Violence Against Women:
Synthesis of Research for Prosecutors

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Prosecuting Violence Against Women

This report reviews research on prosecution policies and practices to protect women from violence. It examines three general categories of violence against women: domestic violence, rape and sexual assault, and violations of protection orders[1] and stalking.[2] Every State has unique definitions of what crimes may be covered and every jurisdiction has its own criminal justice structure and legal culture. A policy that works for one jurisdiction may not work under the customs and laws of another. One must generalize from one place to another in attempting to implement effective policy. A major objective of this report is to give guidance on how to assess the value of adopting policies used elsewhere, while cautioning against the reckless transfer of policy from jurisdiction to jurisdiction. Despite an abundance of good ideas on prosecuting violence against women, few policies have been evaluated for their effectiveness in protecting victims from continuing abuse. Indeed, little research exists on the impacts of prosecution in any context. One must often make a best guess as to what policy will work better than others and minimize the risk of harm.

Prosecuting violence against women poses unique challenges for an adversarial system that is oriented to winning in terms that may not be attuned to protecting victims. Victims and prosecutors do not necessarily share common interests in pursuing prosecution (Davis and Smith 1995; Ford 1983). Victims often expect more of prosecutors than is realistic, and prosecutors often promise more than can be delivered. As prosecutors lament the lack of "victim cooperation" in cases of violence against women, victims also complain of prosecutors' lack of cooperation in meeting victims' wishes. In fact, the policies and practices favored by prosecutors may not always be what is best for preventing violence against women. Nor are a victim's wishes always the best prescription for her own safety or the safety of others.

It is taken for granted that prosecution is a good response to crime; obviously it signifies the state's condemnation of criminal behavior. Criminal justice rests on an ideology that links prosecution to holding criminals accountable for their behavior as part of the state's responsibility to seek justice in criminal matters and to protect society from criminal behaviors. Punishment and retribution are deeply embedded in this perspective. But does prosecution actually prevent violence against women? Can prosecution help to alter a man's disposition such that he will not abuse women and, if he already has, influence him to desist? This report seeks to answer these questions with evidence from the research literature. Rigorous controlled analyses of prosecution policies and anecdotal or limited experiential reports on policy effects have been reviewed. What is presented below is a synthesis of the literature most relevant to formulating protective policies for responding to violence against women.

A Note on Research and Practice

The task of synthesizing rigorous empirical research on how alternative prosecution policies may or may not affect case outcomes and victim safety is relatively easy. Few studies exist that fit this description. More challenging would be to bring together and assess the policy value of every casual or informal observation reported in unrefereed sources (e.g., Web sites), the legal literature, or the popular media. This report does not take that approach; instead, it cautions

strongly against accepting uncritically information that merely supports a hypothesis without trying to refute it. For example, the prosecutor who cites "success stories" under a favored policy is likely to be relying on selective observations without searching for possible contrary evidence from the cases that "failed."[3]

Apart from questions of research rigor, research findings are limited by context, by attributes of victims and offenders, and by law. For example, the most rigorous research on no-drop policies addresses victim-initiated complaints of battery. The current debate over no-drop policies concerns cases brought to a prosecutor following on-scene warrantless arrests by the police: cases in which victims are most likely to be reluctant witnesses for the prosecution. Any consideration of no-drop policy must account for the context in which it operates.

In the absence of relevant research, prosecutors commonly seek guidance from lore grounded in tradition or in myths, stereotypes, selective observations, and political pressures. Applicable research findings may be ignored when they compete with popular policies that are more consistent with familiar practices. This report aims to cover all key issues on policy for prosecuting violence against women with suggestions for prudent implementation of untested policy by monitoring for unanticipated harm.

Finally, there is potential for confusion over the meaning of prosecution as reported in the literature and in this report. The term is commonly used to describe any activity by a prosecutor to bring a case to some resolution other than outright dismissal. This may include agreeing to diversion from court proceedings, an activity clearly distinct from adjudicating a case by trial or plea bargain. Differences in meaning preclude global statements regarding prosecution impacts. Although the term "prosecution" is used freely in this report, its meaning is qualified as needed to understand research findings.

Protective Functions of Prosecution

As recently as the early 1980s, the women's movement called for the criminalization of wife beating. Many jurisdictions still lack a commitment to criminal justice interventions against domestic violence, as evident in their maintaining no-arrest policies, in discouraging prosecution, or in minimizing seriousness and sanctions appropriate by statute (e.g., Buzawa and Buzawa 1992; Ford 1983; Hart 1993). Several States still grant a marital exemption in rape cases (Bergen 1996). Violations of protection orders are not enforced (e.g., Harrell and Smith 1992). And only since the 1990s have States codified stalking as a crime (Crowell and Burgess 1996). In short, opportunities to prosecute may have outpaced prosecutors' acceptance of their objectives.

Historically, a variety of goals have motivated prosecution, ranging from seeking justice and accountability to demonstrating community disapproval of violence against women. Today more than ever, prosecutors seek to protect women from abuse (American Prosecutors Research Institute 1997). Prosecution is seen as a means of crime control through deterrence, incapacitation, and/or rehabilitation. Although prosecution may not explicitly serve these functions, to the extent that prosecutors participate in plea negotiations and make recommendations to judges for

case dispositions, the prosecutor plays a direct part in crime control activities. Prosecution may protect women in general (general deterrence) by demonstrating to the community that if a man abuses a woman, he will be punished.

Prosecuting a particular individual (specific deterrence) may protect specific victims from further abuse. Prosecution alone should serve to deter those already brought to the system because, as Feeley (1979) writes, "the process is the punishment" (p. 199). The costs associated with being prosecuted serve to punish defendants. Alternative formal punishments (e.g., probation, incarceration, restitution) following prosecution should similarly deter further abuse.

Other preventive mechanisms that help protect women from abuse are incapacitation and rehabilitation of offenders. Incarceration in jail or prison serves not only as a specific deterrent but as a concrete crime control measure that incapacitates abusers so that they cannot reoffend while in custody. Alternatively, the prosecutor might recommend to a judge that an offender undergo rehabilitative treatment as part of his sentence. In many jurisdictions, sentencing to domestic violence counseling, for example, is recommended in hope of changing a violent man to protect his victims (Rebovich 1996). In some jurisdictions, the prosecutor also participates directly in rehabilitation efforts by managing pretrial or post-plea diversion programs that involve counseling for violence and anger control and for drug and alcohol problems.

A final means by which prosecution can protect women from violence is to empower them. In cases of domestic violence, prosecution may serve as a power resource used by a woman to make arrangements in her relationship with her abuser to keep him from battering her (Ford 1991b). Alternatively, she may be empowered to find safety by altering her relationship to an abuser by virtue of her alliance with the prosecutor (Ford and Regoli 1993).

Beyond protection, prosecution may serve to help victimized women recover. This may simply involve acknowledging her status as a victim (Ford 1983) or granting her desire for retribution by seeking harsh punishment. Recovery is especially important for victims of rape, and research suggests that prosecuting facilitates recovery from the psychological harms of rape (Sales, Baum, and Shore 1984).

Issues, Conflicts, and Concerns in Violence Against Women Policy Implementation and Practice

Debate over prosecution policy for any crime centers on philosophical differences about the ultimate goal of prosecution. Some argue in support of an absolute prosecutorial mandate to represent the state in seeking justice. Others view prosecution policy as a means of supporting victims, even to the point of acknowledging victims' autonomy and need for self-determination. The goals of prosecuting violence against women reflect a range of these positions.

