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AN EVALUATION OF EFFORTS TO IMPLEMENT NO-DROP POLICIES:

TWO CENTRAL VALUES IN CONFLICT

FINAL REPORT

American Bar Association Criminal Justice Section

Funded by the National Institute of Justice

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DISCLAIMER

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The project staff thanks the many people who shared their knowledge and expertise to produce this final report. At each study site, dedicated individuals generously gave their time, shared experiences, and provided detailed descriptions of their implementation of their no-drop policy. Four sites participated in the case studies: San Diego, California; Everett, Washington; Klamath Falls, Oregon and Omaha, Nebraska.

Many victims of domestic violence also contributed to this report by participating in phone interviews about their interaction with the court system. Our thanks to them for sharing their perspectives.

Foremost, we would like to thank our funder, National Institute of Justice, for supporting this project. Special thanks to Bernie Auchter, our program monitor throughout most of the project, and to Katherine Darke, our monitor during the final months of the project, for their valuable help.

EXECUTIVE SUMMARY

Statement of the Problem

During the late 1980s and 1990s, the law enforcement response to domestic violence changed remarkably. Legal impediments to police officers making warrantless arrests for misdemeanors they did not witness were removed. They were replaced by presumptive arrest statutes (under which police were encouraged to make arrests) or statutes making arrest mandatory when probable cause existed. Many victim advocates were pleased with these changes, arguing that taking the decision to arrest away from victims, shielded them from possible retaliation by batterers.

The changes in police practices regarding domestic incidents were paralleled by changes in the prosecution of these cases. Many jurisdictions changed their prosecution policies to assure that *all* legally sufficient domestic cases would be prosecuted whether or not victims were fully cooperative; to drop the requirement that victims sign a complaint; or to forbid victims from dropping charges once filed. Other jurisdictions facilitated the process of obtaining restraining orders; established special domestic violence courts staffed with personnel specially trained in handling the complications of domestic cases; or established better coordination between police, prosecution, judicial and probation agencies.

Some prosecutors adopted a policy that paralleled mandatory arrest policies of the police. So-called "no-drop" or "evidence-based" prosecution was pioneered in places like Duluth and San Diego in the late 1980s as a response to the high dismissal rate of domestic violence cases. Until that time, it had been the practice of most prosecutors and judges to dismiss domestic cases in which the victim was unwilling to come to court or to testify against the defendant. Since many victims failed to cooperate for a variety of reasons, domestic violence cases had dismissal rates many times higher than other crimes.

In particular, the San Diego City Attorney received a lot of national press about evidence-based prosecution. The office realized that there were other forms of evidence besides the testimony of victims that could be collected in domestic violence cases. Advocates convinced the office to treat domestic violence like any other crime and not rely solely on the victim to determine how to proceed. Statements made on 911 tapes or to responding police officers could be admissible under certain circumstances. Photos of injuries could be taken and the testimony of medical personnel entered. Physical evidence could be collected from the household. The statements of witnesses could be used. San Diego prosecutors fought hard to convince judges to accept these forms of evidence. Over the course of years and with the passage of key statutes on admissibility of evidence, the City Attorney's Office prevailed and was able to win convictions in a large percentage of cases, even without (or in spite of) the testimony of the victim.

San Diego's success convinced other prosecutors to follow suit. In a major study conducted of 142 large prosecutors' offices in the U.S., 66% of the prosecutors reported that their office had adopted no-drop policies. But the term no-drop is somewhat misleading. Pro-prosecution policies might best be characterized as "hard" versus "soft" no-drop policies. Hard policies dictate that prosecution proceed regardless of the victim's wishes whenever there is

sufficient evidence to do so while soft policies allow the victim to drop out of the system under special circumstances (e.g., there is reason to believe that the violence will escalate if she proceeds).

Advocates argue that no-drop policies are victim-friendly. Several law and social science review articles have debated the pros and cons of no-drop prosecution. To date, however, there is little evaluation data that can be brought to bear on the wisdom of no-drop policies.

The Current Study: Evaluating No-Drop in Four Sites

We wanted to learn if prosecution without the victim's cooperation was feasible with appropriate increases in resources. We therefore identified three sites where Office of Justice Programs (OJP) had awarded funds for no-drop prosecution under the VAWO grant program to encourage arrest policies. From the handful of grantees who had been awarded funds to implement no-drop, we chose Omaha NE, Everett, WA and Klamath Falls OR -- the three grant proposals that seemed the most unequivocal in implementing a strong no-drop policy. To these three we added San Diego. Even though San Diego had not applied for funds under the arrest policies grant program, we believed it was important to include it. San Diego is not only the first place to try no-drop, but it is widely respected as being the most successful no-drop site. San Diego officials are in demand nationally to conduct trainings on no-drop. We reasoned that we could not conduct a study of no-drop without including the longest and strongest program.

Research questions. We designed our study to examine effects of no-drop policies on court outcomes and victim satisfaction with the justice system and feelings of safety. We wanted to learn whether implementing a no-drop policy resulted in increased convictions and fewer dismissals. We also wondered whether the rate of trials might increase in jurisdictions where no-drop was adopted as a result of the prosecutor's demand for a plea in cases in which victims were uncooperative or unavailable. Finally, we questioned whether prosecutors might have to downgrade sentence demands in order to win the willingness of defense attorneys to negotiate pleas in the new context of a no-drop policy.

Looking at court outcomes would tell us what the effects of no-drop policies were on case processing. But just because conviction rates increased would not necessarily mean that the policy was a good one. No-drop policies are often described as intended to "send a message" to abusers (that prosecution is out of the victim's hands so there is no point in making threats against her), to the victim (that prosecution is the best thing regardless of what she might think), and to the community (that domestic violence will not be tolerated). In our study, we focused on how no-drop policies affected victims. Did victims who did not want their spouses or boyfriends prosecuted eventually come around to the prosecutor's way of thinking? Or did prosecution without victims' consent anger victims and discourage them from calling the police in the future?

