordinated the responses of nine criminal justice and human service agencies to wife abusers and their victims. Under the auspices of the Domestic Abuse Intervention Project (DAIP), the agencies' common set of policies and procedures is designed to shift the responsibilities of placing controls on the assailant from the victim to the criminal justice system. At the same time, the project offers educational and support systems to the abusers who need help in changing their behavior.

### Basic Assumptions

- 1) The criminal justice system is our society's mechanism for defining and enforcing our standards of right and wrong.
- 2) Wife beating is not an individual couple's problem resulting from a poor relationship, but a social problem caused by women's traditionally subordinate position to men. Men have had society's tacit approval, through our institutions' failure to respond to woman abuse, to maintain their superiority by physical force. Battering, under DAIP, is defined as criminal behavior used to establish or maintain control within a relationship.

### Policies

- 1) Half of Duluth's police officers, selected randomly, initially carried out the following policies:
  - I. In cases where there is an existing court order for protection, the officer will arrest if:
    1. The court order specifically excludes the party from the premises; and
    2. The officer witnesses the party on the premises; and
    3. The officer can verify the existence of the court order.

If there is a complaint of such a violation, but the officer does not witness the party on the premises, the officer shall write an investigation report.

The judges will caution those excluded by court order that any violation of protective order will likely result in arrest and prosecution.

- II. When responding to disturbance calls involving cohabiting adults, the officer will arrest if:
      1. The alleged assault occurred within four hours of the officers arrival; and
      2. There are visible signs of injury or physical impairment on the victim; and
      3. Based on the statement of the parties and the officers' observations, the officer has probable cause to believe an assault has occurred.

If one party alleges an assault, but the other conditions of arrest are not present, the officer shall write a full investigation report on the incident.

- III. Following a domestic assault related or court order arrest, the officer shall inform the victim that a representative of the Domestic Abuse Intervention Project (DAIP) will be in contact with them shortly and shall request that the jailer contact the DAIP to provide follow-up to both parties. Domestic assault related arrests may include charges such as criminal damage to property, trespass, disorderly conduct.

- 2) Prosecutors agreed to:
  - a) call a DAIP advocate to work with each victim from the beginning of each case;
  - b) work with the expanded use of arrest by police officers, whereby the arresting officer became the complaining witness;
  - c) eliminate the previous practice of dropping charges at the victim's request. The prosecutor and advocate focus on the victim's role as a witness in the case and the importance to the community of prosecuting in order to reduce battering.
- 3) Judges worked with DAIP to sentence abusers to participate in DAIP's counseling and education program. Consistency in revoking probation for failure to attend counseling was obtained.
- 4) Four traditional counseling agencies agreed to provide batterers' treatment programs which focus specifically on the violence. Therapy objectives include:
  - . increase client responsibility for his/her behavior;
  - . develop alternatives to battering (time-outs, empathizing, problem solving, tension-reducing exercising, etc.);
  - . increase anger control;
  - . decrease isolation and develop personal support systems;
  - . decrease dependence on the relationship;
  - . increase his/her understanding of the family and social facilitators of battering;
  - . increase identification and expression of all feelings.
- 5) The Duluth's Women's Shelter agreed to:
  - a) support, after much discussion, the DAIP policies of mandatory arrest with probable cause regardless of the victim's desire for arrest, and of prosecution regardless of the victim's wish to drop charges;
  - b) call or visit all victims who had called the police. Previously the shelter had worked only with women who had contacted them;
  - c) conduct educational groups for women.

#### Results

- 1) Of abusers arrested by police officers, 70% pled guilty to the offense. During the same period, none of those whose victims filed charges against them were arrested or pled guilty. Because of the policy's success, it has been expanded to the entire Duluth Police Department.
- 2) Police experienced a 26% drop in repeat calls to victims whose abusers were arrested.
- 3) Counselors reported that the number of continued assaults were reduced, and that court ordered counseling dramatically increased both the number of men in counseling and their length of stay in counseling. The men were also quicker to accept responsibility for their violence.

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The above information is taken from the report, Policing: State of Art/Community Response to Domestic Violence, by Ellen Pence, Director of Domestic Abuse Intervention Project in Duluth, Minnesota.