The National Council of Juvenile and Family Court Judges (1990), for example, premised its recommendations for prosecution policy on the state's interest in pursuing justice:

> Prosecutors should initiate, manage and pursue prosecution in all family violence cases where a criminal case can be proved, including proceeding without the active involvement of the victim if necessary. (p. 21)

The American Prosecutors Research Institute, in contrast, details the unique features of domestic violence that make prosecution important but problematic. These include complications of intimate victim-offender relationships; victims' reluctance to report crimes and to see abusers prosecuted; the control exercised by abusers over their victims; the repetitive, frequently escalating violence; the risk associated with victims leaving a violent relationship; and the paucity of evidence documented by police (American Prosecutors Research Institute 1997, pp. 3–4).

> As a consequence of these characteristics of domestic violence, prosecutors should approach domestic violence cases differently, and with different goals: Victim safety should be the highest priority, higher than conviction. (American Prosecutors Research Institute 1997, p. 4)

Whatever the goals, the implementation of policy on violence against women confronts realities of day-to-day practice that drive the prosecution process. Whether meant to address domestic violence, rape, or stalking, prosecution policy should be sensitive to all the factors that can complicate and endanger the lives of abused women. These range from repeated victim contacts with an offender, as necessitated by court appearances, through practices with respect to screening cases, negotiating pleas, or responding to pressure for high conviction rates (see, for example, Smith et al. 2001). Moreover, politics may dictate untested policy, as do less obvious forces found in traditional notions of case worthiness that are rooted in gender stereotypes (Stanko 1982), without full consideration of policy impacts on victim safety.

The Quest for Effective Policy: Guiding Principles

Like all public officials, prosecutors confront forces both for and against change in policies and practices. Prosecutors do not eagerly embrace change. Forst (1999) identifies several sources of resistance to change that are rooted foremost in prosecutors' insulation from the public and its pressures for change, in their training in law and legal culture and avoidance of public accountability. Innovations in prosecution policy regarding violence against women, however, appear to acknowledge the social movement as prosecutors respond to political pressures with inducements from Federal agencies.

Change may be illusory, however, as prosecutors shape policy to reflect public pressure while preserving traditional prosecutorial culture (Ford 1999). Recognizing the inclination to guard traditional prosecutorial interests, a self-critical prosecutor might challenge policy by asking four questions:

- What is the objective of prosecution?
- Is prosecution policy consistent with objectives?
- Will prosecutorial actions harm the victim?
- Is policy supported by or consistent with research findings?

With widespread recognition of the problem of violence against women and increased understanding of the unique problems confronting women as victims of these crimes, one can assume that prosecutors will pursue prosecution outcomes beyond simply winning conviction. Protecting victims cannot be ignored as a primary goal. To that end, practitioners and researchers alike need to recognize that the ideology of legal culture and personal values may not promote policies to protect victims. The quest for effective policy goes beyond the "obvious."

Domestic Violence Against Women

The final report of the Attorney General's Task Force on Family Violence (1984) was the first major governmental statement to promote recommendations for prosecutors with relevance to domestic violence against women (e.g., organize special units, avoid requiring victims to sign complaints or to testify at preliminary hearings, request protection orders as a condition of pretrial release). The recommendations were not guided by policy research; rather, they represented the views of practitioners and policymakers on sensible practices that entail little risk for victims. They rested on the principle that prosecution serves the dual function of affirming the offense against the state and protecting the victim: "Prosecutors can play a key role in holding abusers accountable for their actions and at the same time help to prevent future violence" (p. 28). This section details research findings on the preventive effects of prosecution policies.

Issues of Policy, Practice, and Relevant Research

More and more prosecutors are demonstrating their concern about domestic violence by devoting special resources to its prosecution (Fagan 1996). Many larger jurisdictions have developed special units for processing cases of violence against women. Indeed, even small jurisdictions can organize the equivalent special units by contracting to share a single prosecutor who can travel to different locales on different days to accrue a volume of special cases sufficient to justify the extra resources needed.[4] Often these units complement specialized courts that are designed to give special attention and consistent treatment to domestic violence victims and offenders. To serve victims as intended, units typically require victim-assistance workers/ advocates, paralegals, and investigators.

Fewer than half of all prosecutors' offices have specialized domestic violence prosecution units. Such units require a reasonably high caseload and commensurate resources to function as desired (Rebovich 1996). None has been evaluated for its impact on victim safety, but any such evaluation would be informative if it focused on specific prosecution policies rather than on the unit as a whole. The remainder of this section examines those policies.

Charging Decisions

A prosecutor's decision to charge a defendant with a domestic violence crime begins a system of interrelated decisionmaking on the part of all actors in the criminal justice process. From the prosecutor's perspective, it represents a commitment to represent the state in yet another of what may be an already heavy domestic violence caseload, and with it, strained resources and the problem of reluctant victims who need protection. Not surprisingly, prosecutors screen out potentially problematic cases in the beginning (e.g., Davis and Smith 1982; Ford 1983).

To prosecute or not. The decision to charge and prosecute a batterer requires assessing the merits of a case relative to the elements of possible criminal offenses, the quality of evidence, the character of both the accused and the victim, and perhaps the likelihood of a successful case outcome. The Violence Against Women Act gives prosecutors one more consideration in charging: If a man is convicted of domestic violence, he will be prohibited by Federal law from possessing a firearm.

Research on prosecuting misdemeanor batteries in Indianapolis found, by victim accounts, that any prosecutorial action short of dismissal reduced the prevalence of continuing violence by at least 60 percent over what was expected in the 6 months preceding prosecution (Ford 1993). No research has evaluated the impact of Federal law.

But what would happen if prosecutors admitted more cases? Davis, Smith, and Nickles (1997) raised the question with respect to a Milwaukee domestic violence court in which the results were anything but positive. More cases were filed under relaxed screening procedures for police arrests, but more reluctant victims also entered the process. Case processing time slowed, which allowed more opportunity for pretrial crime, and victim satisfaction with the system declined. With inadequate resources to fully prosecute all cases, prosecutors did not attempt to do so. The researchers are convinced, nonetheless, that prosecution could help to reduce recidivism if allowed to proceed. They conclude their research with an observation on the importance of involving victims in the screening process:

> In the decision whether or not to prosecute, our results speak strongly to the importance of involving victims. Decisions made to prosecute without the victim's acquiescence need to be carefully considered by legislatures and prosecutors. It may be justified to go counter to victims' wishes not to prosecute in select cases where there is a clear indication (by virtue of prior history, mental illness of the defendant, etc.) that harm will come to victims if defendants are not prosecuted. But to ignore victims' wishes as an important piece of data in deciding whether to prosecute invites a caseload of unwinnable cases, disgruntled victims, and (in extreme cases) prosecution of innocent defendants. (p. 104)

Whether ignoring victims' wishes will result in greater harm to them is unanswered.

What crime? Prosecutors exercise discretion in determining what crime to charge and at what level of seriousness. A traditional complaint with prosecutors' decisions is their failure to charge at a level appropriate to the seriousness of domestic violence. No research has been done to discover whether felony charges are more likely to result in victim protection than misdemeanor charges. But obviously, a felony count will more likely result in pretrial detention and incapacitation of the batterer for a longer period of time on conviction.

Mandatory Prosecution

"Mandatory prosecution" is a catchall phrase that describes prosecutors' efforts to move cases forward in the prosecutorial process, even without benefit of victim witnesses. But mandatory prosecution also underlies several dimensions of prosecutorial decisionmaking in the earliest stages of the process.

Mandatory prosecution highlights the potential for conflict between a victim's interest in protection and the state's interest in making an example of each defendant. It also raises questions concerning disagreements about how best to protect the victim and about whether the victim is competent to decide what is best for her or her children. The oft-cited issue of victim attrition in cases of domestic violence is, from a prosecutor's perspective, a problem of uncooperative victims who require coercive measures to force participation. Indeed, it is argued that if only a victim cooperated, the state would not only better prevent violence by any man but also be better positioned to protect her in particular (Cahn 1992; Wills 1997). From a victim's perspective, nonparticipation may be chosen in response to the prosecutor's noncooperation with her plan for securing herself from continuing violence. That harm can result from mandatory prosecution is obvious, for example, in cases in which victims and offenders are entangled by their immigration status such that the consequences of prosecution for either party may affect their residency.

