

Joshua Rowland wrote the following paper based on his own research. This research was conducted as a requirement for Professor Catherine Moran's *Methods of Social Research* course.

How Injury and Conjugal Status Effect the Prosecution of Domestic Violence.

This study examined arrests (N=44) for domestic violence from a rural community. The extent to which injury and conjugal status of the offender and victim influence the prosecution of their case was examined. This study found that injury does not play a significant role in predicting prosecution of a case, and that the conjugal status of parties involved also is not a significant predictor of prosecution. The implications of these results on policy, and possible alternative explanations are discussed.

Introduction

In the year 2001, more than half a million American women (588,490 women) were victims of nonfatal violence committed by an intimate partner (U.S. Department of Justice, 2001). That equates to 1,612 victims per day. This is an alarming statistic and because of it as well as others, extensive research has been conducted in the area of domestic or intimate partner violence. Domestic violence used to be treated as a private matter and was never one for police involvement. Even when police officers were involved they generally only separated the parties for the night and did nothing to try and stop future violence. The role of police officers has slowly changed and through research society has come to realize domestic violence is a cyclical process. The process is when the abuser and victim go through periods of tension building, followed by the violent act and then there is the, "I'm sorry," or second honeymoon phase. The process continues on

cycling through each phase.

Through my training and experience I've come to know that this cycle is true. I've responded to several domestic violence cases since becoming a police officer in August of 2006, and I've come to realize that without police intervention it is extremely hard to break the cycle of domestic violence. I've also realized that even when I make an arrest as a police officer, that the majority of the time it seems as though the case is not prosecuted. This has led me to wonder why even after intervening, victims of domestic violence don't want to cooperate with the prosecution of their attacker. This paper will focus on what is possibly influencing the prosecution, or lack of, in domestic violence cases. Specifically, I will look at cases where a victim was injured versus not injured and the type of relationship the attacker and victim had and how they effect the prosecution of a case.

The history of domestic violence is well known and policies have been influenced by research done in the field. For instance, must arrest policies derived almost completely out of the Minneapolis experiment done by Sherman & Berk (1984). The Minneapolis study has produced several replicated studies where police officers responding to domestic violence calls must make an arrest if a crime has been committed. This was contrary to a previous era where police officers had discretion over who to arrest and who not to. Now in an effort to take domestic violence more seriously, police officers jobs are "simplified" by removing their discretion.

Today we are faced with a new frontier in domestic violence law. New must arrest policies have taken the discretion away from officers, but while arrests have gone up prosecution levels have remained the same (Herschel & Hutchinson, 2001). What

factors have influenced prosecution? Are they the same as the ones that influenced police officers to arrest? Do must prosecute policies need to be adopted? These questions and others have been explored in different areas of research. The research has shown many different things, some inconclusive findings and some correlations have been found. Hopefully by analyzing the differences in the research we can seek to end or lower domestic violence and create effective policies for both the police and the community. In order to have thorough research on the factors associated with the prosecution of domestic violence, it is necessary to consider it from several view points; the victims, the police, the prosecutors and the offenders.

The research that has been conducted has focused mainly on the victim's reasons for prosecution and the police response. However, prosecutors have their own separate issues. They have been hesitant to bring cases forward for the same reasons why police originally were hesitant to arrest (Herschel & Hutchinson, 2001). These reasons include that the victim could recant their statements and therefore would be unreliable on the stand, that domestic violence is a private matter and should not be in view of the law, and that it disrupts an already dysfunctional family setting. Studies have shown that must arrest policies have reduced recidivism, and as a result it appears as though the legal system is a necessary tool to help combat domestic violence.