What we did. In each site, we interviewed officials from prosecution, defense, court, probation, and law enforcement agencies about their experience with no-drop policies. We wanted to find out first, whether the jurisdiction had implemented a "hard" or "soft" no-drop policy. We also sought to learn about the problems that had been encountered such as opposition from defense attorneys, difficulty in gathering evidence needed to win convictions in the absence

of victim cooperation, and judicial reluctance to admit such evidence at trials.

In the three sites where no-drop policies were recently implemented, we intended to gather samples of domestic violence case files from before and after policy implementation. This would enable us to determine how these policies have affected conviction rates, sentences, trial rates, and trial verdicts. As it turned out, it proved impossible to collect pre-no-drop data in one of the three sites. However, the changes we report below pre- and post-no-drop in two sites are remarkably similar.

We also aimed to interview victims from the prosecutor files we sampled. We hoped to understand from the interviews victim opinions about no-drop policies and how the policies might have affected their willingness to cooperate with authorities. Most importantly, we hoped to ascertain whether the no-drop policy was ultimately seen by victims as helpful or whether it increased their reluctance to contact the police in the event of a future incident.

Methodology

Overview of the design. Our evaluation encompassed both process and impact components. During the process component, we gathered data on no-drop program implementation through collection of written materials, interviews with local officials, and on-site observations.

The impact design envisioned the collection of data on 400 domestic violence cases at each site from prosecution files (200 from the year previous to the implementation of the no-drop policy and 200 cases after the policy). In addition, we collected data on all cases resulting in trial during the two years. Data from these samples were used to examine changes in victim cooperation, protection orders, violations of protection orders, prosecutions of protection orders, and special conditions of sentences. Finally, telephone interviews were attempted with victims in all cases sampled after the implementation of no-drop to ascertain the degree of congruence between their goals and court outcomes, contact with victim advocate and/or prosecution staff, levels of satisfaction with the criminal justice system and level of renewed violence experienced since the arrest of the batterer.

The Process Study

Interviews with criminal justice officials. We interviewed local criminal justice officials using a semi-structured interview schedule. Interviews were conducted with law enforcement officers, prosecutors, defense attorneys, victim advocates, probation officers, and judges. Topics included the impact of no-drop policies on the collection of evidence by the police; interactions with victims; and the coordination among criminal justice agencies. In addition, we questioned what problems were encountered in implementing no-drop polices and unintended consequences of no-drop policies.

On-site observations. Information from interviews with criminal justice officials were confirmed with observations made by the research staff while on site. During our two visits to each site, we spent time in court observing the processing of cases.

Review of written materials. We reviewed written no-drop policies in each of the study sites as well as any legislation pertinent to domestic violence cases.

The Impact Study

The impact evaluation assessed the overall impact of the coordinated approach to domestic violence implemented at each site. In addition, we collected indicators that defined the impact of specific no-drop or "victimless prosecution" policies adopted by each jurisdiction.

Case samples. At the three sites that had recently implemented no-drop, we attempted to collect samples of 200 domestic violence court cases during the year prior to implementation of the no-drop policy and 200 cases after the implementation of the no-drop policy. That was not possible in one site. In Omaha, domestic violence cases were prosecuted by the city attorney before the no-drop policy and by the county attorney afterwards. Thus a pre-post comparison of office processing was not possible. Therefore, we have only post-data in Omaha.

In San Diego, which has had a no-drop policy since the mid-1980's (and thus a pre-post sample was not feasible) we examined the effects of two state laws favorable to the prosecutors. These statutes were designed to make it easier to admit certain types of evidence and thereby increase the prosecutor's chances of succeeding in trials without victim cooperation. To assess the impact of the statutes on domestic violence cases in San Diego, we collected samples of 200 cases before and 200 cases after the new statutes took effect.

For sampled cases, we collected the following:

- Charges
- Defendant criminal history
- Relationship between victim and defendant (whether they are legally married, cohabitate, or share children together)
- Court outcome (plea, dismissal, etc.)
- Sentence and special conditions of sentence (treatment program, drug rehabilitation, parenting classes, etc.)
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Victim interviews. For cases resolved under the no-drop policy, we attempted telephone interviews with victims. The survey queried victims about their desires regarding (a) what should have been done with the case (from dropping charges to sentencing batterers to jail terms); (b) their willingness to cooperate with criminal justice officials; (c) their contact with victim advocates; (d) their belief that their views were heard and considered by criminal justice

officials; (e) their satisfaction with officials (police, prosecutor, and judge) and with the case outcome; (f) their beliefs about whether the criminal justice outcome had increased or decreased their safety; and (g) the level of violence experienced after the case was resolved in court.

Lessons Learned

The first lesson we learned is that no-drop is more a philosophy than a strict policy of prosecuting domestic violence cases. None of the prosecutors pursued *every* case they filed. Prosecutors were rational decision-makers who were most likely to proceed without the victim's cooperation if they had a strong case based on other evidence. Of course, definitions of what constitutes strong evidence varied from site to site, and some prosecutors were much more likely to persist in the face of an unwilling victim than others. But none chose to proceed with every case in which the victim was unwilling to cooperate. In at least some of the sites, criteria that went into the decision to go forward included the defendant's criminal history. Those with prior records of abuse were more likely to be prosecuted; the availability of other forms of evidence (cases with eyewitnesses, photos, and physical evidence) were more likely to be prosecuted; the nature of the victim/defendant relationship (unmarried romantic intimates were more likely to be prosecuted), and defendant gender (male defendants were more likely to be prosecuted than female defendants). In other words, the term, "evidenced-based" prosecution, probably fits practices at our sites better than the phrase, "no-drop." (Although the former term could be applied to *any* prosecutor's practice. After all, what prosecutor would not insist that his decisions were not evidence-based?).

The second lesson from our work is that adopting a no-drop policy can boost convictions dramatically. In the two sites in which we had pre- and post-implementation data, we found extraordinarily large increases in conviction rates, declines in processing time, and large increases in trials. We suspect that the increase in trials is a temporary phenomenon that will decline as defense attorneys come to accept the fact that the rules of the game have changed and come to realize that, even when victims are uncooperative, prosecutors can still win trials. If this happens, defense lawyers are likely to accept taking pleas even when victims refuse to cooperate with the prosecution.