Research confirms that prosecution itself is a stressor in the lives of battered women, but, remarkably, many victims cooperate with prosecutors without prosecutorial coercion and despite psychological distress. A study of 92 victims of domestic violence in Washington, D.C., demonstrated that victim cooperation is positively related to the severity of injuries, the availability of social supports and material aids, and the presence of children in common with the perpetrator. Victims who are substance abusers are less likely to cooperate than other victims. Indicators of psychological distress are unrelated to cooperation (Goodman, Bennett, and Dutton 1999). A related concern is that victims who feel pressured by the system may decide against reporting subsequent offenses, but research findings fail to either support or refute this possibility.

Prosecutors in some jurisdictions attribute recent declines in homicides in part to mandatory prosecution policies. The declines correlate with a nationwide reduction in homicides of all kinds, including declines in domestic homicides in cities without such policies. Whether mandatory prosecution prevents homicides is a significant but open question in need of rigorous research.

No-Drop Policy

The most controversial of all domestic violence prosecution policies is the prohibition against dismissing a case at the request of the victim; the so-called "no-drop policy" is seen by some as a badge signifying progressive prosecutorial action against domestic violence (Rebovich 1996, p. 189). Notice of a no-drop policy is typically made in a prosecutor's first meeting with a victim-witness and often at a point when the victim may still be able to decline to participate prior to charges being filed. It is invoked after charges are filed and a victim shows signs of not cooperating with the prosecutor. The prosecutor may declare: "He didn't just commit a crime against you, he committed a crime against the state. The case is now in the hands of the state and you cannot drop charges."[5]

Many prosecutors allow flexibility in implementing a strict no-drop policy (Rebovich 1996). Variations in no-drop policies fall along a continuum of victim coercion. At the extremes, a "hard" no-drop policy requires a victim to participate under threat of legal sanctions should she fail to appear or testify at the trial. A "soft" no-drop policy permits but does not require victim input in the decision to pursue a case.

Any type of no-drop policy seems to reduce case attrition, as desired. Research on misdemeanor cases in Indianapolis confirms that among similarly situated victims, those who are permitted to drop under a soft no-drop policy are likely to drop at a rate five times higher than those denied the opportunity under a hard no-drop policy (Ford 1993).

Anecdotal reports that support all sides of the no-drop debate abound. Controlled research on the policy's impacts is limited. Only the Indianapolis Domestic Violence Prosecution Experiment (Ford 1993) evaluated the preventive effect of a no-drop policy in comparison to a policy permitting victims to determine whether a case goes forward. But this part of the Indianapolis research dealt only with misdemeanor cases initiated by a victim complaint to the prosecutor.[6]

The experiment compared a soft no-drop policy with a hard no-drop policy. Under the hard condition, victims were told that once charges were filed, the case was in the hands of the state and they would not be permitted to drop. Under the soft policy, victims were told that the normal policy prohibited victims from dropping but that exceptions would be made for them should they feel that it was necessary to drop. They would be allowed to do so only after their abusers had appeared before a judge for a preliminary hearing. They were neither encouraged to nor discouraged from dropping, although they received all the support afforded by the prosecutor's victim assistance workers who made it clear that even if they dropped, they should not hesitate to contact the prosecutor again if they were abused.

The Indianapolis experiment found, for victim-initiated complaints, that permitting victims to drop charges following an arrest by warrant resulted in a significantly lower chance of new violence during and 6 months following the court appearance than when victims were denied the opportunity to drop. They also experienced less violence, less severe violence, and a longer delay before the onset of new violence (Ford 1993).

In short, existing research evidence argues against one of the more popular prosecution policies. A soft no-drop policy is more effective in preventing continuing abuse than widely acclaimed hard no-drop policies in victim-initiated misdemeanor cases. The finding may also be relevant in jurisdictions where victims are required to press charges with a prosecutor following an on-scene arrest. Still, no research exists to answer the question of whether a no-drop policy is best following on-scene warrantless arrests or in felony cases.[7]

Erez and Belknap (1998) reported that 65 percent of their sample of battered women in Ohio believed that victims should be allowed to drop charges "in order to improve their domestic situation" (p. 260). As noted elsewhere, prosecutors commonly misread victims' motives for prosecuting. It is a given that victims seek protection from abuse. Counter to prosecutors' assumptions, however, they are not necessarily committed to pursuing prosecution as the principal means of securing themselves. As Ford and Burke (1987) found, more than half of the battered women who filed charges in Indianapolis were motivated to act in response to victimization but had indefinite expectations for outcomes. More than 80 percent wanted protection, but just 10 percent listed securing protection as the main reason for filing.[8]

A final consideration in the adoption of no-drop policies is the possibility that prosecution may empower women. An earlier study of victims in Indianapolis based on women's accounts of their experiences with prosecuting their batterers concluded that victims were empowered by their ability to use prosecution in bargaining for life events relevant to their self-protection (Ford 1991b). Ford and Regoli (1993) interpret the findings for victim complainants in the Indianapolis experiment as evidence of victim empowerment for self-protection by virtue of their control over the prosecution process through alliance with the prosecutor. Whatever the mechanism, victim empowerment is an aspect of prosecution worthy of further study (Fagan 1996; Mills 1998).

Victimless/Evidence-Based Prosecution

Regardless of no-drop policies, battered women may elect not to participate in the prosecution process by failing to appear for trial, refusing to testify or recanting earlier accusations, or even appearing as witnesses for the defense. Under these circumstances, a prosecutor may choose to proceed with the trial using the testimony of other witnesses and/or with evidence presented by police officers, including photographs, videotapes, and reports of "excited utterances"[9] documented at the crime scene. In the absence of relevant research, such victimless prosecution cannot be said to result in a greater chance of protection for victims than cases dismissed.

The Office for Victims of Crime's *New Directions* (1998) report cautions against the intemperate use of mandatory prosecution and calls for research on its effects:

> Prosecutors should work closely with victim service providers as well as victims of domestic violence to establish appropriate prosecution policies and support research to assess the effectiveness of proceeding without victim testimony in domestic violence cases. (p. 91)

Charge Enhancements

Criminal law commonly provides options for charging offenders with a more serious crime than usual given their prior convictions or aggravating circumstances. Prosecutors in some States may exercise their discretion, for example, in filing felony charges against a man arrested for misdemeanor battery when it is determined that he had previously been convicted of domestic battery.

Prosecutors can create opportunities for enhanced charges by their actions with first offenders. If a prior conviction is a requirement for enhanced charging, it behooves prosecutors to avoid diversion agreements or plea bargains that will not result in a conviction relevant to future enhanced charges. Advocates of mandatory prosecution recognize that any relief from prosecution granted a defendant will free him from the more serious punishment he can suffer should he continue to abuse. However, there is no research to confirm that either the prospect or the reality of facing more serious charges will in fact deter those who have already been convicted.

