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# THE DECONTEXTUALIZATION OF DOMESTIC VIOLENCE

LISA G. LERMAN\*

## I. INTRODUCTION

In 1983, Lawrence Sherman and Richard Berk made headlines in the New York Times with their announcement that police arrests of woman abusers were more effective in deterring subsequent violence than more informal police actions.<sup>1</sup> They based this conclusion on their experiment in Minneapolis, which compared recidivism of violence after six months among 314 abusers who were either arrested, or temporarily separated from their victims by the police, or given some sort of police counseling.<sup>2</sup> The study reported subsequent violence within six months by twenty-four percent of those sent away temporarily, nineteen percent of those counseled by the police, and only ten percent of those arrested. This suggested that the making of an arrest was an effective deterrent.<sup>3</sup>

At the time the Minneapolis Experiment was conducted, a majority of states had adopted statutes that broadened police discretion to make arrests in misdemeanor domestic abuse cases or that mandated the use of arrest.<sup>4</sup> These statutes were part of packages of legislative reforms designed to provide protection and assistance to battered women. Advocates for battered women were pressing

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<sup>1</sup> Philip Boffey, *Domestic Violence: Study Favors Arrest*, N.Y. TIMES, April 5, 1983, at C1.

<sup>2</sup> See LAWRENCE SHERMAN & RICHARD BERK, *THE MINNEAPOLIS DOMESTIC VIOLENCE EXPERIMENT* (Police Foundation Reports 1984).

<sup>3</sup> In discussing the legislative implications of this work, the authors emphasized that "[t]his experiment shows the vital importance of state legislatures empowering police to make probable cause arrests in cases of domestic simple assault." *Id.*

<sup>4</sup> Lisa G. Lerman et al., *State Legislation on Domestic Violence*, in RESPONSE (Sept./Oct. 1983) (reporting that thirty-three states had expanded police power to make arrests in domestic abuse cases, and six states had mandated the use of arrest in some domestic abuse cases).

state legislatures for adoption of additional measures to strengthen legal remedies and police response. The Minneapolis study offered persuasive empirical data which supported the claims of advocates for abused women that law enforcement against abusers was necessary and appropriate.<sup>5</sup>

The Department of Justice has spent \$4 million<sup>6</sup> on replication studies in an effort to test the results of the Minneapolis Experiment. Four million dollars later,<sup>7</sup> the same sociologists turned around and told us that arrest does *not* have a consistent deterrent effect on wife abusers. The New York Times recently quoted Dr. Sherman as saying that "mandatory arrests in domestic violence cases may cause more violence against women in the long run."<sup>8</sup> The Chicago Tribune reported that Sherman recommends the *repeal* of all state laws requiring arrest in cases of misdemeanor domestic violence.<sup>9</sup>

This recommendation represents a myopic view of the problem of domestic violence, disregards twenty years of experience of thousands of advocates around the country, and suggests that policy should be made or unmade on the basis of a set of narrow and arguably misguided studies.<sup>10</sup>

Four papers based on the replication studies funded by the Department of Justice are included in this symposium issue. (These include the articles in this volume by Richard Berk et al., Franklyn Dunford, David Hirschel and Ira Hutchison, and Lawrence Sherman et al.) This article offers comments about and reactions to those articles.

While the studies reporting on this issue deal with an important

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<sup>5</sup> I have the impression that the study tended to focus policy makers on police response as a separate entity and may have led advocates and policy makers to believe that police action *by itself* could offer some sort of solution for abused women. I believe that a great deal more scholarship in the last decade has focused on police response to woman abuse than on prosecution or court action.

<sup>6</sup> Telephone interview with Carol Petrie, National Institute of Justice (Feb. 28, 1991). Petrie estimated that \$4 million had been spent on the six replication studies.

<sup>7</sup> I do not mean to malign the Department of Justice for funding research on domestic violence, or even for funding research on the effect of arrest. But, as my comments indicate, I believe that the studies could have been constructed in ways that would have allowed us to learn more from the data. See, e.g., text accompanying notes 44-45 *infra*.

<sup>8</sup> Daniel Goleman, *Do Arrests Increase the Rates of Repeated Domestic Violence?* N.Y. TIMES, Nov. 27, 1991, at C8.

<sup>9</sup> Rogers Worthington, *Value of Mandatory Arrest for Women Beaters Questioned*, CHI. TRIB., Nov. 19, 1991, at 5C. The newspaper paraphrases Sherman's comment, and I would be delighted to learn that they had misunderstood him.

<sup>10</sup> I do not wish to communicate disrespect for social science research in general, but only to make the point that looking at one corner of a massive and multifaceted problem through a microscope may not produce any significant new knowledge.

topic and produce some interesting data, they reflect a test tube attitude toward solving a social problem. In this case the items in the test tube are men who batter, and the social scientists want to look at the chemical reaction that results from adding mediation, separation of the parties, a warning, a quick little arrest, or a more time-consuming arrest process.<sup>11</sup>

The social scientists have done a careful job of randomly selecting their "mice"<sup>12</sup> (men) and of isolating the effect of arrest or non-arrest. Perhaps we may extract from these studies some objective data that legislators may use in writing statutes. But before we send this data to the legislators, I would suggest a few more experiments that take account of the context in which the arrests take place, and which factor in as variables the victims' wishes and conduct, other pending legal action, the behavior of officers upon responding, whether and how the cases are prosecuted, and what if any sanctions are imposed. To think about how to design those studies, perhaps we should take a peek outside of the test tube to identify the other variables which might have affected the design of the replication studies and the results obtained. In looking at the impact of arrest as a deterrent, the social scientists have not eliminated the other variables from the experiment, since they are not working in a laboratory but on the street. However, they have ignored the impact of some of these variables in doing their analysis.

## II. THE POLICY CONTEXT

How one defines a problem often determines what one perceives to be the solution. In dealing with battering, if the problem is (as some believed in the fifties and sixties) one of female masochism,<sup>13</sup> then the solution is treatment for the victims. If the problem is one of chronic criminal behavior by abusers (a more contemporary view), then an important part of the solution is to enforce criminal law to effectuate deterrence, rehabilitation, incapacitation, or retribution. The researchers who conducted the replication studies do not discuss their own views of the problem or the solution. I

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<sup>11</sup> Each study compares the effects of three of these "treatments".

<sup>12</sup> Others have used mouse images to capture situations in which human beings were being treated as experimental animals, *see e.g.*, ART SPIEGELMAN, *MAUS* (1986), or in which human beings have been placed in dehumanizing situations, *see e.g.*, *MON ONCLE D'AMERIQUE* (Film by Jean Renoir, 1984). Though a mouse would not fit in a test tube, the image is more evocative than that of a paramecium.