The third lesson we learned is that, to implement no-drop requires significant case screening up front. Arrests with weak evidence need to be rejected by the prosecutor so that the prosecutor can credibly claim that he can prosecute the remainder fully regardless of what the victim wants or does. All of the sites engaged in significant screening of domestic violence cases, refusing to file as many as 30% of arrests. Some advocates might have a problem with this practice. Other jurisdictions accept virtually all arrests and then "let the chips fall where they may". Many cases are dismissed in the end, but no victim is excluded from an attempt at justice. Indeed, the Brooklyn, NY domestic violence misdemeanor prosecutor has referred to this prosecution model as the true version of a no-drop policy.

The fourth lesson we learned is that a successful no-drop policy requires judges who are "on board" with the idea of admitting hearsay or excited utterances from victims and statements from defendants or documentation of prior bad acts. In Omaha, where many judges were described as reluctant to admit these forms of evidence, the no-drop policy was weak and the

prosecutor often relented when victims failed to cooperate. On the other hand, in San Diego, where state statutes were strongest and where there was a strong history of admitting such evidence, no-drop prosecution was highly successful. Judges in San Diego came to accept over time that domestic cases could be prosecuted without victim cooperation and were willing to admit essential prosecution evidence. We often heard in sites that were having trouble introducing key evidence that judicial training was essential. However, defense attorneys are very much opposed to judicial training by victim advocates, arguing that it is simply indoctrination. The defense attorneys have a point in that federal and state money seems to be available to train judges to be sympathetic to prosecution arguments but not to train them in the defense perspective on these cases (viz, that not all domestic violence cases involve efforts at control by a primary aggressor but are "fights" that result from interpersonal conflict between two people with different points of view).

A fifth lesson that resulted from our work is that no-drop is very expensive. As we stated, successful implementation of no-drop involves significant training of police in evidence gathering, a realization that more cases will go to resource-intensive trials, and persuasion of judges to accept forms of evidence that historically have been considered controversial. Moreover, it is not enough to encourage arresting officers to do a better job gathering evidence, but it is also necessary to have specialized officers (working closely with prosecutors) to conduct follow-up investigations. In one of our sites, we estimated that each *misdemeanor* prosecution averaged about $1,000. This is a very expensive proposition and one that many jurisdictions may be unwilling to underwrite without the federal funding that has supported prosecutors in adopting no-drop policies. It will be interesting to see whether jurisdictions sustain a commitment to no-drop as federal funds for start-up programs recede.

Finally, our interview data suggested that prosecution may be seen by victims as beneficial, even those victims who initially did not want any criminal justice action past arrest. This is, of course, exactly what no-drop advocates would hope for. However, we stress that we were unsuccessful in locating the vast majority of victims we sought to interview, making it very unlikely that the interview results are representative of the victim populations in our study sites. Therefore, we can come to no conclusions concerning the very basic question of whether victims benefit when criminal justice professionals assume the exclusive right to decide when to prosecute and what outcome to seek.

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION

During the late 1980s and 1990s, the law enforcement response to domestic violence changed remarkably. Legal impediments to police officers making warrantless arrests for misdemeanors they did not witness were removed. They were replaced by presumptive arrest statutes (under which police were encouraged to make arrests) or statutes making arrest mandatory when probable cause existed (Hirschel, Hutchinson, Dean, and Mills 1992). Many victim advocates were pleased with these changes, arguing that taking the decision to arrest away from victims, shielded them from possible retaliation by batterers (Goolkasian 1986).

The changes in police practices regarding domestic incidents were paralleled by changes in the prosecution of these cases. Many jurisdictions changed their prosecution policies to assure that *all* legally sufficient domestic cases would be prosecuted whether or not victims were fully cooperative; to drop the requirement that victims sign a complaint; or to forbid victims from dropping charges once filed (Witte, 1988; Friedman and Schulman, 1990). Other jurisdictions facilitated the process of obtaining restraining orders (Hart, 1992); established special domestic violence courts staffed with personnel specially trained in handling the complications of domestic cases (Goldkamp, 1996); or established better coordination between police, prosecution, judicial and probation agencies (Buzawa and Buzawa, 1996).

Some prosecutors adopted a policy that paralleled mandatory arrest policies of the police. So-called "no-drop" or "evidence-based" prosecution was pioneered in places like Duluth and San Diego in the late 1980s as a response to the high dismissal rate of domestic violence cases. Until that time, it had been the practice of most prosecutors and judges to dismiss domestic cases in which the victim was unwilling to come to court or to testify against the defendant. Since many victims failed to cooperate for a variety of reasons, domestic violence cases had dismissal rates many times higher than other crimes.

In particular, the San Diego City Attorney received a lot of national press about evidence-based prosecution. The office realized that there were other forms of evidence besides the testimony of victims that could be collected in domestic violence cases. Advocates convinced the office to treat domestic violence like any other crime and not rely solely on the victim to determine how to proceed. Statements made on 911 tapes or to responding police officers could be admissible under certain circumstances. Photos of injuries could be taken and the testimony of medical personnel entered. Physical evidence could be collected from the household. The statements of witnesses could be used. San Diego prosecutors fought hard to convince judges to accept these forms of evidence. Over the course of years and with the passage of key statutes on admissibility of evidence, the City Attorney's Office prevailed and was able to win convictions in a large percentage of cases, even without (or in spite of) the testimony of the victim.

San Diego's success convinced other prosecutors to follow suit. In a major study conducted of 142 large prosecutors offices in the U.S., 66% of the prosecutors reported that their office had adopted no-drop policies (Rebovich, 1996). But the term no-drop is somewhat misleading. Pro-prosecution policies might best be characterized as "hard" versus "soft" no-drop policies. Hard policies dictate that prosecution proceed regardless of the victim's wishes

whenever there is sufficient evidence to do so while soft policies allow the victim to drop out of the system under special circumstances (e.g., there is reason to believe that the violence will escalate if she proceeds) (Cahn, 1992).