Several new policies have risen from studies conducted on the factors which influence prosecution and through identification, the policies have be designed to enhance the factor or try and negate it. This policies include no drop policies and victimless prosecution. These policies may have arisen out of contradictory data, and may not be the best possible solution though. For instance, the extent of injuries received by a

victim has been shown to not be a significant factor in the prosecution process. This has been both refuted and supported, but it would help for policy reasons if it could be understood why it is or it isn't. (Herschel & Hutchinson, 2001) (Ford, 1983)

The role of injury on the prosecution of domestic violence:

There are different opinions on whether or not the level of injury received by a victim promotes more prosecution or less, but there is an association between the strength of the case if it is carried forward. McLeod (1983) found that the more severe an injury the victim received the more likely to seek prosecution, which logic would tell us this makes sense. Ford's (1983) study however, found that there was a weak connection between the severity of injury received by the victim and whether or not the case was prosecuted. A later study by Ford concluded that there is inconsistency amongst the literature as to whether or not the severity of injury is a factor in a domestic violence case being prosecuted. Schmidt and Steury (1989), found that there was a small association between injuries received and whether or not the case was prosecuted. They instead insisted that it was substance abuse and prior arrests which were the strongest factors in determining whether or not a case was prosecuted. Another similar study conducted by Martin (1994) found that after examining court cases in Connecticut, substance abuse and prior abuse were the two strongest predictors, but the more severely a victim was injured the less probability of prosecution, (possibly due to the fact that the charges were upgraded beyond simple assault to aggravated assault, which is no longer considered domestic violence.)

This research seems counterintuitive and that the more severely injured a victim was we would expect to see a greater probability of prosecution. If the strongest predictor

of prosecution is prior abuse, then that would mean it would be necessary to have a previous conviction for abuse for someone to be more likely prosecuted. Henning & Lynette (2005) found that prosecutors were more likely to take cases in which the victim was injured but only slightly, as the prosecutor took 75% or more cases regardless of injury. While I can find no steadfast reason to disagree with these findings, I am troubled by their implications. Therefore I would like to reexamine what role injury plays in prosecution to see if in the absence of repeated abuse, it is significant to prosecution.

Another way that research has attempted to explain the factors associated with prosecution is by doing qualitative studies with victims and getting their opinions on what factors influenced their decision to want to help in the prosecution of their attacker. What is puzzling to me is that the level of injury was ranked very low among other factors. Miller (2003) looked at two types of power, personal and legal, and hypothesized that through personal power, a victim of domestic violence could form bond with the arresting officer or some other person associated with the prosecution and that that was a stronger deterrent. Miller (2003) proposed that women who feel they have more personal and legal power would be more likely to call the police, want their spouse arrested, and would be more likely to prosecute. Miller also looked at economic independence as well as a victims satisfaction with the criminal justice system to determine how powerful a victim felt and whether or not this affected their decision to want to prosecute.

Miller found that a women who was married and living with their abuser had less personal power than those that were not married and not cohabitating. This would make sense if spouses were less likely to prosecute, which is something other research has filled the gaps on. Miller also found that the most important factor in whether or not a

victim would want to prosecute would be the amount of legal power they felt they had. This was directly correlated to how safe they felt. If a victim feels safe following an attack they are more likely to use the legal system as a means of punishing or rehabilitating their attacker. If this is true it would have major implications for policy concerning the post arrest actions for law enforcement and the community. This adds another layer to the already detailed and complex web of why domestic violence cases are prosecuted.

What may be missing amongst these aforementioned studies is how does the prosecution of domestic violence compare to the prosecution of other crimes. However, Martin (1994), found that there has been no empirical research that shows victims of family violence desire any less or more want for prosecution than most crimes. So while it is still unclear if injury plays a role in the decision to prosecute, one factor that is, is the type of conjugal relationship a victim and offender share.

The role of conjugal status in the prosecution of domestic violence

Ford (1993) found an association between the conjugal status of the victim and offender. Women who were married, divorced, or those that were separated but had children were more likely to have their cases held back than those women who were cohabitating or previously cohabitated. There were several major differences between Ford's study and today's laws though. First, a woman no longer has to swear out a warrant and police can arrest a suspect within a certain time frame after an assault has occurred in most states. Secondly, women are no longer responsible for the prosecution, the police department now is. With this shift in policy, new studies have examined why prosecution does and does not occur, however few have reexamined the relationship

between conjugal status and whether or not a case gets prosecuted. Also whether or not the seriousness of injuries received is a predictor of a case more likely to be prosecuted. What seemed interesting and should be explored about the severity of injuries and its effect on prosecution was that women were no more or less likely to drop charges. Therefore Ford's study could be dated and may not contain current, accurate trends on the role of conjugal status in the prosecution of domestic violence. It should therefore be reexamined.