<sup>13</sup> *See e.g.*, SNELL ET AL., *The Wifebeater's Wife: A Study of Family Interaction*, 11 *ARCHIVES GEN. PSYCHIATRY* 107 (1964).

begin with a summary of my view, because those beliefs inform my comments on these articles.

Men are violent and abusive toward women because this behavior allows them to establish and to maintain control within the relationships.<sup>14</sup> Many men engage in this behavior because it is effective in maintaining control, and because no one has ever required them to stop. Woman abuse is such a pervasive problem that society, in addition to holding the abuser responsible, must take responsibility for rearranging law, policy, and social services to prevent domestic abuse.

Both civil and criminal legal intervention are useful and important, because they let the individual abuser, the victim, and the community know that woman abuse is a crime and will not be tolerated. Legal intervention can help victims of abuse to become safer and to create conditions in which separation from the abuser is possible. Criminal action gives strong messages that violence is unacceptable, but civil protection orders are very useful also, because of the diverse relief (*e.g.*, child support, temporary custody, return of property, eviction of the abuser, etc.) that is available as part of a civil protection order in most states.<sup>15</sup>

Legal remedies are an essential tool in stopping domestic violence. Some policy-makers have urged that woman abuse be removed from the law enforcement system and relegated to mediation by police or by another public agency. This is a bad idea because the use of mediation ignores the criminality of the abuser's behavior and reinforces his control within the relationship.<sup>16</sup>

One cannot simply initiate one intervention (arrest) in a community and expect to eradicate domestic violence. If the premise of these studies was that making an arrest would stop the violence, the sociologists need only have asked a few advocates whether that was a valid premise. It is the experience of many programs which provide services to battered women that one cannot so much as make a dent in the rate of domestic violence without a coordinated response by the law enforcement, social service and mental health sys-

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<sup>14</sup> See R. EMERSON DOBASH & RUSSELL DOBASH, *VIOLENCE AGAINST WIVES: A CASE AGAINST THE PATRIARCHY* (1979).

<sup>15</sup> See NATIONAL INSTITUTE OF JUSTICE, *CIVIL PROTECTION ORDERS: LEGISLATION CURRENT COURT PRACTICE AND ENFORCEMENT* (1990); Lisa G. Lerman, *A Model State Act: Remedies for Domestic Abuse*, 21 HARV. J. ON LEGIS. 61 (1984).

<sup>16</sup> My reasons for this view are explained in LISA G. LERMAN ET AL., *DOMESTIC ABUSE AND MEDIATION: GUIDELINES FOR MEDIATORS AND POLICYMAKERS* (1990). See also Lisa G. Lerman, *Mediation Of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women*, 7 HARV. WOMEN'S L. J. 57 (1984).

tem.<sup>17</sup> To be effective, the entire community of professionals and service providers who come into contact with wife abuse must be educated about the nature of the problem, and they must collaborate to address the complex problems presented by each case.

Failure of coordination will cause the failure of any individual remedy. For example, if a statute requires the police to make arrests but the police department does not adopt a policy implementing the statute, the officers responding to calls may not even be aware of the statute.<sup>18</sup> If a particular department adopts a policy implementing the statute, but the officers do not receive adequate training about the nature of woman abuse, they either may fail to make arrests or make inappropriate arrests.<sup>19</sup> If the police are asked to make arrests but the prosecutor files charges in few of the arrest cases, the police may refuse to act, because they believed that making arrests in cases that will be dropped is a pointless exercise. If the prosecutor adopts a policy of aggressively prosecuting abuse cases but fails to provide victim advocacy services to maintain contact with victims, attend to their safety needs and help them to understand the law enforcement system, then the prosecutor often is doomed to frustration because the victims of abuse are less likely to remain available to testify.<sup>20</sup> If the prosecutor sets up a good system within the office and obtains a high rate of convictions and guilty pleas, but the mental health community does not develop expertise on treatment of abusers and establish close communication with the courts, then most abusers will receive little effective attention. If the probation department fails to monitor abusers who have been convicted of or who plead guilty to charges of spouse abuse, then there will be no deterrent to engaging in post-conviction recidivism.

Requiring that police arrest suspects in domestic violence cases is a useful component of a coordinated response.<sup>21</sup> Absent a re-

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<sup>17</sup> See e.g., Jeffrey L. Edelson, *Coordinated Community Responses*, in *WOMAN BATTERING: POLICY RESPONSES* 203 (Michael Steinman ed. 1991).

<sup>18</sup> David Hirschel and Ira Hutchison point out that since the Minneapolis Experiment, there has been a fourfold increase in police departments with pro-arrest policies, but that most departments still have not changed their policies to conform with statutes. David Hirschel & Ira Hutchison, *Female Spouse Abuse and the Police Response: The Charlotte, North Carolina Experiment*, 83 J. CRIM. L. & CRIMINOLOGY 73 (1992).

<sup>19</sup> In the District of Columbia, a departmental policy requiring police to file reports and make arrests seemed to have virtually no impact on police conduct. See Sandra Torry, *DC Targets Domestic Violence: Law Requires Arrest if Abuse Suspected*, WASH. POST, Nov. 11, 1991, at C1.

<sup>20</sup> See U.S. ATTORNEY GENERAL'S TASK FORCE, ON FAMILY VIOLENCE, U.S. Department of Justice, Final Report 10-26 (1984); LISA G. LERMAN, PROSECUTION OF SPOUSE ABUSE: INNOVATIONS IN CRIMINAL JUSTICE RESPONSE (1981).

<sup>21</sup> Some of the reasons for preferring that arrest be mandated by statute are ex-

quirement that arrests be made, police make very few arrests in domestic abuse cases.<sup>22</sup> If the police have the discretion to decide whether or not to make an arrest in a woman abuse case, they usually exercise that discretion not to make the arrest. Mandatory arrest is therefore one feature of an appropriate criminal justice response, but it is not a sufficient response.<sup>23</sup>

### III. MAKING SENSE OF THE DATA

My comments on these data are informed by incomplete understanding of the technical language in the replication papers.<sup>24</sup> Nevertheless, I venture a few observations based on the researchers' own conclusions about their data and a few questions about how the researchers constructed the experiments.<sup>25</sup>

#### A. IS ARREST AN INDEPENDENT DETERRENT?

The replication studies have produced rather inconsistent answers to the question of whether arrest is an effective deterrent of domestic violence. In some cases, different conclusions have been reached about one another's data. In two out of four sites, Milwaukee and Colorado Springs, the researchers found a deterrent effect from making arrests compared with other police responses in cases

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plained in Sarah Buel, *Mandatory Arrest for Domestic Violence*, 11 HARV. WOMEN'S L. J. 213 (1988).