Advocates argue that no-drop policies are victim-friendly. For example, Friedman and Schulman (1990: 98) concluded that "as a deeper understanding of domestic abuse has been reached, it has become evident...that the victim should not be laden with the burden of stopping the violence; therefore, she should not be responsible for how the case is prosecuted." Others have argued against no-drop policies on the same grounds of the best interest of victims. Ford (1991), for instance, believes that batterers have stripped victims of their power and that an important result of prosecution is to restore to victims some of this lost power. Victims' disempowerment, Ford believes, is simply compounded by a system that does not treat them as responsible for making decisions.

Several law and social science review articles have debated the pros and cons of no-drop prosecution (e.g., Corsilles, 1994; Hanna, 1996; Mills, 1998). To date, however, there is little evaluation data that can be brought to bear on the wisdom of no-drop policies. However, one major study concluded that no-drop produces iatrogenic effects. In a true experiment examining the relative impact of various domestic violence prosecution strategies, Ford and Regoli (1992) found that cases randomly assigned to a condition in which victims had the opportunity to drop the case had lower rates of both pretrial and post-conviction violence than cases assigned to a no-drop condition.

An earlier study of ours was also not supportive of policies which encourage prosecution when victims do not wish to go forward (Davis, Smith, and Nickles, 1997). During the course of an evaluation of a domestic violence court in Milwaukee, the prosecutor changed his filing policy. Previously, he only accepted cases if the victim indicated willingness to cooperate, but he changed that policy and began accepting cases with sufficient evidence to proceed regardless of the victim's wishes. We surveyed victims prior to and after the policy change and found significant decreases in the proportion of victims satisfied with the prosecutor's handling of the case and the case outcome. Further, significantly fewer victims felt that the court's actions made them safer from abuse after the policy change. Nor were there positive prosecution results. The district attorney realized that to successfully prosecute cases with reluctant or hostile victims would necessitate more trials (because defense attorneys would be less likely to plea bargain) with greater reliance on different types of evidence such as police officer testimony, photographs of victim injuries and 911 tapes. However, with no additional funds available, the district attorney was in fact in no position to try more domestic violence cases. There was no increase in the number of trials after the new policy went into effect, while overall convictions dropped from 69% to 52% and time from case filing to disposition doubled.

While there were no measurable positive outcomes of prosecuting cases regardless of expressed victim interest in Milwaukee, we noted that it was not a solid test of prosecution without the victim's cooperation because it was implemented without additional funds and without coordination with other agencies to support the policy. Additional money was not made available to hire an adequate number of assistant district attorneys to conduct more trials. There was never a serious effort to train police officers to collect better evidence to be used in lieu of

victim testimony. Lastly, additional victim advocates were needed, but not hired, to work with the new caseload of uncooperative victims.

The Current Study: Evaluating No-Drop in Four Sites

After our experience in Milwaukee, we wanted to learn if prosecution without the victim's cooperation was feasible with appropriate increases in resources. We therefore identified three sites where Office of Justice Programs (OJP) had awarded funds for no-drop prosecution under the VAWO grant program to encourage arrest policies. From the handful of grantees who had been awarded funds to implement no-drop, we chose Omaha NE, Everett, WA and Klamath Falls OR -- the three grant proposals that seemed the most unequivocal in implementing a strong no-drop policy. To these three we added San Diego. Even though San Diego had not applied for funds under the arrest policies grant program, we believed it was important to include it. San Diego is not only the first place to try no-drop, but it is widely respected as being the most successful no-drop site. San Diego officials are in demand nationally to conduct trainings on no-drop. We reasoned that we could not conduct a study of no-drop without including the longest and strongest program.

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Overview of the design. Our evaluation encompassed both process and impact components. During the process component, we gathered data on no-drop program implementation through collection of written materials, interviews with local officials, and on-site observations.

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CHAPTER 3: SAN DIEGO, CALIFORNIA

The San Diego City Attorney's office was an innovator in establishing no-drop policies and remains a dominant leader in the field today. Casey Gwinn, City Attorney, began the no-drop approach back in 1985 when he was an assistant city attorney. He remains totally dedicated to the approach and generously supports his Domestic Violence Unit. Assignment to the Unit is seen as a prestigious one. Mr. Gwinn, and his senior staff, train and give presentations nationally on prosecuting domestic violence cases without the victim's participation.

History of the Domestic Violence Unit

The San Diego City Attorney's Domestic Violence Unit is responsible for all misdemeanor family violence cases within the city of San Diego, a population of 1.2 million, and the city of Poway. Family violence cases include misdemeanor domestic violence, same sex domestic violence, elder abuse, elder domestic violence, stalking, statutory rape, child abuse and child molestation cases.

The San Diego City Attorney's office has witnessed a tremendous increase in the number of cases. In 1986, then assistant city attorney Casey Gwinn was the sole member of the domestic violence unit. The San Diego Police Department had less than 1,000 documented domestic violence cases that year. In 1990, the domestic violence unit was increased to five members to cope with ever increasing caseloads. By 1999, the San Diego Police Department averaged over 800 documented domestic violence reports *per month*. The City Attorney's Domestic Violence Unit grew in increments in response. As of 1999, the Unit had reverted to the leadership of Assistant City Attorney Gael Strack (who had served as second in charge when Mr. Gwinn ran the Unit); three senior trial deputies, and eight trial attorneys. In addition, they have two investigators assigned to the Unit, three victim advocates, and a support staff person. Still they struggle to keep up with burgeoning caseload.

History of the No-drop Policy

When Mr. Gwinn was a deputy city attorney in 1985, he was approached by three women who provided services to domestic violence victims, a representative of the YWCA, the Crime Victim Legal Clinic, and the Center for Women Studies. He was asked to become a member of the San Diego Domestic Violence Task Force. Through these women, and his participation on the Committee, he learned about domestic violence and began to shape policy.