More recent studies have found that married couples are more likely to result in arrest and prosecution. Avakme & Fyfe (2001) found that spousal relationships are more likely to result in arrest and prosecution than non spousal, contrary to their thoughts that police would be more lenient to spousal couples. This contradicts Ford's earlier thoughts that married couples are less likely to have a partner arrested. It should be realized however that at the time of Avakme & Fyfe's study, there are must arrest policies in place versus the time of Ford's. The increase in spousal arrests could potentially be attributed to the implementation of must arrest policies. Herschel & Hutchinson (2001) found that couples who were previously married or who were previously cohabitating were more likely than those who were currently married or cohabitating to have their case prosecuted.

While there may be a difference in arrests, this would make more sense sociologically because there is more social distance between previously married persons than currently married persons. Herschel & Hutchinson (2001) also found that marital status was the only demographic statistically significant in the decision to prosecute. This contradicts earlier studies that stated race was a contributing factor. Wooldredge &

Thisleweit (2005) found that an individual's living arrangements is a significant predictor of rearrest measures. Persons who resided with their victims are more likely to be arrested and arrested sooner than other living arrangements. Wooldredge & Thisleweit (2005) also found that a non-cohabitating suspect is less likely to have charges dropped and is slightly more likely to get jail time for an assault than those that live with their partner at the time of assault. These studies have all examined the nature of a living arrangement and its effect on prosecution, but what they are lacking is why a person's living arrangement makes a difference in prosecution, more so than the level of injuries received.

The current and past research on domestic violence and prosecution has told us that injury may or may not play a role, and that conjugal status does play a role in prosecution. However, conjugal status research is unsure of which type of relationship is most likely to result in prosecution. Likewise, injuries received has been associated both with an increase and decrease in prosecution. With such contradictory data, it is hard to develop effective policies concerning the prosecution of domestic violence. Therefore, to gain a better understanding and totality of influences on prosecution, this paper will reexamine these variables. Based on the previous research I have developed the following hypothesis's; that a domestic violence case where injury has resulted is more likely to be prosecuted than a case that does not have injury, that spousal couples are less likely to be prosecuted than separated parties, and that spousal couples are also less likely to be prosecuted than boy friend/girl friend relationships.

Method

Data:

Arrest statistics were gathered from the Moultonborough Police Department (MPD), in Moultonborough NH from a sample of 44 arrests. Moultonborough is a seasonal vacation town with a year round population of approximately 3,500 residents, and at peak during summer time 25,000 residents. The Moultonborough Police Department consists of 11 full time officers and 3 part time officer. MPD maintains 24 hour patrols.

The statistics were taken from all arrests for domestic violence from January 1, 2004, to January 1, 2006. The data included 44 males ranging in age from 18-65 years of age and 44 females ranging from 18-63 years of age. Males accounted for 72.3% of offenders while females accounted for 27.7%. Conversely females accounted for 72.3% of the victims, while males accounted for 27.7%. The sample was completely of the Caucasian race, as Moultonborough has an extremely small minority population. Other demographic and socioeconomic data was excluded due to the possibility that it could single out an individual case.

Measures:

Domestic Violence: Since the statistics were gathered based on arrests, the statutory definition for domestic violence was used. It includes the following:

NH RSA 173:B

"Abuse" means the commission or attempted commission of one or more of the following acts by a family or household member or current or former sexual or intimate partner and where such conduct constitutes a credible threat to the plaintiff's safety:

- (a) Assault or reckless conduct as defined in RSA 631:1 through RSA 631:3.
- (b) Criminal threatening as defined in RSA 631:4.