<sup>22</sup> Sherman & Berk, *supra* note 2, at 2 (reporting studies that indicated arrest rates in domestic violence cases of ten percent and three percent). A 1989 study in DC found an arrest rate of five percent in domestic violence cases. D.C. Coalition Against Domestic Violence, (Press release) "Study of D.C. Police Response to Domestic Violence Shows Police Do Not Make Arrests, in Violation of their own Guidelines," November 3, 1989.

<sup>23</sup> Changing criminal justice response to a problem is complex. It is not always possible to secure change in every institution at the same time. I recently participated in drafting a mandatory arrest bill for the District of Columbia, as part of the Legal Committee of the D.C. Coalition Against Domestic Violence. In our decision to make police response a primary focus, we considered the chicken/egg question: we were very concerned both about inadequate police response and about the apparent unwillingness of the United States Attorney's Office (which acts as the local prosecutor in D.C.) to prosecute any but a trivial number of domestic violence cases. Some of us felt that by strengthening police response, we would put pressure on the prosecutor's office to take these cases seriously because when an arrest is made, a decision regarding whether or not to file charges must be made.

<sup>24</sup> It does seem that empirical research presented in an interdisciplinary journal to an audience of policy makers ought to be translated into English. These papers are comprehensible in significant part, but they do not reflect much awareness of their non-social science audience.

<sup>25</sup> The National Institute of Justice may do some comparative analysis of the data produced by the six replication studies. Telephone interview with Carol Petrie, National Institute of Justice (Feb. 28, 1991). Reports from two of the sites (Atlanta, GA, and Dade County, FL), are not yet available. *Id.*

in which the suspect was "employed, married, high school graduate, and white" (Milwaukee) and in which the suspect was employed by the U.S. military (Colorado Springs). In Milwaukee, arrest was observed to have a criminogenic effect (i.e., the arrest appeared to increase the likelihood of subsequent assault) on a socially "marginal" subcategory of cases. In two other sites, Omaha and Charlotte, the data does not indicate any difference in the likelihood of recidivism between the cases in which the suspects were and were not arrested.

In Milwaukee and Charlotte, researchers identified different factors that predicted whether subsequent violence was likely. In Milwaukee,

[e]mployed, married, high school graduate and white suspects are all less likely to have any incident of repeat violence reported to the domestic violence hotline if they are arrested than if they are not. Unemployed, unmarried, high school dropouts and black suspects, on average, are reported much more frequently to the domestic violence hotline if they are arrested than if they are not.<sup>26</sup>

In Charlotte, in contrast

the strongest predictors of recidivism were measures of prior criminal activity, such as possession of a local (felony or misdemeanor) record, possession of a state (felony) record, and number of prior non-traffic arrests within the preceding five years. Further, while prior criminal activity was associated with recidivism, other offender-related variables, such as race, age, marital and employment status, were not. Moreover, knowledge of an offender's prior criminal activity produced only a modest contribution to predicting correctly an offender's probability of recidivating.<sup>27</sup>

However, the Charlotte study found that the likelihood of recidivism was not significantly affected by whether or not the police made an arrest—the only reliable predictors were the offender characteristics presented above. Researchers David Hirschel and Ira Hutchinson explain that "[t]he results of the Charlotte experiment are decisive and unambiguous, and indicate that arrest of misdemeanor spouse abusers is neither substantively nor statistically a more effective deterrent to repeat abuse than either of the two other police responses examined in this location." They conclude that "[t]he results of the Charlotte and Omaha studies suggest that there is not adequate support for a mandatory or presumptive arrest policy based on specific deterrence. The hope that arrest alone could contribute to the solution of this serious problem is unfulfilled."<sup>28</sup>

<sup>26</sup> Lawrence Sherman, et al., *The Variable Effects of Arrest on Criminal Careers: The Milwaukee Domestic Violence Experiment*, 83 J. CRIM. L. & CRIMINOLOGY 137, 168 (1992).

<sup>27</sup> Hirschel & Hutchison, *supra* note 18, at 104.

<sup>28</sup> *Id.* at 115, 117.



Two of the replication studies, then, found that arrest deterred some people and two of the studies found that arrest did not appear to have a deterrent effect. No site, however, produced data indicating a deterrent effect as strong as that shown by the Minneapolis data. In Minneapolis, the strong deterrent effect was observed in a population that (based on the Milwaukee and Charlotte studies) would indicate a high likelihood of subsequent violence; in the Minneapolis sample, sixty percent of the suspects were unemployed, fifty-nine percent had prior arrests, and eighty percent had committed prior domestic assaults.<sup>29</sup>

#### B. ARREST OUT OF CONTEXT

What conclusions are we to draw from this new wisdom?<sup>30</sup> If arrest does not clearly help to stop violence or reduce calls to the police (depending on which objective one had in mind), should it be abandoned?

These studies provide a limited measure of the specific deterrent effect of arrest when all other forms of intervention are ignored or avoided. If we measured any other aspect of the criminal justice system against this yardstick, it undoubtedly would be found wanting. If the system does not accomplish all of the intended effects, or if it might not, should we abandon it?

As to the "good risks," arrest may be beneficial regardless of the action or inaction of other parts of the law enforcement system. As to "bad risks," it appears that arrest alone *might* be an aggravating circumstance. Even among the likely recidivists, the data from Milwaukee suggest that arrest does appear to have a short-term (one month) deterrent effect.<sup>31</sup> But to achieve a longer-term deterrent effect, it actually may be necessary to enforce the law in other more lasting ways.

Will arrest produce a demonstrable deterrent effect when combined with prosecution, incarceration, treatment for the abuser, shelter and other services for the victim and her children, and other court orders addressing contact, custody, support and other issues? This question remains to be examined in another set of experiments.

Even if a law enforcement approach fails to result in specific

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<sup>29</sup> Sherman & Berk, *supra* note 2, at 5.

<sup>30</sup> See *infra* at 238-40.