In 1985, it was the policy of the City Attorney's office to call domestic violence victims to determine if they wanted to pursue prosecution. If they responded in the negative, charges were dropped. Through conversations with domestic violence advocates, Mr. Gwinn began to question the wisdom of that policy. The advocates argued that domestic violence cases be treated like any other crime. Women should not be asked if they want to press charges, because that empowered the batterer to persuade--or force her--to drop the charges.

As a result, Mr. Gwinn (one of two deputy city attorneys who handled domestic violence cases) stopped asking victims if they wanted to pursue prosecution. Between May and August of 1986, the number of domestic violence cases jumped dramatically when the victim was no longer given the option of dropping charges.

In August of 1986, Mr. Gwinn went to the City Attorney to request that a specialized Domestic Violence Unit be instituted. The City Attorney agreed and Mr. Gwinn was the deputy assigned to the Unit. Mr. Gwinn was handling 75-100 cases per month (prior to the Unit, only 20-30 cases had been prosecuted per month). Mr. Gwinn continued his dialogue with victim advocates and sought their opinions prior to writing protocols for the Unit. He quickly realized that police reports in domestic violence cases were woefully inadequate. He met with the San Diego Police Department in August of 1986 and arranged to provide training to the sergeants and patrol officers on how to gather evidence in domestic violence cases. Out of this training came the Domestic Violence Checklist that ultimately developed into the Supplemental Police Report that is used today.

In the fall of 1986, the first policy statement was issued from the Domestic Violence Unit. It defined a no-drop policy that stated that prosecution will go forth if there is evidence that a crime occurred whether the victim agrees to cooperate or not. The prosecutor would decide the fate of cases, not the victim. With that statement, Mr. Gwinn began to aggressively file cases. The first major test of the policy came in November of 1986. A sitting San Diego judge was arrested for domestic violence. The alleged victim was interviewed by Mr. Gwinn and reported being hit. However, she fled to Mexico and could not be found to testify. Mr. Gwinn refused to drop the charges and the case became a major media story. The no-drop policy received a considerable amount of discussion and debate. The trial judge refused to allow the admission of either the 911 tape or the fact that the victim was over five months pregnant (this was important as the defense claimed the victim was the aggressor and leaped over a coffee table to assault the defendant) and living in Mexico. Although the case resulted in a hung jury (the judge denied a prosecution motion for a new trial), the City Attorney supported the no-drop policy in domestic violence cases. The six months following the trial were very active as the defense challenged the ability of the prosecutor to win cases at trial without the victim's cooperation. In that six-month period, 21 jury trials were held and Mr. Gwinn won 17 of them without the victim's cooperation. Indeed, he secured the highest conviction rates in cases in which the victim testified for the defense and denied the abuse altogether.

Operation of the Domestic Violence Unit

The City Attorney's office only accepts cases they can prove with, or without, the victim's cooperation. They reject approximately 30% of cases in which the police department makes an arrest. If they can prove the case, with or without the victim, they accept it. If not, the case is rejected. Their assumption up-front is that victims will not cooperate with the prosecution. Filing decisions are made by deputy assistant city attorneys in the domestic violence unit.

There have been many changes in how domestic violence cases have been handled in San Diego over the years. We sampled cases from two points in time. The 1996 sample reflects a

time when there was not a specialized domestic violence court. One judge handled all the domestic violence arraignments, another sat in the trial setting department, and a third handled civil cases. In the event that the case proceed to trial, any municipal judge could try the case.

The 1999 sample reflects a time when there was a specialized domestic violence court and two statues that allowed the admission of evidence favorable to the prosecution (see discussion below). Two judges were assigned to the special court to preside over arraignments, trial setting conferences, and trials (if necessary, trials could be assigned out to any trial judge if backlogs became a problem) and a third judge handled civil cases.

The policy of the special Domestic Violence Unit in the City Attorney's office regarding plea-bargains has remained intact for many years. For those who plead guilty, non-negotiable conditions are: a plea to battery (not a disorderly conduct), three years of probation, 52 week certified batterer treatment counseling, restitution for the victim for damaged property, and a state fine of $200 (the judge may waive this for indigents). Negotiable items depending on the offender's background and the facts of the case. These items include the number of counts to be pled to, the amount of incarceration time, and the amount of time sentenced to public work or community service. Deputy city attorneys have no authority to waive the non-negotiable conditions; supervisors may make exceptions in very rare and unusual circumstances. Diversion is never permitted by law.

San Diego prosecutors benefit from two laws favorable to their position passed after 1996 and prior to 1999. The evidence code section 1370 offers a hearsay exception to admit statements of the victim made to the police, doctors, or civilian witnesses. It does not require the state to prove the excited utterance exception. Statute 1109 allows the admission of previous domestic violence police reports even if a conviction was not secured. California is not the only state with such provisions but combined these two statutes are favorable for the prosecution. We heard from officials in other places we visited that these statutes largely explain why San Diego prosecutors can win cases without the victim. Mr. Gwinn and Gael Strack, Assistant City Attorney and head of the Domestic Violence Unit, disagree. They contend these laws do not make a significant difference in their ability to win cases. The office was winning the majority of cases prior to the passage of these statutes. Under a much earlier evidenced code, 1240, admission of victim's statements were frequently allowed as an excited utterance (every state has some type of excited utterance provision).

Continual training of the police is seen as critical in prosecuting cases without the victim's cooperation. Prosecutors in San Diego recognize that evidence makes the difference in pursuing a pro-prosectuion evidence-based approach. Therefore, prosecutors in the City Attorney's office spend a great deal of time training officers on good investigation techniques in domestic violence cases. They have also produced a video to enhance their training. Every patrol officer must receive a two-hour training on domestic violence every two years. The Supplemental Report used since 1996 by law enforcement in domestic violence cases is very comprehensive and has been replicated by many departments across the country.

The San Diego Police Department. In 1992, the San Diego Police Department formed a specialized unit. They have 27 investigators assigned under the direction of a Lieutenant.

Investigators apply to the unit and are screened by the Lieutenant for their suitability. They remain in the Unit for 15 months and then are reassigned elsewhere. There are 23 males and four females. Four are bilingual (they would like to have seven but recruitment is a problem). There are four supervisors, two male and two female.