(c) Sexual assault as defined in RSA 632-A:2 through RSA 632-A:5.

(d) Interference with freedom as defined in RSA 633:1 through RSA 633:3-a.

(e) Destruction of property as defined in RSA 634:1 and RSA 634:2.

Prosecution: Any arrest in which a plea is reached or a trial is held, regardless of whether or not the defendant was found guilty.

Conjugal Status: Refers to the type of relationship the victim and offender had. There were three types which an arresting officer could choose from on Information Management Corporation (IMC); spousal, boy friend and girlfriend, and separated.

Spousal Relationship: includes currently married, heterosexual couples, whether or not the relationship was sexually consummated.

Boy Friend/Girl Friend Relationship: includes romantic partners and engaged persons, whether or not the relationship was sexually consummated.

Separated: includes any type of former romantic relationship, whether or not it was ever sexually consummated.

Injury: Any visible marking, discoloration of the skin, or injury reported by the arresting officer. The arresting officer must report the type of injury in his report and could choose from apparent minor injury and apparent major injury. Due to the fact that all assaults reported apparent minor injury, the variable was dichotomized into injured or not injured using the same definition. It is acknowledged that the results would only be able to be generalized to apparent minor injury cases.

Procedure:

Consent was first obtained from Corporal Peter W. Beede and then Chief of Police Scott Kindmond of the Moultonborough Police Department in order to gain access

to the arrest data and necessary statistics. The Moultonborough Police Department tracks all its arrests on Information Management Corporation, which tracks all of the identifying characteristics of victims, offenders, and witnesses, as well as all pertinent information for the crime. Using IMC, a search was conducted for the period between January 1, 2004 and January 1, 2007, of all arrests associated with domestic violence. The search resulted in 44 arrests for domestic violence. The cases were turned over to me from MPD with identities of parties involved unknown.

Over the course of two Saturdays in March and one in April, I categorized that data for each arrest at MPD. I stored the data on a password protected computer and shredded the hard copies of the cases once I was done. The data was categorized based upon the options available on IMC and according to domestic violence statute RSA 173:B. As stated previously, due to the homogeneous results for injuries associated with assaults, I dichotomized the category into injured versus noninjured. Table 1 illustrates the crimes that the offenders were charged with.

Table 1

| Crime Charged With | | | | |
|-------------------------------|-----------|---------|---------------|--------------------|
| | Frequency | Percent | Valid Percent | Cumulative Percent |
| Assault | 32 | 72.7 | 72.7 | 72.7 |
| Crim Threat | 2 | 4.5 | 4.5 | 77.3 |
| Vandalism | 2 | 4.5 | 4.5 | 81.8 |
| Violation of Protective Order | 6 | 13.6 | 13.6 | 95.5 |
| Burglary | 1 | 2.3 | 2.3 | 97.7 |
| Reckless Conduct | 1 | 2.3 | 2.3 | 100.0 |
| Total | 44 | 100.0 | 100.0 | |

Results

To test whether victims who are injured are more likely to have their case prosecuted than those that are not injured, a chi square analysis was performed. It was

found that fifteen (65.2%) cases were prosecuted where the victim was injured, while eight (34.8%) cases were prosecuted where the victim was not injured. Conversely, eighteen (85.7%) cases were not prosecuted where the victim was injured and three (14.3%) cases were not prosecuted where the victim was not injured. The relationship between injury and prosecution was not significant however, $\chi^2(1, N=44) = 2.46, p > .05$.

Table 2 is the cross tabulation of victim injury status by prosecution.