<sup>31</sup> In analyzing the Milwaukee data, Berk et al. point out that "the two arrest treatments seemed to delay the onset of new violence by a little more than a month compared to the warning treatment." Richard Berk et al., *A Bayesian Analysis of the Colorado Springs Spouse Abuse Experiment*, 83 J. CRIM. L. & CRIMINOLOGY 170, 173 (1992).

deterrence in some cases, enforcement of the law (including arrest, prosecution, and the use of other legal remedies for abuse) sends an appropriate message to the community—that domestic violence is not acceptable. Specific deterrence of a particular offender is not the only goal. When an arrest is made, the victim may become more confident of her right not to be abused; her children might begin to understand that violence is not “normal” and is not their mother’s fault; other men and women in the community may judge their own situations and conduct differently if they see or hear about arrest or prosecution of a neighbor or co-worker.<sup>32</sup>

### C. POLICE DATA VS. VICTIM DATA ON SUBSEQUENT INCIDENTS

One striking difference between the Minneapolis data and the data produced in the replication studies is that, in tabulating subsequent incidents of violence, the Minneapolis study collected information from victim interviews *and* police reports and arrived at cumulative totals. The more recent studies kept these two sources of information separate but accorded greater weight to the data acquired from the police. For example, in comparing the outcomes obtained at the various sites, Richard Berk and his colleagues used “official data” as the measure of “outcome,” explaining that “the ‘cleanest’ story is told from the treatment assigned and the official data,” the data produced by the victim interviews is characterized as “weaker.”<sup>33</sup>

Berk and his colleagues also indicated that the authors of the Milwaukee study, while they collected both official and victim data, “have (to date) focused on the official data, which they felt was far more reliable than the data extracted from the interviews with victims.”<sup>34</sup> Indeed, the researchers were not able to talk to all of the victims, nor did the victims consistently call the police when another incident occurred.

In the Colorado Springs study, the researchers noted that “when the Colorado Springs outcome is constructed from the victim reports rather than from the official data, a strong treatment effect surfaces; the odds multiplier for arrest is approximately .65, and the Bayesian ninety-percent confidence region no longer includes 1.0.”<sup>35</sup> I think this means that the odds of a subsequent incident of violence being reported after arrest are sixty-five percent of what

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<sup>32</sup> See Hirschel & Hutchison, *supra* note 18, at 118.

<sup>33</sup> See Berk, *supra* note 31, at 194.

<sup>34</sup> *Id.* at 173.

<sup>35</sup> *Id.* at 197.

they are if no arrest is made. This appears to parallel the Minneapolis data. The authors suspected that the victims linked to bad risk suspects were more difficult to re-contact, which would lead to over-emphasis of data collected from good risk suspects. Another possibility, however, is that police data is an unreliable source of information about reincidence of violence and that the results produced using such data are ambiguous and misleading. A third possibility is that the victims of bad risk suspects are more likely to request police assistance than are victims of good risk suspects, because of the social stigma attached to calling the police. If this is the case, the apparent deterrent effect among good risk suspects may represent under-reporting.

The Charlotte study does confirm that police data produces a drastically low estimate of the actual percentage of cases in which more violence occurs. The authors noted that, "[b]ased on police data, repeat incidents are the exception rather than the rule." Interviews with victims, however, indicate "alarmingly high levels of repeat incidents of spouse abuse, confirming that the scope of the problem is far greater than police data indicate. . . . 61.5% of women have experienced another abusive incident within six months."<sup>36</sup>

Use of police data is preferred over victim data because the whole sample of victims is assumed to have at least the opportunity to call the police. Victim data is incomplete because some victims cannot be recontacted, while others cannot remember or do not wish to talk about what happened. But the variables that determine whether anyone calls the police when violence occurs are *at least* as unpredictable and as complex as the location and memory of the victims. The data looks neater if police reports are used, but do they reflect even a representative sample of the incidence of recidivism?

#### D. VARIATIONS IN POLICE BEHAVIOR: ABUSER DETERRENCE AND VICTIM DETERRENCE

What do we know about how the police behaved during the experiments? In Milwaukee, the police worked from a script, at least with the suspects whom they did not arrest. We are not told what they said, but we can presume that there was some degree of consistency in police communications with the parties. In Omaha, on the other hand, there was little effort to make the police behavior within each treatment uniform. Suppose that, at one site at which no script was given to the officers, the following two scenarios took place:

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<sup>36</sup> See Hirschel & Hutchison, *supra* note 18 at 116.

In one arrest case, the officer came in, looked around and, in the presence of the victim, said the following to the abuser:

"Why did you hit her?"

"She's been catting around again."

"Listen, buddy, I know how you feel. Believe me, I understand. But we are doing this study at the department, and I am going to have to take you in. If it were up to me, I would not do it. Maybe I would even take *her* in. But under our new policy, I'm supposed to bring you in."

In another case, suppose that an officer came in and, after surveying the room, took the victim to a private place to talk, out of the earshot of the abuser, and said:

"Ma'am, I can see you got something you did not deserve. Can you tell us about it?"

During her story, he took notes, nodded, and listened. Then he told her that the abuser would be arrested but might be released in a matter of hours. He then asked whether she would like transportation to a safer location. After helping the victim to work out her plans, the officer returned to the other room and said:

Sir, you are under arrest for misdemeanor assault. Just because she is your wife doesn't mean you can do this. If you are convicted of these charges, you could spend six months in jail or be fined \$10,000 or both. And believe me, quite a few guys are doing time for just what you did to your wife tonight. You will come with us.<sup>37</sup>

In the replication studies, these two interactions would be categorized as the same "treatment." It would not be uncommon for officers in the same department to behave so differently. The divergence of behavior might be limited by the existence of state or municipal laws or departmental policies that encouraged police to treat violence as a crime. It might be limited by the active implementation of those laws or by policies of the police department, the prosecutors' office, or the courts.

We are not offered much information about the context in which each of these experiments was conducted. To the extent that police behavior could vary this much, inconclusive results would not be surprising.

Police behavior during response undoubtedly affects both the likelihood of subsequent violence (detering the abuser) and the likelihood that the victim will call the police for help during the next incident (detering the victim).<sup>38</sup> If police behavior in a significant

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<sup>37</sup> These dialogues are fictitious, but they are extrapolated from many conversations between the author and abused women, police officers, and advocates for abused women about the range of conversations that take place between police officers and abused women.

<sup>38</sup> In 1984 Sherman and Berk observed that

number of cases deterred victims from calling the police again, then the variance in behavior might obscure any differences between the assigned interventions.

Victims of abuse may also have been deterred from calling the police in cases assigned to a non-arrest intervention because of disappointment with the police response. If the police warned the abuser and did not make an arrest, the victim may be less likely to call the police for subsequent incidents because she may perceive that they did not help her. (Imagine, for example, that the police "counseled" the couple, and the beating continued following the departure of the police.) If the police made an arrest, the victim may be more likely to call them after the next incident because she may perceive that they were taking action to protect her. This could skew the data on recidivism higher in the arrest group and lower in the warning group, compared with the actual recurrence of violence.<sup>39</sup> The likely skewing raises additional questions about the researchers' reliance on the police data rather than the victim interviews.