The county has a pro arrest policy that requires an arrest, not a citation, of the primary aggressor. Approximately 25% of calls for service in domestic violence cases result in an arrest (the national average is 20%).

Following an arrest by a patrol officer, the case is assigned to an investigator in the Domestic Violence Unit to complete the investigation. In addition to interviews with the victim and any witnesses, the investigator checks the arrestee's prior criminal record and domestic violence history. If the person is in custody, the investigation must be completed within 48 hours. If he is not, they have five days to complete the investigation. Obviously, custody cases are given priority. The Unit investigates about 170 cases per week.

Following the investigation, the detective has two options. The case can be dropped or it can be referred for prosecution to either the City Attorney for misdemeanor filing or to the District Attorney for felony filing. About 70% of the cases are referred for prosecution and the remaining 30% are dropped.

In the academy, all officers receive eight hours of training on evidence collection specific to domestic violence cases. Every other year officers receive advanced training (four hours) in collecting evidence in domestic violence cases put on by the department. In addition, regional trainings are available for officers and domestic violence training on a periodic basis is mandated by California law. When an investigator joins the Domestic Violence Unit, they attend a five-day class on domestic violence investigations.

The Lieutenant in charge of the Unit, recommends a no-drop policy in domestic violence cases "without hesitation" to other departments across the country. Aggressive prosecution is the only way to deter future recidivism and stop intergenerational violence. Unlike in the past, the Lieutenant reported that the Unit is not seeing the same people over and over. About 75% of those coming through the unit are first time arrestees.

The Victim Services Coordinator. The City Attorney's Domestic Violence Unit has three full-time victim coordinators, one of whom is paid for by Children's Hospital and housed at the City Attorney's Office. They serve approximately 350 victims per month. It is their responsibility to notify victims about the status of their cases, to give referrals for services, to discuss restitution, to obtain their opinions on sentence offers, and to explain victim's rights to make an impact statement. In addition, advocates will go to court with victims who want their support and sit with them during evidentiary hearings and trials. They help prepare victims for the emotional toll testifying can extract and explain the court process and the batterer treatment program. Further, they work with victims to develop a safety plan and explain the cycle of violence.

The Senior Victim Coordinator of the Unit said she has not heard objections raised by non-profit advocates about the no-drop policy (there had been discontent in the 1980's but she reports none today). She believes getting the offender into treatment is the most important outcome in order to stop the violence. As evidence, she points to the drastic reduction in domestic violence homicides since 1997: 6 in 2000, 8 in 1999, 5 in 1998, and 15 in 1997.

The Public Defender's Office. In the past, the Public Defender's Office had a specialized Domestic Violence Unit, but abandoned it. They believed that a specialized unit interfered with their responsibility to train every public defender in all aspects of the law. As of our site visit, they used an eight-week rotation cycle, rotating assistant public defenders from the traffic division to arraignment, to misdemeanor trial divisions. There are 24 assistant public defenders and all cases are handled vertically, that is, the assigned public defender remains with the client from arraignment to disposition.

According to a representative of the public defender's office, defense attorneys were "caught off guard" when the no-drop policy was instituted. The City Attorney's office had a "high degree of success" in the late 1980's and early 1990's. Police were trained by prosecutors to record everything the victim said in great detail, to document injuries with photographs, and to document the victim's emotional state (e.g. crying, shaking, hysterical). As a result, law enforcement investigations became very thorough and it was possible to proceed with the case even when victims were not available. According to the public defenders we interviewed, judges were lenient in allowing 911 tapes and excited utterances into testimony. Public offenders believe that judges politically want to appear emphatic to domestic violence.

The defense bar rose to the challenge and began to vigorously defend these cases in new ways. They introduced their own expert witnesses to counteract domestic violence experts who testify for the prosecution. While we were told that the public defenders do not track their success rate, they believe they win their share of trials. (Prosecutors disagreed, and our data, document that the prosecution wins more trials than does the defense.) Public defenders report that their success rate is increasing, in part, because cases are being spread out to different judges since California's court unification system. As a result, public defenders perceive that courts are not as stacked against the defense in domestic violence cases as they have been in the past.

Public defenders believe that outcomes in domestic violence cases, especially the unwavering requirement that offenders be sent to batterer treatment, are too routinized. They argue that "one size does not fit all". Not all offenders need Duluth-style batterer treatment and outcomes should reflect that individual's need and facts of the case rather than be universal. That is a battle they are not winning.

Observation of a Trial With an Uncooperative Victim. The case observed stemmed from a February 1999 incident. That incident resulted in two charges, corporal battery of a spouse (for an alleged slap on her face resulting in a split lip and broken tooth) and spousal battery (allegedly he poured beer on her back when she tried to get away from him).

The trial began on Wednesday, March 1, 2000. All of Wednesday afternoon was spent on motions (discussion took place in chambers and then the decisions were put on record).

Prosecution motions to introduce the 911 tapes, the photographs of the victim's injuries in the 1988 case, and prior bad acts (under section 1390 that allows the presentation of evidence from a previous domestic violence assault regardless if an arrest is made) were granted. The judge denied the admission of the medical records from the 1988 case.

Jury selection took about one-half a day. The prosecutor's opening statement was about 45 minutes and laid out his case, including the possibility that the victim would tell a different account of events in court than she told to the police. The defense's opening, approximately 30 minutes in length, focused on the alleged victim's use of drug and alcohol; her temper; her desire to get back at the defendant by filing a false police report because she was mad at him; and the defendant's mild manner and non-violent disposition.

The prosecutor called as his first witness the emergency room doctor. He testified as to the victim's injuries in the June 1988 case (introduced as prior bad acts). The 1988 case did not result in an arrest and was not presented for filing to the prosecutor's office. The statute of limitations had run out. Thus the prosecution could not pursue the 1998 case.

Important aspects of the doctor's testimony were:

- The victim told the doctor her husband had hit her. The hospital then notified the police who responded to the hospital to interview the victim.