Vertical Prosecution

A traditional complaint about prosecutors' handling of domestic violence cases was their apparent contempt for these cases, as demonstrated by their insensitive interactions with victims and inconsistency in treatment of both victims and their batterers. Vertical prosecution is meant to eliminate problems by having a single prosecutor work on a case from screening through case settlement. The victim can expect to see a familiar face from one encounter to the next, she and the defense should receive consistent information and treatment, and her wishes and concerns will be recorded with a single prosecutor. In large jurisdictions, vertical prosecution goes hand in hand with specialized prosecution units, as recommended by the Attorney General's Task Force (1984) and, more recently, by the Office for Victims of Crime (1998). It is fair to assume that vertical prosecution supports victims as they participate in criminal justice proceedings, but vertical prosecution has not been subjected to evaluation either alone or as part of a special prosecution unit.[10]

Preferred Prosecutorial Tracks

Once a case is accepted for prosecution, prosecutors generally form an initial sense of how it should be processed and settled. Policy may call for prosecuting every case to conviction and recommending counseling or perhaps executed time for those convicted. Where policy allows for greater discretion, a prosecutor may evaluate each case to determine the outcome that will best protect the victim from further violence and proceed accordingly.

The Indianapolis experiment (Ford 1993) evaluated the relative preventive effects of alternative prosecution tracks for misdemeanor cases that entered the criminal justice system either by on-scene warrantless police arrests or by victim complaints to the prosecutor. Defendants were randomly assigned to one of three tracks: pretrial diversion to batterer counseling, prosecution to conviction with batterer counseling mandated as a condition of probation, and other traditional prosecution to conviction with recommendations for presumptive sentencing. In addition, if a case was initiated by a victim complaint, the prosecutor had the defendant brought to court by

either a warrant or a summons, as determined by random assignment (in place of prosecutorial discretion).

The experiment found similar results for on-scene arrest and victim-complaint cases. Based on victim interviews, no significant differences in the likelihood of new violence emerged under any prosecution policy track within 6 months of settling a case. Nor did it matter which policy was pursued in terms of the frequency, severity, or time to new violence. Thus, in the absence of other reasons for pursuing a particular prosecution track, no one track is preferred for its potential to protect a victim from short-term repeat violence (Ford 1993).

Other reasons may exist for pursuing a particular track. Diversion may be preferred if it can be held out to a victim as an option to keep her in the process. However, diversion may be the least preferred option because it may allow a defendant to avoid enhanced charges should he batter again. In fact, it may not be an option at all. California, for example, has eliminated by law any domestic violence diversion policy.

Summons versus warrant following victim-initiated charges. After accepting a victim complaint for prosecution, the prosecutor seeks the approval of a judge and, in the absence of other policy, recommends that the defendant be brought to court either by summons or by arrest on a warrant. A warrant may be preferred for its more punishing impact and potential for specific deterrence, providing that it is in fact served on the suspect. The Indianapolis experiment found that recommendations for warrant arrests are generally preferred over summonses for their preventive impacts (Ford 1993).

Diversion and deferred judgments. Diversion programs keep defendants in the judicial system but under control of the prosecutor. Defendants are given an opportunity to avoid the risk of a conviction by meeting the terms of a mutually agreed-on activity. For example, batterer counseling may be mandated as a condition for diversion. Provided the defendant successfully completes the counseling, the prosecutor drops charges and the man avoids being convicted of domestic violence. Some pretrial diversion programs require only that the defendant acknowledge that he battered the woman. If he fails to complete the program as expected, he will be prosecuted as though he had never been diverted. Other diversion programs call for the defendant to plead guilty but defer the plea pending successful completion of treatment. If treatment is completed, the prosecutor dismisses both the case and the plea agreement. Otherwise the plea is taken to a judge for sentencing.

The Indianapolis experiment found no significant difference in the recidivism of men who were prosecuted under a pretrial diversion policy rather than other punitive sentencing, no matter how they entered the process (Ford 1993). Similarly, having entered a diversion program, there was no difference in rates of new violence (Ford 1991a).

The Indianapolis experiment did not pursue cases long enough to evaluate the outcomes of those whose defendants either completed or failed to meet the terms of diversion. No other research to

date provides such evidence and no research exists on the effectiveness of deferred judgments in preventing new violence.

Rehabilitative probation. Cases tracked from prosecution to conviction convey some idea as to what outcome might be recommended to the judge for sentencing. Court-mandated counseling for domestic violence is a popular outcome among prosecutors, judges, and victims. Following conviction, counseling is implemented as a condition of probation, either alone or in combination with other terms imposed by the court. The sentence may force counseling under the same programs as those used for diversion, but now failure to meet the terms of treatment constitutes a violation of probation and a chance of incarceration. Still, the Indianapolis experiment found no unique preventive impact associated with recommended counseling under probation (Ford 1993).[11]

Punitive outcomes. One can reasonably argue that any case outcome sought by a prosecutor will be punishing, even if it is touted as rehabilitative in nature. Some outcomes are clearly punitive by design (e.g., incarceration, supervised probation). The Indianapolis experiment called this "other" (punitive) sentencing. It represents the usual sentencing sought when prosecutors were unconstrained in their exercise of discretion. Prosecutors may seek such punishments in the hope of both deterring the convicted batterer and making an example of him for others. No research assesses whether "other" sentencing might serve as a general deterrent. But contrary to expectations under specific deterrence, the Indianapolis experiment found "other" sentencing to be the least effective policy in preventing new violence, although it did not differ in statistical significance from any other outcome sought under a no-drop policy.

A batterer in Indianapolis who experienced his case outcome as especially punishing was more likely to be angered by the outcome, less likely to feel treated properly, less likely to acknowledge that his behavior was wrong, and less likely to believe the decision on his case would be good for him. Apparently, perceived harsh punishment builds resentment that focuses attention on the defendant's hurt rather than the harm he did to his victim (Ford 1988). Even so, the Indianapolis research found minimal evidence of retaliatory violence in response to prosecution (Ford 1991a).

Plea Bargaining

Regardless of the crime, plea bargaining has long been a topic of controversy among academics and politicians. For domestic violence, prosecutors' refusal to plea bargain demonstrates a tough-on-crime stance that promises that batterers will not escape ultimate criminal justice controls. In practice, it is a policy feasible only for relatively small caseloads, such as felony charges or in small jurisdictions. Moreover, plea bargaining may be encouraged for domestic violence as a means of avoiding case attrition by victim nonparticipation. Coupled with seemingly nonpunitive sentencing such as counseling, it can be attractive to defendants who want to demonstrate to their victims a genuine desire to reform. No research has been published on the preventive effects of plea bargaining in cases of domestic violence.

Mandatory Penalties

Mandatory sentencing denies prosecutors their discretion to recommend case outcomes. A prosecutor may believe that a particular outcome is best for an offender and his victim, but on conviction, has no influence over a judge's decision because by law there is a mandatory sentence. Where discretion is denied, one may expect that the system will respond by allowing prosecutorial control elsewhere in the process.[12] For example, in 1991, Iowa enacted mandatory 2-day jail terms and mandatory batterer education programs to ensure that men convicted of misdemeanor violence would receive sentences consistent with the seriousness of domestic abuse. According to research findings for one county, penalties for those convicted increased, but overall convictions declined (Carlson and Nidey 1995).

The loss of prosecutorial discretion apparently meant that prosecutors lost their ability to encourage victims to participate in the criminal process with promises of sentence recommendations consistent with victims' wishes. Victims responded by declining to participate in the proceedings. Prosecutors had the option of negotiating pleas to nondomestic charges but lost the opportunity to seek enhanced charges should violence recur. In sum, mandatory penalties resulted in fewer convictions because they took away incentives for defendants to plead guilty to domestic abuse charges and, as more cases went to trial, victims became both more important and problematic for securing convictions (Carlson and Nidey 1995). Carlson and Nidey (1995) conclude their analysis with this observation: "[A]dvocates of mandatory penalties should be cognizant of the possible impact on the judicial processing of domestic abuse cases and aware of the additional responsibilities and burdens these penalties may place on the victims of domestic violence" (p. 147).