## PROSECUTING "REAL" CRIME

by Kathleen Quinn

"Real" crimes are generally perceived, by both the criminal justice system and the society at large, as the muggings, burglaries and armed robberies committed by criminals who are unknown to their victims. Certainly these are of grave concern. But when it is literally more dangerous for women to be in their own homes than on the street; and when violent families are creating new generations of violent persons who assault strangers as well as their own family members, it is time that we rethink our definition of criminal behavior.

With a heavy backlog of "real" crimes to prosecute, State's Attorneys have traditionally been reluctant to accept and handle complex and difficult domestic violence cases. "Ninety percent of the women drop the charges" is a frequently made assertion. There is no question that many battered women request that criminal charges be dropped. The reasons for this are many: a very legitimate fear of reprisal (in one jurisdiction, half of the women who requested that charges be dropped were accompanied by their abusers), a lack of understanding of the drawn-out criminal process, economic considerations such as time lost from work, and reconciliation. Another reason is that women are often actively or unintentionally discouraged from proceeding by the prosecutor's office itself. Questions such as "who will support you and the kids if he goes to jail?" frighten many women into foregoing criminal action.

A heretofore ignored reason that many women fail to follow through with prosecution is that in some cases just filing charges achieves the result that women seek: an end to the violence against them. In a recent New York City study of battered women it was found that the threat of criminal prosecution was sufficient to alter the conduct of some violent men.

Prosecutors themselves often have other reasons for not pursuing domestic violence cases: a belief that such cases are inappropriate in court, that the matter is a private, family dispute, that both parties are culpable, or that domestic cases are not winnable and hence cannot contribute to a high conviction rate.

Whatever the reasons for not prosecuting, the message conveyed to the violent abusers is that the injuries and pain they inflict, the crimes they commit, are not serious, that in fact they are often too trivial for the court to even bother with. The failure of the criminal justice system, the system which monitors our cultural norms of right and wrong, to sanction violence within the family gives tacit societal approval for that violence to continue. The fact that domestic abuse is so rampant is evidence that it is not just an individual or marital problem, but is at least in part sustained by the social institutions which respond to it inappropriately.

But our courts can protect domestic violence victims and can require abusers to alter their destructive behavior. A recent publication, Prosecution of Spouse Abuse: Innovations in Criminal Justice Response, by Lisa G. Lerman, describes several jurisdictions where prosecutorial policies have vastly improved the rates of victim follow-through and abuser convictions and have contributed to reductions in violence. The report finds that "Improving the rate of victim cooperation depends not on weeding out ambivalent victims, but on setting up a system which will encourage victims to cooperate and will protect their interests...The probability of victim cooperation is in fact better predicted by the conduct of the prosecutor than by the conduct of either the victim or the defendant."

In Santa Barbara, California, the prosecutor's office treats domestic abuse as a crime against the state and signs criminal complaints against abusers, thus relieving the battered woman of the responsibility of personally charging her partner. As a result of this policy, in 1979 Santa Barbara had an astounding rate of victim cooperation: 92 per cent of the women followed through with prosecution. Los Angeles, with a similar policy, also has victim cooperation rates of over 90%. Given that about 20% of other types of criminal complaints are dismissed due to witness non-cooperation, these figures are even more noteworthy.

Serious prosecution of domestic cases also proves that they are highly winnable. A domestic violence prosecution program in Seattle reports a conviction rate of 83 percent. During the first six months of 1980 in Westchester County, New York, another jurisdiction which aggressively prosecutes spouse assault, 119 batterers were convicted while only 3 were acquitted.

Even in cases where the victim fails to appear at the trial, the Seattle City Attorney has achieved a 34 percent conviction rate by proceeding on the basis of police or witness testimony, or photographs of her injuries.

Some jurisdictions subpoena the woman to testify. While this approach usually works, it has to be used carefully because her failure to appear can result in her being held in contempt of court. In at least one Illinois case several years ago, a woman allegedly spent three months in jail for contempt, while her abuser went free.

Finding that lack of communication between prosecutors and battered women is the "biggest single cause of case attrition," the report stresses the importance of victim advocates to explain the court process and to stay in contact with the victim. It is also important for the prosecutor's office to talk with the woman to determine what she wishes to achieve by prosecuting. In general, women do not want their abusers imprisoned; they want their violent behavior to cease. Thus a sentence to participate in mandatory counseling in exchange for a guilty plea or for suspension of prosecution (diversion) may be appropriate except where the violence is extreme or the abuser has a past record. If this approach is to be at all effective, however, the abuser's failure to comply with the conditions imposed must be followed with swift imposition of sanctions.