- The doctor described the victim's injury of bruises and cuts to the hand. He did not did recall any visible bruising of the eye (the victim told the police her husband had hit her in the eye and it hurt). The prosecutor showed the doctor a Polaroid picture, and an enlargement of the picture, of the victim's eye taken by the police. The doctor said he could not see the injury but noted the quality of the picture precluded a definitive answer one way or the other.

- The doctor said the victim reported she had drunk 3-4 glasses of wine earlier in the evening. She said she had not used drugs. The doctor said his observations of her behavior, coupled with his neurological exam, were consistent with someone drinking a few glasses of wine. She was coherent.

Thursday began with the testimony of the police dispatcher who made the tape of the victim's call to the police in the June 1999 case. The tape had the voice of a woman identified as Susan Jones (names have been changed to protect anonymity) who reported her husband had "just beaten the crap out of me". She identified her husband as 50 years old with gray hair, 6" tall, wearing blue jeans and cowboy boots. She said she did not know where he was. She agreed to meet the officers at the dock (she and her husband live on a sailboat docked in the harbor).

The next witness was the alleged victim, Ms. Jones. She was not cooperative with the prosecution. She was in court to explain that her husband had not assaulted her in the June 1999 case and acted out of self-defense in the February 1998 incident. During the trial, she and her husband (the defendant) arrived together, sat in the hall and hugged each other on breaks (in full view of the jury), and walked out of court hand-in-hand each day. Important aspects of her more than 3-hour testimony were:

- In the 1998 case, she was the aggressive party. Her husband tried to leave to avoid escalating the argument but she pulled him back. In an attempt to get away from her, he hit her with a brass cigarette lighter about 3" high and 1" wide that weighed approximately the weight of a half a stick of butter. Her husband left after he hit her. She found a friend to take her to the hospital. She told the friend (who is now out of the country and unavailable for the trial) that her husband hit her. The friend told the nurse at the hospital that the husband did it. Further, the victim told the doctor that her husband hit her.

- The victim said she had been drinking heavily and using drugs. She said she drank and used drugs from the time she got up in the morning until she went to bed at night. Her drug habit was daily for an 8-10 year period but she said she has been off drugs since last July with the help of her husband.

- The victim said her husband did not like her using drugs and they often fought about it and the money it costs to buy the drugs. She said her habit cost about $1,000 per month during the 8-10 year period.

- The victim could recall few events from the February incident. What was clear in her mind was that is was not her husband's fault; she was not afraid of him; and she was not a victim of domestic violence. She had almost no memory of talking to the police or pictures being taken. When the prosecutor showed her the pictures, she acknowledged they were of her.

- She said she told the police her husband hit her because she was mad at him. She made the report to get him in trouble. She could not remember why she was mad at her husband.

- In the 1999 case, she said her husband did not hit her. They had a verbal argument. She started and prolonged the argument. She could not remember what the argument was about. After her husband left, she went to a friend's boat (she could not remember who the friend was) and called the police. She called the police because he had left in the middle of the argument. She wanted him to remain and settle the argument. As a consequence, she was mad at him and wanted to get him in trouble.

- She could not remember what she said to the police, as she was "high as a kite". She did not remember that she refused to have pictures taken of her injuries (a cut lip and chipped tooth). She described her husband to the police as 50 years old, with short gray hair and wearing jeans and cowboy boots. The police found a man matching the description and asked her to do a curbside lineup. When she was asked if the man was her husband, the man said "Susan, don't do it" and she changed the description of her husband to a younger, shorter man, with long blond hair dressed in a grey sweat suit. The man (her husband, the defendant) was let go. He was subsequently arrested for corporal battery of a spouse.

- Ms. Jones said her husband did not hurt her on the night of the July incident. She denied any cut to her lip. She stated that the chipped tooth was the result of some bad dental work. That work, done in May, resulted in her tooth being chipped while she was eating a few days after the dental work was done.

- She was openly hostile to the prosecutor during her testimony. She was cooperative with the defense. She could remember very few details of either incident and had only two clear memories. First, her husband hit her in self-defense in the 1988 incident. Second, he did not hit her in the 1999 incident. She said in no uncertain terms that she did not want to be in court. The cases are one and two years old. They were her fault. She and her husband have gone on with their lives and she could not understand why these old incidents were being dragged up or what purpose it served to do so. When asked by defense counsel, she said she was not lying under oath to get her husband off. She said she understood lying under oath would be perjury and she "did not want to go to jail either". When asked by the prosecutor, she reported that she had testified in court as she did because it was the truth and not because she feared retaliation or to protect the man she loves. She went into a fairly lengthy soliloquy. During that soliloquy, she said she loved her husband. She also said that she was the one with the bad drug habit and bad temper. She added that he did not want to argue and would try to walk away but she continued the arguments. Finally she ended by saying that she would probably be dead from drugs without his support in kicking the habit.

The afternoon concluded with the testimony of three police officers. The first two testified about the June 1999 events and the last about the February 1988 case. The salient parts of the testimony regarding the 1999 case were:

- Officers responded to the domestic violence call and found Ms. Jones crying and with a cut lip and chipped tooth. She said her husband had hit her and accused her of having an affair. He prevented he from leaving during the assault. When she managed to get off the boat, he poured beer on her back.

- The police searched for, and found, a man matching the description given by the victim. At a curbside lineup, she was asked to identify him. He said, "don't do it Susan". She changed her description of her husband. She said the man in front of her was not her husband (both sides agree now that it was indeed her husband). Susan said to the man—"you are not my husband, right" and he replied "okay then we will settle this later".

- The victim was coherent according to the officers and there were no notes in their report indicating she was drunk or high.

- The victim refused to have pictures taken of her injuries. The officers described them in their report and noted the back of her shirt was wet.

The salient parts of the testimony about the 1998 case were:

- The officer responded to the hospital to interview Ms. Jones about 3:30 in the morning.

- Ms. Jones was crying and said her face and hand hurt. She said her husband hit her in the hand with a heavy (3-4 pound) brass lighter. She said he also punched her in the eye. This occurred about midnight that night.