Continuance Rules

Continuances rank among the most annoying aspects of prosecution for prosecutors, victims, and defendants alike (except, of course, for those who might use them to strategic advantage). Generally speaking, victims are most inconvenienced by continuances. Defense attorneys request them hoping that sooner or later a victim will get tired of coming to court only to receive a new trial date. Prosecutors may use them to gain time to contact victims who may have decided not to participate. On the positive side for victims, prosecutors may request a continuance when a victim fails to appear to locate her and make certain that she is safe. Thus, continuances may serve not only to manage the process, but also to protect victims, so long as the length of time in the process does not increase the risk of renewed violence (Ford 1991a; Davis, Smith, and Nickles 1997). Because continuances can be used against victims, courts sometimes impose rules granting a limited number of continuances to the prosecution and the defense. The impact of continuances and continuance rules on victim protection has never been tested by empirical research.

Victim Assistance and Advocacy

Victim assistance describes any and all activities that serve victim needs through the course of prosecution. Victim assistance units are common in prosecutors' offices around the Nation. Victim advocates hold an important position in facilitating prosecution by preparing and

supporting victims (DuBow and Becker 1976; Rebovich 1996). Advocates can address victims' crisis needs, provide information on the criminal justice system and community agencies poised to assist with specific needs, and support and comfort victims by accompanying them to court. Details of advocacy in action vary with the nature of advocates, the constraints placed on their activity, and the nature of their employers.

More than 70 percent of large prosecutors' offices employ victim assistance personnel, including advocates, to support victims and encourage their participation in the prosecution process (Rebovich 1996, p. 188). By the prosecutors' estimates, their victim support programs are effective. However, in a qualitative study of 49 battered women who contacted the prosecutor following on-scene arrests in Washington, D.C., Bennett, Goodman, and Dutton (1999) found that the prosecution system itself presented obstacles to victim cooperation:

- Confusing information was related at the most difficult time for a victim to absorb it and without benefit of followup for clarification.
- The slow progress of prosecution caused fear and frustration among victims.
- Conflict arose over the possibility that the man would be incarcerated.

They conclude that victims might be better assisted with clear information presented in printed materials or by contacts with advocates who can provide more extensive followup than usual on the nature of the process, the status of a case, and a case's likely outcome.

The use of information from advocates is constrained in some States by laws governing admissibility of confidential communications between victims and advocates. Unless the advocates enjoy the testimonial privilege of certain licensed professionals, they can be forced to testify to their communications with a victim. Whether this affects the ability of advocates in prosecutors' offices to help protect victims is not known.[13] A related issue concerns the use and efficacy of advocates hired by the prosecutor as opposed to advocates employed by an outside agency independent of the prosecutor. Here too, research is needed to inform policy.

Victim Impact Statements

In some jurisdictions, the victim is encouraged to address the court prior to sentencing to set forth her desires for sentencing her abuser, to describe the consequences of the offense on her life and the lives of others, and to cite any other concerns that she may believe are relevant to sentencing or in need of public expression. The opportunity seems obviously relevant to a victim's recovery, should she choose to use it, although such effects have not been described by any research to date.[14]

Summary and Implications

Prosecution policies need to be evaluated carefully to discover whether they help prevent violence and to ensure that they do not result in greater harm than alternatives would. The literature on prosecuting domestic violence includes numerous unsubstantiated or anecdotal

accounts of policies that are effective in bringing cases to a desired outcome or in protecting victims. The limited empirical research that exists supports the following key findings with respect to misdemeanor cases:

- Given the prevalence of domestic violence prior to prosecutorial intervention, prosecuting batterers protects their victims from further violence for at least 6 months.

- Prosecuting batterers prevents continuing frequent and severe violence against their victims.

- Whether a case comes to the prosecutor by on-scene warrantless arrest or by victim-initiated complaint makes little difference to victim safety for at least 6 months following case settlement if the prosecutor tracks the case toward pretrial diversion with counseling, probation with counseling, or other punitive sentencing. Practical reasons may exist for preferring one policy over another, and this finding does not preclude implementing one over another.

- Mandatory penalties confound prosecutors' efforts to ensure defendant accountability and protect victims. They result in harsher sentencing but fewer convictions, and they work against victim participation in the process.

- For victim-initiated complaints, after a defendant is arrested on a warrant and appears before a judge, victims will most likely find protection for at least 6 months under a soft no-drop policy.

- Battered women may be empowered to arrange for self-protection when permitted to drop charges, at least in victim-initiated cases.

A number of policies represent seemingly sound ideas in support of victims and are unlikely to have negative consequences. Any of these might be evaluated under controlled research, and in the absence of indications of harm, they are worth implementing:

- Special prosecution units.
- Vertical prosecution.
- Continuance rules in support of victim-witnesses.
- Victim advocacy.
- Victim impact statements.

The most authoritative guide for prosecutors consistent with these findings comes from the American Prosecutors Research Institute:

> Ideally, prosecutors should treat each case individually, making informed decisions and evaluations based on facts presented in the interview with the victim and evidence collected by the police. Domestic violence victims have many concerns,

> including divorce, child custody, visitation, and fear of retaliation if they cooperate with prosecution. The prosecutor should first assess the victim's safety. (1997, p. 5)

This statement does not cover the many policy alternatives with possible preventive impacts that are available to victims and prosecutors. Research suggests that the proliferation of policy recommendations, even those promoted by the government, is not a result of increasing knowledge about prosecution effects (Fagan 1996).

There is much yet to learn regarding key issues:

- It is not known whether prosecuting one batterer will keep him from battering another partner or whether prosecution deters men in the general population from battering or killing women.
- The preventive effect of permitting victims to drop charges following an on-scene police arrest is not known.
- It is not known whether research findings to date will generalize to jurisdictions beyond the research site.

Recognizing the absence of relevant research, it is all the more important that policy be assessed critically for potential negative impacts.

Rape and Sexual Assault on Women

The prosecution of rape and sexual assaults by strangers, in contrast to domestic violence, is less encumbered by controversies over goals, policies, and practices. Prosecuting rape and other sex offenses fits traditional prosecution aims, such as justice, accountability, deterrence, and preservation of public order. Seeking to win by convicting rapists has been accepted without question.

The prosecution of rapists may, however, take different paths according to the relationship between a victim and her rapist. Rapes and sexual assaults perpetrated by intimate partners, friends, or relatives raise the same policy concerns as in domestic violence prosecutions—case attrition, reluctant or recanting victims, the likelihood of repeat violence—in addition to those unique to the offense. In general, apart from prosecution strategies cognizant of legal reforms, there are no contentious policy debates over prosecuting rapists outside of prior intimate relations. Where policies are questioned, it is with respect to their link to statutes that have allowed victims to be emotionally abused by, and reluctant to participate in, criminal justice proceedings.

Issues of Policy, Practice, and Relevant Research

A number of statutory reforms have been implemented in jurisdictions throughout the United States and Canada to deal with criminal justice agents' lack of sensitivity toward rape victims;

with abuses of victims in the prosecution process, especially in questioning by defense counsel; and generally with concern over the inclination of victims to avoid prosecution, sometimes in favor of informal solutions (Bachman 1998).

The women's movement of the early 1970s spawned rape reforms intent on making criminal justice responsive to increasing reports of sexual violence and to the special needs of rape victims. Rape victims were commonly depicted as having been revictimized by the criminal justice process. Spohn and Horney (1992) describe four areas of reform that began in the 1970s to protect victims from the system:

> The most common changes were (1) redefining rape and replacing the single crime of rape with a series of graded offenses defined by the presence or absence of aggravating conditions; (2) changing the consent standard by eliminating the requirement that the victim physically resist her attacker; (3) eliminating the requirement that the victim's testimony be corroborated; and (4) placing restrictions on the introduction of evidence of the victim's prior sexual conduct. (p. 21)

The reforms had immediate relevance to prosecutors, who won greater freedom to file criminal charges against sexual predators without arguing for traditional notions of rape. Under rape shield laws, they no longer had to defend the victim against insinuations of sexual conduct irrelevant to the case at trial. A case could now be made for sexual assault without the need to demonstrate that the victim forcefully resisted and without producing corroborating evidence such as injury or physical proof of penetration. In principle, rape law reforms should bolster the prosecutor's efforts to bring rapists to justice, if not by easing the prosecutor's burden of proof at trial, then by holding out more charges, along with reasons for defendants to enter guilty pleas.