TABLE 2

Victim Injured * Case Prosecuted Crosstabulation

| | | | Case Prosecuted | | Total |
|----------------|--------------------------|--------------------------|-----------------|--------|-------|
| | | | Yes | No | |
| Victim Injured | Yes | Count | 15 | 18 | 33 |
| | | Expected Count | 17.3 | 15.8 | 33.0 |
| | | % within Case Prosecuted | 65.2% | 85.7% | 75.0% |
| | No | Count | 8 | 3 | 11 |
| | | Expected Count | 5.8 | 5.3 | 11.0 |
| | | % within Case Prosecuted | 34.8% | 14.3% | 25.0% |
| Total | Count | 23 | 21 | 44 | |
| | Expected Count | 23.0 | 21.0 | 44.0 | |
| | % within Case Prosecuted | 100.0% | 100.0% | 100.0% | |
| | | | | | |

To test whether spousal couples are less likely to be prosecuted than separated and boy friend/girl friend couples, a chi square analysis was performed. It was found that six (26.1%) cases of prosecution involved spouses, zero (0.0%) cases involved separated persons, and seventeen (73.9%) involved boy friend/girl friend relationships being prosecuted. This relationship was found to be non significant $\chi^2(2, N=44) = 2.85, p > .05$.

Table 3 is a cross tabulation of conjugal status by prosecution.

TABLE 3

Conjugal Status * Case Prosecuted Crosstabulation

| | | | Case Prosecuted | | Total |
|-----------------|--------------------------|--------------------------|-----------------|--------|-------|
| | | | Yes | No | |
| Conjugal Status | Married | Count | 6 | 7 | 13 |
| | | Expected Count | 6.8 | 6.2 | 13.0 |
| | | % within Case Prosecuted | 26.1% | 33.3% | 29.5% |
| | Seperated | Count | 0 | 2 | 2 |
| | | Expected Count | 1.0 | 1.0 | 2.0 |
| | | % within Case Prosecuted | .0% | 9.5% | 4.5% |
| | B/F G/F | Count | 17 | 12 | 29 |
| | | Expected Count | 15.2 | 13.8 | 29.0 |
| | | % within Case Prosecuted | 73.9% | 57.1% | 65.9% |
| Total | Count | 23 | 21 | 44 | |
| | Expected Count | 23.0 | 21.0 | 44.0 | |
| | % within Case Prosecuted | 100.0% | 100.0% | 100.0% | |
| | | | | | |

Within their own categories, six (46.2%) spousal cases were prosecuted, while seven (53.8%) were not, zero (0.0%) cases of separated parties were prosecuted while two (100.0%) were not, and seventeen (58.6%) cases of boy friend/girl friend were prosecuted and twelve (41.4%) were not. The relationship again was not significant $\chi^2(2, N=44) = 2.85, p > .05$. Table 4 is a cross tabulation of prosecution by conjugal status.

TABLE 4

Conjugal Status * Case Prosecuted Crosstabulation

| | | | Case Prosecuted | | Total |
|-----------------|--------------------------|--------------------------|-----------------|--------|--------|
| | | | Yes | No | |
| Conjugal Status | Married | Count | 6 | 7 | 13 |
| | | Expected Count | 6.8 | 6.2 | 13.0 |
| | | % within Conjugal Status | 46.2% | 53.8% | 100.0% |
| | Seperated | Count | 0 | 2 | 2 |
| | | Expected Count | 1.0 | 1.0 | 2.0 |
| | | % within Conjugal Status | .0% | 100.0% | 100.0% |
| | B/F G/F | Count | 17 | 12 | 29 |
| | | Expected Count | 15.2 | 13.8 | 29.0 |
| | | % within Conjugal Status | 58.6% | 41.4% | 100.0% |
| Total | Count | 23 | 21 | 44 | |
| | Expected Count | 23.0 | 21.0 | 44.0 | |
| | % within Conjugal Status | 52.3% | 47.7% | 100.0% | |
| | | | | | |

Discussion

The goal of this study was to reexamine the relationship between the prosecution of domestic violence, conjugal status of the parties involved, and how injury effects prosecution. While this has been done in the literature before, inconclusive and varying results were found. This study hypothesized that domestic violence cases where

an injury occurred was more likely to be prosecuted than one where injury did not occur. Secondly, that a spousal relationship was less likely to be prosecuted than a separated couple. Thirdly that a spousal relationship was less likely to be prosecuted than a boy friend/girl friend relationship.