A number of abuser programs around the country have found that court mandated counseling which is specifically designed for violent men can be effective in altering their behavior. In fact, since abusers are extremely unlikely to seek help unless forced to, mandated treatment is essential. Even if the man's current relationship with the victim is ending, treatment is important because abusers are highly likely to repeat battering in future intimate relationships.

Other policies can also have a deterrent effect. When the Westchester County, New York prosecutor receives a domestic assault complaint but decides not to file charges, the office often sends the abuser a warning letter. The letter informs the man that a complaint has been received, that the alleged conduct is illegal, and that conviction can lead to incarceration. The staff reports that the victim can predict with a great deal of accuracy whether such a letter will trigger or deter violence. They also report that subsequent violence appears to be rare.

The same office gets police reports of domestic calls and sends letters to victims offering services. About 30% of the victims contacted respond. There has been no report of violence precipitated by these letters. In fact, the prosecutor believes that "the likelihood of subsequent violence is greater if no one intervenes than if services are offered."

State's Attorneys worried about keeping up with their current workloads will obviously be concerned with the resources needed to carry out any of these policies. The experience of the jurisdictions which have implemented them is that while the number of cases may increase somewhat, the number of cases dismissed or abusers acquitted drops dramatically. This results in both fewer resources wasted and in higher conviction rates. Caseloads can also be reduced by creating a diversion program for appropriate defendants.

Illinois State's Attorneys have the added resource of the Domestic Violence Order of Protection. Using its remedies to protect women pending trial can provide the victim with the safety and freedom from intimidation that she needs to follow through with the prosecution. Since the court's power over the batterer is greatest during the first few days after a violent incident, the sanctions imposed then are more likely to deter violence than are later even more serious restrictions. Thus for example, an ex parte Order of Protection, obtained when a charge is filed, which orders the abuser to have no contact with the victim, to vacate his residence and to participate in counseling, can be extremely effective in preventing further criminal acts. An ongoing order granted in conjunction with a sentence of supervision, conditional discharge or probation can continue to protect the victim while her abuser learns to accept responsibility for his violence and to act in an appropriate, non-violent manner.

As the statistics above so dramatically demonstrate, domestic violence is too serious, too widespread and too devastating in its consequences to be trivialized any longer. It is within the power of our criminal justice system to protect battered women and to require their abusers to change, and it is up to us to insist that the system indeed provide "justice for all."

The publication highlighted above can be ordered for \$7.00 from the Center for Women Policy Studies, 2000 P Street, Suite 508, Washington, D.C. 20036.

Sheriff John Jif  
Darr, Sedgewick  
County  
Attachment No. 4  
2-2-84  
Attachment # 4

HOUSE BILL NO. 2711  
ROOM 526-S  
THURSDAY, FEBRUARY 2, 1984  
3:30 P.M.

THIS ACT IS ADDRESSED TO THE SITUATION WHERE A PIMP OR ANOTHER PROSTITUTE RECEIVES THE MONEY AND ANOTHER PROSTITUTE PERFORMS THE SERVICE. THIS WOULD BE BENEFICIAL IN SOME CASES. LINE 40 CHANGES PATRONIZING FROM A CLASS C TO A CLASS B MISDEMEANOR. I AM SUPPORTATIVE OF THAT AS ONE PARTY IS AS GUILTY AS THE OTHER. IT TAKES TWO TO TANGO.

IN THE AREA OF PROSTITUTION IT SEEMS WE SHOULD EITHER PUT TEETH INTO THE LAW OR FORGET IT. UNDER PRESENT CONDITIONS PROSTITUTION IS GIVEN A LOW PRIORITY IN MANY LAW ENFORCEMENT AGENCIES. WHEN AN ARREST IS MADE VERY LITTLE TIME OR FINE IS IMPOSED. I WOULD SUGGEST A MINIMUM MANDATORY JAIL SENTENCE FOR CONVICTIONS LIKE 30 DAYS FOR THE FIRST CONVICTION; 60 DAYS FOR THE SECOND; AND 120 DAYS FOR 3 OR MORE CONVICTIONS. THIS WOULD APPLY TO THE CUSTOMERS AS WELL AS THE PROSTITUTE.

IN ADDITION IT SEEMS APPROPRIATE TO INCLUDE IN THIS ACT A SECTION TO COVER A PERSON SOLICITING ANOTHER TO ENGAGE IN AN ACT OF PROSTITUTION.

Att. 4