Do the descriptions of the experiments reveal anything about the type of skewing that might have occurred? Is it in fact likely that the non-arrest group was discouraged from reporting? Joan Zorza points out that in Charlotte and Omaha the victims were encouraged to leave the home in many cases.<sup>40</sup> This intervention could be read by the victim as signifying that the police believe that she is at least partly responsible for the problem. If the abuser tends to blame the victim for the violence and the victim blames herself, then many victims would be prone to interpret police eviction from the home as signifying that the victim had done wrong.

In many cases the victim is not safe if she stays home, and the only safe solution is for her to go elsewhere. The police can encourage the victim to relocate without communicating blame, but if this "removal of one of the parties" was part of a standard operating procedure, one might wonder what was said, which victims were removed, how they interpreted their eviction, and what impact that

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There was one factor . . . that seemed to govern the effectiveness of arrest: whether the police showed interest in the victim's side of the story. . . .

If the police do listen, that reduces the occurrence of repeat violence even more. But if the victims think the police did not take the time to listen, then the level of victim-reported violence is much higher. One interpretation of this finding is that by listening to the victim, the police "empower" her with their strength, letting the suspect know that she can influence their behavior.

Sherman & Berk, *supra* note 2, at 6.

<sup>39</sup> This analysis assumes that the victims prefer law enforcement to warning.

<sup>40</sup> Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence, 1970-1990*, 83 J. CRIM. L. & CRIMINOLOGY 46, 68 (1992).

conduct could have had on subsequent reporting of violence to the police by those victims.

E. DOES POLICE INTERVENTION "CAUSE" SEPARATION, OR VICE VERSA?

In the Milwaukee report, any police response to a domestic violence call is said to have the effect of tending "to split the couple up." Many couples ceased to cohabit between the time of the arrest and the time of the follow-up interview.<sup>41</sup> The researchers assumed that separation reduces the risk to the victims, presumably by reducing contact hours. They give no basis for concluding that there is a causal connection between the police response and the separation, beyond the reduced number of cohabitants. In light of the frequent escalation of abuse that accompanies the victim's attempt to separate, this assumption is a dubious one.<sup>42</sup>

*Perhaps, instead, it is separation that "causes" arrest.* Victims of abuse may call the police because they are attempting to escape the violence and the many other types of control exercised over them by their abusers. Perhaps the police are likely to be called at a point at which there is some psychic separation that has not yet resulted in the woman obtaining a separate place to live. Calling the police certainly communicates a message that the behavior is unacceptable. These data may indicate that women who call the police are likely to separate from their abusers. To assume that the separation is "caused" by the arrest is to treat the women as inanimate objects who are acted upon by the abusers and the police but whose own actions are disregarded.

This other imponderable human factor (the victims, largely invisible in these studies) may account for some of the other observed effects of arrest. Consider the "marginal" group in Milwaukee in which arrest seems to increase the likelihood of more violence. If the victim calls the police, arrest of the abuser communicates to the woman that she has a right not to be abused. The arrest may validate her struggle to escape from the abuser. This may lead her to insist on greater personal autonomy—to be able to leave the house without permission, not to be followed around, to be able to go to

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<sup>41</sup> Sherman et al., explain:

ninety percent of the 1200 police reports and seventy-four percent of the 900 initial victim interviews reported that the couples were cohabiting on the date of the presenting incident. This compares to only forty-one percent of the total follow-up interviews reporting cohabitation since the presenting incident.

Sherman et al., *supra* note 26, at 152.

<sup>42</sup> See Martha Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991).

school or get a job, see friends, or whatever. At the same time the abuser may be angered by the appearance, evidenced by the arrest, that the "system" was on her side. These types of dynamics could explain increased violence.

This hypothesis could explain the results reported by Sherman, et al., but it would lead to different conclusions. Rather than recommending that the police cease to make arrests because the arrest is viewed as a "cause" of subsequent violence, this analysis would indicate that the law enforcement system must continue to offer protection and support to the victim and to incarcerate or monitor the abuser after an arrest is made.

#### F. THE RELATIONSHIP OF ARREST AND UNEMPLOYMENT TO SUBSEQUENT VIOLENCE

The Milwaukee data indicate that abusers who are unemployed are more likely to become violent in the six months following arrest than they would be if they had not been arrested. The authors do not speculate as to the reasons for this correlation, except for some references to the stake in society (need to go to work) of employed men and their consequent significant response to arrest.

There are other possible explanations of this data. One, mentioned above, is that the victims of employed abusers may be more reluctant to call the police after an arrest is made due to social stigma or other reasons. There may be no deterrent to violence; there may be only a deterrent to calling the police.<sup>43</sup> Another possibility is that, if the victim is employed and the abuser is not, the abuser may resent the victim's greater level of productivity and social status, and resent being economically dependent on the victim. Such resentment, exacerbated by arrest, could increase the likelihood of assault.

#### G. WHAT HAPPENED AFTER ARREST?<sup>44</sup>

Most of the researchers seem to prefer to create the impression that they are studying the effect of arrest in a vacuum. They note the fact that the courts do not prosecute many abuse cases, but they then treat this as an immutable status quo and ignore the fact that the effect of arrest may depend entirely on the type of follow-up. They refer to arrest as both "treatment" and "punishment," as if

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<sup>43</sup> Some victims might be deterred from calling the police because of threats of harm or death that would follow any additional contact with the police.

<sup>44</sup> See BRIAN FORST ET AL., *WHAT HAPPENS AFTER ARREST?* (1977).

our criminal justice bureaucracy is a toggle switch capable of only two things: arrest or non-arrest.

These studies provide very little information about whether there was any attempt to enforce the law after arrest in the cases included in the study. They also fail to examine whether the other intervention had any impact on the deterrent effect of arrest. The Charlotte study mentions that thirty-five percent of the cases in the sample in which the police made an arrest were prosecuted, but it does not discuss the outcomes in those cases (except to mention that less than one percent of the convicted offenders received jail sentences). The study also fails to mention the reasons why sixty-five percent of the cases did not result in prosecution, or whether the abusers in cases that did result in prosecution were more effectively deterred than were abusers in the cases that were not prosecuted.<sup>45</sup>

To study effectively the deterrent effect of arrest and prosecution, or to compare the impact of arrest alone against the impact of arrest and prosecution, it would be necessary to randomly assign a group of cases to prosecution. At least in Milwaukee, the researchers tried to secure the cooperation of the prosecutor's office and failed. Perhaps this question will be asked during the site selection process when the next study of this sort is planned. There are some prosecutors who are interested in stopping domestic violence.