The present findings suggest that injury does not play a significant role as to whether or not a case is prosecuted. This supports previous findings by both Ford (1983), and Henning & Lynette (2005). However, it is important to note that due to the small sample size of this study it is difficult to look at significance alone. If we look at the percentages of cases prosecuted in which injury occurred and did not occur, it appears to also support the finding that injury is not a significant predictor because more cases were prosecuted than not prosecuted where the victim was not injured, but less cases were prosecuted versus not prosecuted when the victim was injured. There were only a total of eleven non-injury cases however, and those cases were for more serious crimes like reckless conduct, burglary, and violation of a protective order (which MUST be prosecuted under NH state law), so we would expect those cases to be prosecuted. Both Ford (1983), and Henning & Lynette (2005) had much larger samples than this study and still found similar results. Both studies also looked at multiple crimes, and found that the noninjury cases included more serious crimes as well. It appears as though seriousness of the crime is a potential predictor which future research could examine.

The present findings also suggest that conjugal status of the parties does not play a significant role in the prosecution for domestic violence. Spousal couples are no more or less likely to be prosecuted than boy friend/girl friend relationships or separated relationships. In fact when looking at the percentages, separated couples are the least

likely to be prosecuted. This goes against Blackian theory, which states the more social distance between two parties, the more likely they were to prosecute the crime. However there were only two arrests between separated parties and therefore the relationship cannot be given any serious weight.

The findings did support Avakme & Fyfe (2001) findings which held that spousal couples were more likely to be prosecuted than any other type. This was contrary to their hypothesis, as was mine. One reason I can propose for this is that spousal couples spend more time together, which means there is a possibility for multiple abuses due to the fact that a spouse is often economically dependant on the other. Herschel & Hutchinson (2001) found that conjugal status was a significant predictor however, and had a much larger sample size, but they looked only at assaults and not other crimes. Ford's (1983) study found that spousal couples were less likely to be prosecuted. The difference that could be attributed to the differences this study is seeing amongst the literature is the possibility that must arrest policies have resulted in police officers arresting more spousal couples today. If we applied Blackian theory, we would see that police officers were less likely to arrest spousal couples in the past due to the social distance. Now with must arrest policies, officers have to arrest if a crime has been committed and therefore it is a possibility that more spousal cases are being prosecuted as a result.

Strengths and Weaknesses:

A strength of this study was that there was a large number of assault cases and it appears as though they are the majority of arrests that are made when police are called to a domestic dispute. If this is the case, then I propose that there are mitigating factors which might be influencing the role of injury on prosecution, such as the routine ness of

the call, or the large volume of that type of arrest compared to other, more uncommon crimes.

Weaknesses of the study were the small sample size which resulted in having to little cases to make generalizable findings. Another, which may or may not be a weakness was the fact that only one prosecutor handles the cases for MPD. This meant that every case went through the same person, and also there was small number of domestic violence cases compared to what a larger jurisdiction would handle. It is unclear from the previous literature how many prosecutors were used, so it appears as though future research would want to take this into account.

While none of this studies hypothesis were supported, it has helped to clear up some inconsistencies among the literature. While there was an extremely small sample size in this study, and a larger one would have been desired, the information presented in this study still helped to show that injury does not play a role in domestic violence, and that in fact the previous literature has been supported. An alternative reason for this is that it is the severity of the crime which predicts prosecution. An issue that was not resolved is the effect of conjugal status on prosecution. A desirable future study might include a longitudinal study where proportional data was obtained from each type of relationship, as this was not the case in the present study. Also a larger sample size, involving different jurisdictions and prosecutors would be included.

I enjoyed doing this research, as it has helped me to view phenomenon from many different viewpoints, even though I may only be testing a few hypothesis's. I learned how to run statistical tests and how to interpret their results, which has helped me to read and understand research articles better. I feel that I can pick up an article and read it from

beginning to end now without flipping past parts, and understand why the authors are doing what they are doing and be able to be critical of their methods and results.

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