Spohn and Horney's (1992) research on the impacts of reforms in six jurisdictions around the United States found little evidence of major effects. Prosecutors continue to be guided by traditional attitudes toward victims and by the informal expectations of the courtroom workgroup in screening and prosecuting cases of sexual assault. Nor did reforms significantly alter what may or may not be introduced as relevant evidence for prosecuting or defending a rapist. Perhaps the most important impact of reforms is their symbolism for promoting attitudinal change about rape and rape victims consistent with State interests—a long-term and difficult-to-measure outcome.

Bachman and Paternoster (1993) extended the Spohn and Horney inquiry to consider national victimization data with impact findings evaluated relative to changes in the processing of other crimes. They too conclude that rape reform laws have had little impact on victim reporting or criminal justice practices, although their data are less relevant to questions of prosecutor behavior than were those of Spohn and Horney.

Spohn and Horney (1992) conclude their research with an observation on prosecutors' resistance to change that mirrors issues described for domestic violence. They point out that the rape law reforms did not constrain the exercise of discretion and conclude that prosecutors will continue to be guided by the informal norms of the courtroom workgroup rather than the opportunities

available under legal reforms. In particular, victim-oriented reforms are unlikely to affect prosecutorial decisions, given their inability to improve the flow of cases through the system and their potential to conflict with the values of other officials who are especially concerned with the rights of defendants.

No research has been conducted to evaluate the preventive effects of rape law reforms. At best, one can infer that, by virtue of their presumed symbolic and educational effects, "legal reforms could be thought of as a preventive intervention" (Crowell and Burgess 1996).

Case attrition confounds rape prosecutions, just as it does domestic violence. Many victims choose not to participate in the prosecution process, including at least 10 percent who are encouraged by the police or by prosecutors to drop charges (Greenberg and Ruback 1992). Apart from issues of reporting and victim decisions to proceed, once a case comes to the attention of the prosecutor it is subject to screening for its ability to win conviction. In their study of one Midwestern city, Frazier and Haney (1996) found that as many as 50 percent of rape cases with assailants questioned by police failed to get charged, typically because the police believed the victim was not interested in prosecuting and the prosecutor decided there was insufficient evidence to proceed. Seventy-six percent of the suspects referred to the prosecutor were charged and 59 percent of the defendants in those cases entered guilty pleas. There were no significant differences between stranger and acquaintance rapes in percentages charged or guilty pleas entered. Fourteen of the 125 cases referred to the prosecutor were ultimately dismissed for reasons including victims who were, from the prosecutor's perspective, uncooperative, not credible, or not locatable. Ultimately, only 14 percent of identified assailants are sent to prison (Frazier and Haney 1996).

Charging: To Prosecute or Not

One solution to the attrition problem calls for more critical screening of sexual assault allegations prior to charging. Screening decisions can filter out "good cases" at the expense of legitimate victims who are entitled to justice. However, charging all cases invites attrition, including greater rates of victim nonparticipation, which results in police and prosecutors investing less effort on investigations of rape and sexual assault (Frazier and Haney 1996). Evaluation research does not suggest that prosecution will protect women from sexual predators. Obviously, if offenders are incapacitated, women outside of prison are safe from attacks by those men. But so few accused of rape and sexual assault are ultimately imprisoned (Frazier and Haney 1996) that prosecution offers less protection than it might.

Does prosecution help victims recover from rape? Limited relevant research addresses this point. The Frazier and Haney study (1996) looked at evidence of posttraumatic stress disorder to assess the impact of prosecution on victim recovery. Based on case outcomes and attitudes toward the legal system, they find no relationship. However, given the low rates of conviction and incarcerations, Frazier and Haney interpret the finding in a positive light:

> While it may be premature to conclude that involvement in the criminal justice system has no influence on recovery, these data are heartening because they suggest that the

> rape victim's experience in the legal system may have less of an impact on her recovery than other factors over which she has control. (p. 626)

Mandatory prosecution. As in cases of domestic violence, concern over reluctant victims and case attrition has led some prosecutors to pursue cases of sexual assault without victim consent and participation. Prosecutors invoke policies meant to coerce victim participation, although they may be intent on prosecuting without her. Mandatory prosecution of rapists and sex offenders has not been evaluated for its consequences for victims. Some would argue that it is another instance of criminal justice revictimizing a rape victim by ignoring her wishes. Others point to the state's responsibility to act against serious crime under any circumstance. Mandatory prosecution needs to be evaluated for its impact on victims of sexual assault, including its effects on victim safety and recovery.

Preferred prosecutorial tracks. Felony rape or sexual assault charges do not invite creative prosecution policies. There are no significant calls from any quarter for diversion programs or for rehabilitative counseling under probation. Cases are routinely tracked for prosecution to conviction with executed jail or prison time, although lesser punishment is common (see the review of studies reporting case outcomes by Frazier and Haney [1996]). However, prosecutors may (or may be required to) grant a victim an opportunity to address the court at sentencing with her own recommendation. Whether any variation in prosecutorial tracking affects either victim safety or recovery has not been addressed as a research problem.

Special units. Beyond legal reforms and changes in policy, many prosecutors' offices have committed to enhanced sensitivity toward victims and increased rigor in prosecuting by assigning women prosecutors to sexual assault cases (LaFree 1989). Where feasible, many have established whole units dedicated to prosecuting rape and sexual assaults. These include prosecutors, special investigators, and victim assistance workers who are prepared to support victims and gain their participation in building strong cases for court.

One development in prosecuting rapists is the use of expert testimony from specialists known as sexual assault nurse examiners (SANE) who work as part of a sexual assault response team (SART). In communities with a SART, a victim of sexual assault is transported immediately to an examination site (normally a hospital) accompanied by a victim assistance worker, where she is examined by the forensic nurse, evidence is collected, and a statement is taken by the police or a prosecutor trained in sensitive interview techniques. The team approach allows for vertical prosecution and minimizes the need for the victim to repeatedly describe the assault.

SARTs should increase victim participation in the prosecution process. Victims are treated with sensitivity, receive needed support, and can be confident that the prosecutor is bringing to court the best evidence possible to make a case against an attacker. SARTs have not been evaluated to determine their impacts on either case attrition or convictions, although there is little reason to believe that SARTs might somehow harm victims.

Rape and Sexual Assault as Domestic Violence: Cross-Training

The prosecution of rape and sexual assault committed by a domestic partner may pose special problems in offices with separate specialized units for domestic violence and for sexual assault. A rape may be processed initially by a SART that collaborates with the prosecutor's sexual assault unit, regardless of victim-perpetrator relationship. SART members trained to deal with cases of stranger assault may be inept at dealing with or confused by victim reactions to spousal rape or other cases of sexual assault by intimates. For their part, members of domestic violence teams sometimes are not aware of or fail to ask the right questions to elicit and deal with sexual offenses that may accompany other forms of intimate partner battering. Prosecution policy may also be confusing or ambiguous in cases in which domestic violence and sexual assault are intertwined. If prosecutors follow a no-drop policy for domestic violence and not for sexual assault, or vice versa, then a case of domestic sexual assault may be treated differently according to which specialized unit assumes responsibility for prosecution.