Another datum we are given regarding additional procedures is that the Colorado Springs study looked at a large number of cases in which arrest was followed by the victim's obtaining an Emergency Protection Order, which was not part of the experiment at the other sites.<sup>46</sup> We are not told what relief the court ordered or in what proportion of cases the court issued a longer-term order. The rate of subsequent violence in Colorado Springs appears to be lower than that in Milwaukee and Omaha.<sup>47</sup> Is this because victims obtained protection orders or because victims received some other services that were not part of the experiment? These studies ask their readers to assume that the outcomes in these cases are linked to arrest alone, even without knowing what other interventions or relief victims may have obtained.

Perhaps taking a "non-marginal" working person and letting him spend a night at the police station may be enough *all by itself* to scare him into behaving better. Perhaps arrest alone does not have

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<sup>45</sup> See Hirschel & Hutchison, *supra* note 18 at 117.

<sup>46</sup> In Milwaukee, cases in which a victim had obtained a restraining order were excluded from the sample.

<sup>47</sup> Berk, et al., *supra* note 31, at Table 3.



that impact on people who have been in such a situation a few times before. If one accords credence to the new results indicating that arrest may not be a significant deterrent for some domestic abusers, then the implication of this study is that higher priority must be given to prosecuting these cases, obtaining protection orders for the victims,<sup>48</sup> and ensuring that the abusers are incarcerated or placed in treatment programs for alcohol abuse or for battering, or all of the above.<sup>49</sup>

#### H. THE ATTITUDES OF THE RESEARCHERS

The articles presenting the results of the replication studies that are published in this issue disclose little about the authors' views on domestic violence or about their experience in this field. One wonders whether the researchers believe that they are presenting objective reality rather than a point of view.<sup>50</sup>

Who are the people who conducted this research? What do we know about their perspectives about and experience working on do-

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<sup>48</sup> After a suspect is arrested, a judge can (as a condition of release or as an independent civil order) issue a very specific injunction designed for the protection of the victim. The effect of arrest might be quite different if such an order is issued, in writing, and a copy given to the police.

<sup>49</sup> Prosecutors can require abusive men to get treatment for their violence problems while charges are pending and can ask a judge to require continued treatment as part of the disposition of the case. Abusive men generally will not go to treatment of their own free will, but they can be compelled to go if they have criminal charges pending against them (as a condition of release on bail), or have a chance at a suspended jail sentence. This type of coercion is not found to interfere in the treatment of abusers as it might with other problems, and it provides ongoing monitoring and attention to the behavior of the abuser. See Donald G. Dutton & Barbara M.S. McGregor, *The Symbiosis of Arrest and Treatment for Wife Assault: The Case for Combined Intervention*, in *WOMAN BATTERING: POLICY RESPONSES* 131 (Michael Steinman ed., 1991). These authors conclude, after examining the effectiveness of specialized treatment for abusers in Canada, that

"law and order" and treatment approaches operate symbiotically to reduce further violence. Arrest serves both a didactic and deterrent function, showing the man that wife assault is unacceptable and will be punished by the state. Treatment then provides the opportunity for the man to learn new responses to the interchanges with his wife that formerly generated violent behavior.

*Id.* at 150.

<sup>50</sup> I provide here some information about my own background, to enable the reader to better understand the perspective from which I write. I began working on woman abuse in 1979 when I became the Staff Attorney on a Family Violence Project at the Center for Women Policy Studies. I had had little exposure to issues of domestic violence before I started work on this project. I brought to this project a feminist perspective, and some previous work on violent pornography to my role as Staff Attorney. Working under a federal grant from the Law Enforcement Assistance Administration, I studied the usefulness of the various legal interventions in domestic violence situations, reading the literature, participating in professional meetings, and doing site visits, mostly to federally funded demonstration projects. My perspective reflects extensive contact with lawyers and other advocates for abused women.

mestic violence? From the articles, one can discern that they are twelve men and three women, mostly academics, a few police officers. The non-inclusion of this type of information is standard practice in most professional writing. However, more information would be useful in trying to understand their work. What do they believe about domestic violence? Why did they do this work? One can discern partial answers to some of these questions from the articles, but they are written in traditional anonymous academic style. This "invisible author" approach is especially ill-suited to this field because the personal beliefs of the professional make an enormous difference in how the person perceives the problem of domestic violence and the appropriate responses. Did the researchers receive any advice or assistance from those who work with battered women or with men who batter? If not, why not?

The articles offer little information about the methodology used by these researchers. We do not know who conducted the follow up interviews, whether they were done by men or women, whether they were done in person or on the telephone, whether the abuser was present during the conversation, or what questions the interviewers asked. How can we interpret these results without this type of information?<sup>51</sup>

I ask these questions in part because these studies approach the problem of wife abuse from some considerable distance; the studies are not designed with a good understanding of the perspective of the victim.<sup>52</sup> I offer a few examples that raise concerns about the authors' perspectives.

### 1. "Non-Serious" Domestic Violence

In the Omaha study, the author mentions that "serious (*i.e.*, felony) cases were excluded" from consideration. Because this was a randomized experiment, in which some women received less protection than they would have if police had been using their own discretion, it was essential to try to screen out cases in which the risk of harm from the experiment was greatest. Nevertheless, anyone who has worked with battered women who has tried to get assistance from the police or the courts would not have characterized the cases included in the experiment as "non-serious." Most advocates for

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<sup>51</sup> Dr. Sherman reported to me that in Milwaukee, all of the victim interviewers were women, about half were black, and said that they were recruited from battered women's shelters and from universities. Telephone conversation between Lawrence Sherman and the author, May 7, 1992.

<sup>52</sup> In some of my comments I undoubtedly overgeneralize in my reactions to these articles—this is almost inevitable in a short commentary of this sort.

battered women regard any violence between intimates as serious. In every case of domestic violence, there is a likelihood that the victim will suffer more violence at the hands of that offender. In most cases, he has continued access to the victim. The attempt to distinguish serious from non-serious domestic violence is useful only to those who wish to exclude some of the cases from the law enforcement system.<sup>53</sup>

One could define some violence as non-serious by looking at the degree of injury inflicted. This analysis is inappropriate because much unmistakably violent behavior causes no injury at all. For example, if a man throws a lamp at the head of a woman but misses and the lamp explodes against the wall, the woman may not be injured at all, but her life may be in serious danger.

If one measures the seriousness of the violence by intent, one finds that the defining characteristic of domestic violence is that it is intended to cause physical harm to a woman or to make her fear that she will suffer harm in the future. It need not involve any touching. The expression of that intent by a man toward a woman with whom he is or has been in an intimate relationship is serious. Is it non-serious if he only wants to scare her, or if he intends to hurt her but not very badly? The answer is apparent in the question.

If those who conducted these experiments shared the perspective that all domestic violence is serious, they might have been reluctant to undertake this research. Suppose one of the calls to the police that was assigned to mediation was followed a week later by a murder? If this had been perceived as a genuine possibility, the experiments might have been conducted differently, or, indeed, not done at all.<sup>54</sup> Was this category of crime selected for this experiment in deterrence because of a perception that it is less serious than other violent crime?

The authors of the Charlotte study assert that it is obvious that "premium jail space will not be used on misdemeanor spouse abus-

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<sup>53</sup> See, e.g., Charles A. Bethel & Linda R. Singer, *Mediation: A New Remedy for Cases of Domestic Violence*, 7 VT. L. REV. 15-25 (1982) (explaining the exclusion of domestic violence cases involving serious injury from mediation, and then offering as an example of a non-serious injury case one in which the abuser carried a gun and the victim's injuries required a visit to the emergency room but involved no broken bones.) *Id.* at 22, 24.

<sup>54</sup> When the Minneapolis experiment was funded, many advocates for abused women (I among them) were concerned about the risks posed to victims from random assignment, and the about ethical dilemma and potential liability for the researchers presented by doing this type of experimental work. We were especially concerned about experimenting on a set of cases that involve violent crime and that present a high likelihood that the same suspect will attack the same victim again.

ers.”<sup>55</sup> The tone of this comment is similar to the comment in the Omaha study about the exclusion of “serious” cases of domestic abuse. Do the authors believe that what we are dealing with here is a little non-serious criminal activity, perhaps down there with littering or shoplifting? In fact, it is common practice by law enforcement officials to classify as a misdemeanor, domestic violence offenses that would be treated as felonies if the act in question had been committed against a stranger. Thus, the misdemeanor/felony distinction is not a meaningful one in the domestic violence context.

## 2. *Failure to Hold the Abuser Responsible for the Violence*

In the Omaha study, one of the “treatment”<sup>56</sup> options was to send “one of the parties” away from the scene.<sup>57</sup> The author says nothing about who was or should have been removed—as if the only significant part of the intervention is to get the parties temporarily physically separated and that who goes where is irrelevant. This neutral reference to separation suggests that the researcher may not recognize the fairness question (why should the victim leave because of the spouse’s criminal conduct?) and the safety question (if the victim stays, will she be a sitting duck for the next assault) implicit in any “separation” intervention. Assuming that the author has described the intervention adequately, this “separation” option, built into the experiment, is one which appears to make no systematic effort to communicate to the abuser that his violence is his responsibility. Perhaps some officers would communicate that idea, and others would not. Does the author understand that the essential purpose of enforcing the law in domestic violence cases, as in other criminal cases, is to force the offender to take responsibility for controlling his conduct?

## 3. *The Exclusion of Non-Cohabitants*

The researchers in the Charlotte and Milwaukee studies included only spouse or “spouse-like” relationships, perhaps reflecting a belief that these are the main categories of battering relationships that are worthy of study. This erroneous assumption

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<sup>55</sup> See Hirschel & Hutchison, *supra* note 18, at 118.

<sup>56</sup> Perhaps it is standard to refer to the thing you are testing in a social science experiment as a “treatment,” but it seems misleading in this context, in that the word conveys the impression that the arrest itself is a discrete and independent response, complete and separate from any other aspect of law enforcement. The use of this word reflects the failure of the researchers to view arrest as a step in the law enforcement process.

<sup>57</sup> See Franklyn W. Dunford, *The Measurement of Recidivism in Cases of Spouse Assault*, 83 J. CRIM. L. & CRIMINOLOGY 120 (1992).

may be an unfortunate consequence of the absence of terminology that accurately describes the problem of the battering of women who are or have been in intimate relationships with their abusers. Despite inadequate terminology, most people who work in domestic violence learn early in their work that this is not a problem defined by marital status or living arrangement but by intimacy and aggression. These studies include no mention or explanation of the reasons for excluding the significant number of battering cases that involve people who are or have been dating but not cohabiting.

Perhaps the researchers recognized that there is a significant group of battering relationships that involve parties who are or have been dating but not living together.<sup>58</sup> If they had not known that before, then in Charlotte this should have become apparent from the fact that police received 47,687 calls that were coded as domestic violence, and only 18,963 were determined at the scene to involve "spouse-like" situations.

It is possible that the definition of the problem to exclude non-cohabitants reflects a definition in a statute or police policy. If this is the case, it should be explained. Otherwise the research perpetuates this too-narrow definition of domestic violence. This is important because others may draft statutes and policies based on this research, which provide remedies or services to victims who are married to or living with their abusers, and which exclude others. Another thing that is lost by the exclusion of non-cohabitants is the possibility of understanding the relationship between deterrence and the degree of commitment of the parties. The non-cohabiting parties may be younger, their relationships of shorter duration; and it is possible that they would react to police intervention in quite a different way.

#### 4. *The Probable Cause Determination*

The researchers in the Charlotte study excluded from the experiment eighty-two percent of the 18,693 spouse-like cases because "there was no probable cause to believe that a crime had been committed."<sup>59</sup> The authors then asserted that "[t]he above analysis clearly indicates that arrest is not an option in the vast majority (82.2%) of the spouse-like cases [to which the police respond]" because of the absence of probable cause.<sup>60</sup> This assumes that police

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<sup>58</sup> Often domestic violence continues after a couple separates, whether the couple has been married or not. See Mahoney, *supra* note 42. Domestic violence also occurs in dating relationships in which the couple is not cohabiting.

<sup>59</sup> Hirschel & Hutchison, *supra* note 18 at 94.

<sup>60</sup> *Id.*

determinations of probable cause are objective and accurate. Because in most cases the police took no action or merely calmed things down, the author concluded that these were situations that involved "minor problems requiring little or no police action."<sup>61</sup>

What is wrong with this picture? For almost twenty years scholars, advocates, and victims of abuse have been documenting that the police tend to perceive, when looking at domestic violence situations, that no crime has been committed unless the victim has been injured so badly that hospitalization is required. The police often classify felony cases as misdemeanors or as non-criminal if the suspect and the victim are intimate.<sup>62</sup> Dispatchers assign these cases low priority, so the response is often very slow, which reduces the likelihood that the abuser will be on the scene when the police arrive. Most important, police often find no probable cause because the police do not believe the victims' allegations, sometimes because the abuser denies them and sometimes for other reasons.<sup>63</sup>

To examine whether there really was no objective basis to find probable cause to arrest in such a high percentage of cases, the researchers would need to interview the victims who called the police and compare the police conclusions about the situation with the victims' stories. It seems unlikely, however, that 19,000 people in Charlotte called the police (almost 9,000 "spouse-like") without a good reason.