These concerns are not obviously in need of research. However, they do point to a need for cross-training for prosecutors about domestic violence and sexual assault, including in those jurisdictions without specialized units. Training should be grounded in policy research to the extent that it exists and should itself be subject to evaluation for its effect on prosecution processes and prosecutors' behavior toward victims of violence against women.

Summary and Implications

Unlike policy for prosecuting domestic violence, questions about the effects of prosecuting rape center on how to make reforms work rather than on what reforms are best for victims. There has not been a significant push, for example, to coerce rape victim participation with no-drop policies or victimless prosecution. Major policy reforms since the 1970s have had little effect on prosecution outcomes. Most cases of rape or other sexual assault, especially those committed by strangers, involve felonies that leave less room for policy alternatives than are available for misdemeanors. Pretrial diversion, for example, is not a topic of concern. But given relatively low rates of conviction and incarceration, perhaps alternative policies should be tested for their possible victim impacts.

The scarcity of research on the preventive and recuperative effects of prosecution policy should not preclude implementing harmless programs in support of sexual assault victims, such as vertical prosecution and special prosecution units, including SARTs.

Even better would be additional research on no-drop policies and other strategies to guide implementation of prosecution policy, practices, and programs likely to prevent sexual assaults and facilitate victim recovery.

Violations of Protection Orders and Stalking

Antistalking laws and protection orders are meant explicitly to protect specific victims from specific predators. They seek to enable criminal justice interventions against threats and other frightening acts before more serious violent crimes are committed. The willingness of prosecutors to pursue cases of stalking or violations of protection orders attests to the seriousness of the crimes and signals to the police that action by law enforcement is important and will be supported (Sohn 1994).

Issues of Policy, Practice, and Relevant Research

Violations of protection orders and antistalking laws pose several different questions and concerns for prosecutors than those described for domestic violence, rape, or most other crimes. For one, many cases involve perpetrators who have already been processed by the legal system and proved that they are unresponsive to criminal justice controls (e.g., Keilitz, Hannaford, and Efkeman 1997). Are there likely to be protective policies apart from incarceration? If a victim invites an offender to her home in spite of a protection order (as may happen with intimate partners) and by law or policy only a judge can nullify an order, should the violation be prosecuted? If the violation is prosecuted, should a no-drop policy be imposed? Although research findings to address all such questions cannot be presented, a few general considerations relevant to policy and research on protection orders and stalking are discussed below.

Prosecutors have four general responsibilities with respect to orders of protection. They can:

- Facilitate a victim's effort to obtain a protection order either by requesting that an order be made effective during the course of the criminal process or by backing the victim's efforts to obtain a civil order.

- File criminal charges and prosecute violations of protection orders.

- Work with the police and judges to encourage an aggressive response to violations of protection orders.

- Use protection orders and their violations to strengthen a case for stalking, when necessary.

Keilitz, Hannaford, and Efkeman (1997) studied the effectiveness of civil protection orders (both temporary and permanent) as reported by victims surveyed in three jurisdictions: Washington, D.C., Denver, and Wilmington, Delaware. They conclude that protection orders can be useful in keeping men from further abusing or otherwise bothering petitioners with violations of the orders, although they are less effective for men with extensive criminal histories. Victims reported few incidents of violence under protection orders and few were reported to the courts. Violations were processed by contempt proceedings without involving prosecutors.

Harrell, Smith, and Newmark (1993) evaluated the protective effects of orders of protection in Denver and Boulder, Colorado. The researchers found that the women who were most likely to

seek permanent orders of protection were those who had already endured a history of abuse. Perhaps for that reason, permanent orders did not deter physical abuse: Researchers found that more dangerous offenders are less affected by threatened punishment. Although protection orders did not ensure protection from new violence, law enforcement action against violations did help to protect victims from continuing severe violence over the next year. On-scene police arrests significantly reduced the level, if not the occurrence, of new violence.

The prosecution of stalkers poses other problems for prosecutors, largely because stalking has only recently been criminalized (Crowell and Burgess 1996). Relative to other crimes against women, there is less consensus on the nature of the crime, how it should be investigated, and what prosecution strategies will likely result in convictions. Like rape and sexual assaults on women, stalking may be committed by an intimate partner, by other family members or acquaintances, or by strangers.

Antistalking laws address threatening behavior that may not be criminal under traditional statutes, such as harassment or intimidation. Stalking is a preferred charge when the law allows for warrantless arrest for stalking but not for related crimes. Stalking may be a useful charge for obtaining harsher sentencing, especially when the penalties of lesser offenses are deemed inadequate to deter. Antistalking laws may also allow for criminal prosecution of behaviors incidental to prohibitions spelled out in orders of protection but not strictly proscribed by the order (Thomas 1993). Prosecutors help to enforce antistalking laws by working with police to develop cases, training police on the nature of the crime, and informing victims on how to document evidence.

Stalking is more victim driven than other crimes of violence against women. Victim participation is essential to proving a key element of the crime: fear. Because stalking is defined as a pattern of harassing behaviors that instill fear in targeted victims, prosecutors need not prove every incident of harassment as a crime. They must demonstrate, however, that whatever the event, it was perceived by the victim as threatening and made her fearful, if not terrorized. The challenge for prosecutors is to muster evidence sufficient to meet a threshold that demonstrates both the victim's fear and the predator's intent to instill fear.

Prosecutions under antistalking statutes are too new and too few to have confronted the range of alternative strategies and controversies characteristic of domestic battery cases. No research has been reported to evaluate whether prosecuting a stalker will cause him to desist.

Summary and Implications

Prosecuting violations of orders of protection has potential for preventing severe violence, if not the chance of continuing violence. Prosecutors must resist the urge to fault victims who fail to report violations of protection orders. As they remind women that a protection order is "only a piece of paper," prosecutors must appreciate that victims who use protection orders in conjunction with other self-protective measures may find them effective (Keilitz, Hannaford, and Efkeman 1997). Victims' ability to stop continuing violations without police intervention was the

most common reason they cited for not reporting violations to the police (Harrell, Smith, and Newmark 1993, p. 67).

Further research is needed on the prosecutorial response to violations of protection orders. The potential deterrent value of an order of protection is only as good as its enforcement. Until more is known about prosecutors' efforts to make protection orders work, it cannot be said for certain whether they do.

Extant literature on stalking and criminal justice rests on an assumption that, if stalkers are successfully prosecuted, their victims will be protected. There is no empirical research to support the claim.

> [C]urrent antistalking statutes do little more than stiffen the penalty for harassment or threatening statutes long in existence. . . . [I]t is apparent that other steps must be taken to protect stalking victims and victims of all crimes. (Sohn 1994, p. 241)

What these steps might be remains to be discovered.

Conclusion

Much needs to be learned about the impacts of alternative prosecution policies and practices on violence against women. In particular, research is needed on whether prosecution can protect victims from further violence, on whether prosecution prevents violence by men in the general population, and on whether prosecution policies can help victims recover from the harm inflicted by their attackers. The absence of policy research does not mean that prosecutors should remain locked into traditional practices. But prosecutors must exercise caution when adopting popular policies that are grounded in ideologies that do not consider the complexities and dynamics of victim protection.

Protecting Victims Through Prosecution

One major area in which policy might be better informed by rigorous research is the realm of domestic violence. The single (Indianapolis) experiment on policy effects supports the general belief that prosecution can reduce the chance of recurring domestic violence. Regardless of how a case comes to the prosecutor's attention, tracking misdemeanor cases for diversion to counseling, for counseling under probation, or for other sentencing has minimal effect on the likelihood of new violence against the same victim for at least 6 months.