In drawing conclusions about their data in an earlier draft of their article, Richard Berk and his co-authors offered the suggestion that if some offenders pose higher risks of recidivating, one could "further constraints on high risk offenders . . . . For example, bail could be made much higher . . . . *suspects* could be strongly encouraged to make use of local shelters for battered women which

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<sup>61</sup> *Id.*

<sup>62</sup> A graphic example offered by Nancy Loving, *infra* note 63, from a newspaper article:

It was about 4 o'clock in the afternoon when a call came into the 103rd Precinct station house in Jamaica, Queens, from a woman who said her husband had beaten her, that her face was bleeding and bruised. She thought some of her ribs had been broken.

"Can you help me?" she pleaded to the police officer who answered the phone. "My husband's gone now, but he said he would come back and kill me. She was also frightened, she said, that he would start beating the children when she returned.

"It's not a Police Department thing," the officer told her. "It's really a family thing. You'll have to go to Family Court tomorrow. There's nothing that I can do."

N.Y. TIMES (June 14, 1976).

<sup>63</sup> See UNITED STATES COMMISSION ON CIVIL RIGHTS, UNDER THE RULE OF THUMB: BATTERED WOMEN AND THE ADMINISTRATION OF JUSTICE 12-22 (1982); See generally NANCY LOVING, RESPONDING TO SPOUSE ABUSE AND WIFE BEATING: A GUIDE FOR POLICE (1980).

might also reduce risk of retaliation."<sup>64</sup>

Okay, it is a typo. And probably after the editors read this comment, it will be corrected so that the victims are no longer referred to as the suspects. But one assumes that this article was carefully written, and probably proofread by more than one person before the draft was turned in. And of course anyone could make a mistake. But one must wonder—why this mistake? Why do these authors mix up the victims and the abusers? Would an advocate for battered women have made this error?

### 5. *The Goals of the Researchers*

What do the researchers tell us about their motivations for undertaking this work? Sherman, et al. say little about the purpose of their study. What they do say is that, among the police with whom they were working, "the primary concern was the reduction of calls to police about domestic violence citywide."<sup>65</sup> This made it important for them to look seriously at whether a disproportionate number of calls were coming from a small number of offenders.

Perhaps it is so obvious as not to require mention, but I would have thought the purpose of this study was to determine how to prevent men from abusing women. If the police simply want to reduce the number of domestic calls that they have to respond to, I can think of two simpler methods. (1) Disconnect the phone. (2) Go back to the good old days, and just stop answering these calls.

## IV. CONCLUSION

What are the implications for state legislators and policy makers of this new research on the effectiveness of arrest as a deterrent in domestic violence cases? Dr. Sherman takes the position that in some cases, arresting the offender makes subsequent violence more likely, and therefore, the laws mandating arrest of men who abuse women should be repealed. Sherman acknowledges that prosecution and incarceration of offenders would incapacitate them and might be a deterrent to others. But, he urges, resources are inadequate to undertake prosecution of these cases, because they are so numerous, and even if the resources are available, many prosecutors are not interested.<sup>66</sup>

Dr. Sherman explains this recommendation by asserting that

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<sup>64</sup> Draft corresponding to Berk et al., *supra* note 31, at 198-99 (emphasis added).

<sup>65</sup> See Sherman, et al., *supra* note 26, at 155.

<sup>66</sup> Telephone conversations between Dr. Sherman and the author, April 23 and May 8, 1992.

based on the data indicating an escalation effect of arrest among domestic abusers who are unemployed, unmarried, and black, it would be irresponsible to continue to mandate arrests. While this position undoubtedly reflects genuine concern that the police should not take action which might cause harm, this reasoning also provides a justification for withdrawing the criminal justice system from efforts to stop domestic violence. The repeal of the mandatory arrest laws would effect a dramatic cessation of treatment of domestic abuse as a crime, since, in the absence of a mandate, the police tend to exercise discretion not to arrest men who abuse women.

The replication data make a stronger case for more law enforcement than they do for less law enforcement. The data show a high likelihood of repeat assaults—this population of victims is in greater danger than are victims of other violent crime. The data suggest that the risks of subsequent violence is greater if the abuser has a criminal record (Charlotte) or if the abuser is unemployed, unmarried, or black and is arrested (Milwaukee). This offers a possible basis for targeting certain categories of cases for careful and diligent prosecution and for strenuous efforts to jail offenders and to provide services to the victims. No one has yet tested whether a full-scale effort to enforce the law in these cases will produce deterrence, but neither has such an effect been demonstrated for cases involving homicide or drug-dealing. The entire system would grind to a halt if policy initiatives were contingent upon empirical proof of their effectiveness.

In states which have or are considering enactment of mandatory arrest laws, legislators should examine other steps that would help to ensure full enforcement of the law. Legislative options include: funds for domestic violence programs, including shelters, counseling programs; funds to set up domestic violence units in prosecutors' offices; funds to provide training for prosecutors, judges, court personnel and others, on handling of domestic violence cases. State legislatures could enact legislation that would require prosecutors to keep data on their handling of domestic abuse cases and require them to make a written record of reasons for decisions not to prosecute. They could enact legislation that would increase the post-arrest protection offered to victims of abuse during and after prosecution of a charge, by providing for criminal courts to issue specific protective orders as a condition of release and as a condition of probation, and by increasing supervision of abusers while charges are pending and during probation.

In some states it is not possible at present to propose new appropriations. If new resources are not available, the question be-



comes one of priorities. Prosecutors need to re-evaluate the low priority often assigned to domestic assault. If a principal goal of prosecuting criminals is to protect members of a community from harm, then crimes of violence against persons should be given priority over crimes against property. Violent crimes in which the victim is in continuing danger should be accorded even higher priority than isolated assaults against strangers. A prosecutor might consider reallocating resources presently devoted to prosecution of shoplifters, prostitutes, and burglars to prosecuting men who repeatedly assault women with whom they are or have been in intimate relationships.

The data from the replication studies should lead us to worry about communities in which the police are required to make arrests, and in which the state takes no post-arrest action to protect the victims from further assaults. The escalation effect of arrest on some offenders makes clear that "arrest-only" is not an adequate law enforcement response to domestic violence. But the lesson for legislators, researchers, advocates, prosecutors, judges, and police is that we must focus not only on police conduct in domestic abuse cases, but also on whether and how prosecutors and judges are enforcing the law.