Of special note, however, is the impact of a soft no-drop policy on further violence. In victim-initiated complaint cases with defendants arrested on warrants, women are least likely to suffer new violence when they are told that they may drop charges after the defendant's initial court appearance. Unfortunately there is no comparable research on no-drop policies for cases initiated by on-scene warrantless arrests—those in which no-drop policies are widely advocated.

In one realm of prosecution policy, popular and traditional policies and practices may, in fact, not be in the best interest of victim protection. Coercive policies may be less effective than efforts to empower a victim by informing and supporting her choices with respect to prosecution and her need for safety. Finally, prosecutors should remember that, while any policy might be effective, optimal victim safety calls for implementing the *most* effective policy.

Research Findings and Gaps

New research is needed on prosecution policies to replicate and extend the findings of the Indianapolis experiment, especially as they might pertain to on-scene arrests. There is also a need for research on sexual assault to determine the effect that no-drop policies may have on both stranger and intimate partner rape. No research comparable to the Indianapolis experiment has been reported on the protective impacts of prosecuting rape and sexual assault. In the meantime, prosecutors would be advised to carefully assess the rationale for implementing no-drop policies when they could be more detrimental to a victim than allowing her to drop but offering her support and guidance on safety planning and self-protection in the event that she abandons prosecution.

Research on legal reforms for handling rape cases finds that often prosecutors do not alter their practices in the interest of victim protection. On a positive note, the failure of legal reforms to alter prosecution practices suggests a need for prosecutors to question the extent to which their discretion is guided by informal norms of the courtroom workgroup rather than opportunities made available by legal reforms.

The same can be said for stalking and violations of protection orders. Responses to these newly criminalized offenses have no hope of protecting victims if prosecutors fail to take advantage of the opportunities afforded under new laws. Research demonstrates that orders of protection can work to reduce the severity of violence when violations are prosecuted. It will not be known whether antistalking laws work until they are used. In short, even negative findings and gaps in research can indicate that policy should be implemented with restraint.

Guiding Principles for Victim Protection

The absence of research findings to guide policy should not be taken as cause either for doing nothing or for implementing what is intuitively (or politically) appealing. One can still assess any policy proposed by addressing two critical questions:

- Are policies consistent with research findings?
- Will actions taken despite research gaps harm the victim?

Are policies consistent with research findings? The ideal world of prosecutorial decision-making would be driven by research that shows what works best to protect victims. Such a world does not exist. But even in cases in which research might dictate policy, implementation must proceed cautiously. It should be assessed with respect to how closely the research and implementation sites match. Are the populations comparable in all relevant respects? Are laws and legal constraints the same? Will the policy be implemented as it was for the research?

Findings from even a single study that point to the shortcomings of exercising discretion to track cases toward outcomes dictated by ideology, workgroup influences, or personal attitudes and values should raise concern about implementing untested policies. For example, although prosecution may help protect victims of domestic violence, mandatory prosecution may diminish the impact of prosecution in comparison to prosecution in which victims exercise some control over outcomes. The lesson for prosecutors is to recognize that prosecution may not necessarily offer women the best chance for protection from continuing violence.

Will actions within research gaps harm the victim? Prosecutors genuinely committed to supporting and protecting victims will likely find themselves searching in vain for research support. The gap in knowledge regarding protective policies calls for assessing the potential harmful effects of ill-informed policy on victims. One might consider, for example, whether a policy would force unnecessary contact between a victim and her abuser or whether the policy might disempower a victim.

In short, acting within gaps calls for extra caution by prosecutors. Mimi Rose, Chief Assistant District Attorney for the Family Violence and Sexual Assault Unit in Philadelphia, speaks for prosecutors who have been reluctant to adopt untested prosecution policies: "Always remember: It's our case, but it's her life" (Rose 1996).

Notes

1. The terms "protection order," "protective order," and "restraining order" often are used interchangeably, although the States define and apply them differently. This report uses "protection order" and "order of protection."

2. Domestic violence dominates the literature on prosecuting violence against women. There are a number of reasons for this, some of which are worth noting in order to understand the corresponding imbalance in materials presented in this report. For one, domestic violence is defined by relationships as well as acts. It not only covers assaults and batteries, it also encompasses rapes and stalking committed by domestic partners. Second, incidents of domestic violence are easily the most common and numerous of acts of violence against women. Third, most crimes of domestic violence are classified as misdemeanors and as such allow the greatest variability in policy and in the exercise of prosecutorial discretion. Fourth, domestic violence has captured the public's attention more widely as a problem to be solved through prosecution. It has been central, for example, to community-based coalitions for prevention. Finally, what little evaluation research has been done focuses almost exclusively on domestic violence.

3. Our task is not to lecture on research methods. However, critical thinking can be enhanced by understanding the sources of misguided opinions. Maxfield and Babbie (1998) list five errors in personal human inquiry that controlled research seeks to avoid: inaccurate observation, overgeneralization, selective observation, illogical reasoning, and ideology and politics. The reader may benefit from a review of these issues in their methods textbook.

4. For example, a prosecutor formerly in charge of a county domestic violence unit now works as a special domestic violence prosecutor for several small counties.

5. This is not the place to review arguments for and against no-drop policies that are not addressed in the research literature. Such arguments abound in the legal and advocacy literature. A good starting point for the interested reader are articles by Purdy and by Elliott, Giddings, and Jacobson in the summer 1985 issue of the *NCADV Voice*.

6. Smith and colleagues (2001) studied no-drop policies applicable principally to cases initiated by police arrest and implemented in four cities known as models for domestic violence prosecution policies. They found that "no-drop is more a philosophy than a strict policy of prosecuting domestic violence cases" (p. vii). The research was not designed to evaluate protective impacts.

7. No-drop policies in felony cases, while no less controversial than for misdemeanors, are more likely to have wider acceptance as an expression of the state's concern for general societal well-being and for the threat posed by an especially serious offender to both his victim and others in society. Discussions of no-drop policies in the research literature tend to center on misdemeanors and do not distinguish between felonies and misdemeanors.

8. Other "main" reasons given in response to an open-ended question included answers in the following categories: motivated to act, but indefinite expectations for outcomes (53 percent); to force fulfillment of victim interests other than direct protection (17 percent); to demonstrate commitment to altering relationship (11 percent); to punish him or give him his "just deserts" (6 percent) (Ford and Burke 1987).

9. An "excited utterance" or "spontaneous declaration" is a statement admissible in court as an exception to the hearsay rule when made under the stress of excitement caused by a startling event (Black 1979).

10. Although this report addresses the prosecution of violence against women, notice should be taken of vertical adjudication—the processing of cases by a single prosecutor through a specialized prosecution unit and adjudicated in a domestic violence court, perhaps with its own probation unit.

11. More recent experimental research focusing on the actual outcomes of court-mandated treatment under the Duluth model finds no preventive impact associated with completion of counseling (Feder and Forde 1999). Similarly, Gondolf's comparison of court-mandated batterer intervention programs found none to be relatively superior to another in preventing new violence. In particular, pretrial intervention worked no better than postconviction referrals (Gondolf 1999).

12. Walker (1998) describes the system response to mandatory sentences as consistent with a "law of criminal justice thermodynamics" under which a going rate is maintained by alterations in practices to circumvent mandated sentencing. Thus, "an increase in the severity of the penalty will result in less frequent application of that penalty" (p. 54).

13. Generally, in a prosecutor's office, information that victims divulge to victim assistance staff is not privileged. In service provider organizations, by contrast, the information is generally privileged, although that varies by State.

14. Studies of victim impact statements in contexts that do not focus on violence against women have found that they have no relationship to victim satisfaction with criminal justice (Davis and Smith 1994b). Nor do they increase officials' apparent sensitivity to or sentencing consistent with victim harm or wishes (Davis and Smith 1994a; Erez and Tontodonato 1990; Erez and Rogers 1999).

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