- The officer said Ms. Jones was upset but coherent. When asked by the defense, he said he had no notes in his report that the Ms. Jones had been drinking or using drugs. He had no independent memory about drugs or alcohol except there was nothing about it in his report.

- The officer took pictures of Ms. Jones's injuries.

- The officer drove Ms. Jones to a friend's boat and searched for, but did not find, the suspect.

Much of Friday was spent on discussion among counsels and the judge about what jury instructions to use. The prosecution rested and the defense began. The first witness was a character witness for the defendant, his former boss and friend. He testified that:

- He has known the defendant for 2-3 years and his wife for a year or two. He has been out with them on several occasions. Susan often drank a lot and became loud and argumentative. He said Susan became angry with him (the witness) because he had to lay her husband off due to an ebb in the construction business (the defendant is an electrician). At one point, Susan threatened the witness but there was nothing physical. The witness described the defendant as a gentle man without a temper and Susan as a bit of a "lose cannon" when she drinks.

- The witness did not see the couple the night of either incident and has never seen any physical violence between them.

The second character witness was a friend of the couple who lives on a nearby boat and married the couple (she is a minister). Her testimony was:

- The defendant is a gentle man who avoids arguments. His wife is the verbally aggressive one. She has not seen any physical violence. She was with the couple the night of the Feb. 1998 incident and she said Susan had been drinking a lot and was arguing with her husband. Her husband told the witness he was going to leave his wife as he had "had it" but did not elaborate. The defendant left and Susan followed after him that February night. The witness did not see them after that.

- The witness said that last December Susan told her she had a drug problem for 8-10 years but that she had been clean since July.

The jury was excused at 4:30 for the weekend. Monday began with jury instructions from the judge (that took about 30-45 minutes). The prosecution closed. Main points in the 45-minute closing arguments were:

- Susan was a victim of domestic violence who is recanting out of love, fear, and/or persuasion. The phrase "don't do it Susan" when she was asked to identify her husband the night of the June incident was interpreted as evidence that he was warning her not to cooperate with the police.

- The accounts Susan gave to the police officers in Feb. 1998 and June 1999 were coherent (and inconsistent with Susan being high as a kite).

- The people had met every element to prove the 1998 and 1999 incidents (each element was explained one by one to the jury).

- The officers and doctor were credible witnesses and Susan was not. They had no motive to lie but Susan did.

- The assaults occurred in the couple's boat where there were no witnesses.

- The defense argument that the victim was out to get the victim made no sense because in the February incident she was not even the one to call the police (the hospital had). In the June case, she refused to identify her husband or have pictures of her injuries taken.

- The prosecutor closed with the question "why should you care about this case when the victim does not?" He explained domestic violence is against the law and that a real person had been harmed even though she now is denying it out of love, fear, and/or persuasion.

The defense presented closing argument. Major points during the one-hour closing were:

- When the defendant said, "don't do it Susan", he meant don't file a false police report like she had in the previous February incident.

- Susan was mad at the defendant and that explains why she filed false reports.

- Susan is the one with the temper and she was constantly high on drugs and alcohol.

- There was not good evidence of injuries in the June incident. The hand injury in the February incident was self-defense.

The prosecution rebuttal focused on why domestic violence victims recant; the improbability that Susan could have been so high and drunk on the nights of the incident but appeared coherent to trained police officers and the doctor; and a re-argument of the people's evidence. Rebuttal lasted about 20 minutes.

The judge reiterated (he had explained earlier when giving jury instructions) to the jury about how they could use (or not use) the February 1988 case. The first thing the jury must do is to decide by a preponderance of the evidence that the defendant committed the crime. If they decide that the defendant committed the 1988 offense, it can be used (or not used—it is up to the jury to make that determination) to indicate that the defendant has a propensity to commit domestic violence. The judge also explained the deliberation process and they were dispatched to deliberate. The time was 3:30 and the jurors were dismissed for the day at 4:30.

Deliberations resumed at 9:00 Tuesday morning. At around 2 p.m., the jury returned with a verdict: not guilty. When the prosecutor questioned the jurors after the verdict, they said

they returned a not guilty verdict because they did not believe the victim. She either lied to the police when she said her husband hit her or she lied to them when she said he did not hit her, or if he did, it was only in self defense to get away from her. Her lack of credibility presented them with reasonable doubt as to the defendant's guilt.

Examination of Data From Case Records

San Diego's no-drop policy dates back to the late1980s. It is the model from which others have copied. Because the policy began so long ago, an archival comparison clearly was not possible in San Diego. However, we learned during our site visit that there had been recent changes in legislation regarding admissibility of evidence (evidence code 1109 and 1370 described above) whose impact should be studied. Therefore, we set as our primary task in San Diego evaluating the effects of the legislation.

Differences in all prosecuted cases. We found some interesting differences between the two years. We looked first at case characteristics. There was no difference between the two years in the proportion of defendants with a criminal history or in the distribution of categories of victim/offender relationships. However, the proportion of female defendants increased from 5% of the sample to 16% of the sample.[1] Also the proportion of defendants charged with assault dropped from 89% to 80%, while the proportion of defendants charged with violations of probation or other charges increased.[2]

We then examined differences in case processing between 1996 and 1999. Figure 3.1 shows that processing time declined from an average of 91 days in 1996 to 32 days in 1999.[3] The decline was the result of a large change in the rate of dispositions taken at arraignment. Arraignment dispositions went up to 46% in 1999 from just 17% in 1996.[4] We did not find any differences in adjudications of guilt from 1996 to 1999. The rate of adjudications of guilt was an amazing 96% in both years. Nor did we find differences in the proportion of guilty defendants whose sentences included jail time, probation, or batterer treatment. But we did find a significant difference in the proportion of offenders whose sentences included a no contact provision. In 1999, 61% of offenders were ordered to stay away from victims, up from 38% in 1996.[5]

None of these changes is related in an obvious way to the new legislation. Rather, they seem to be the result of changes in implementation of a specialized domestic violence court.

Analysis of trial cases. If the legislation did make a difference in whether important evidence was admitted during the course of trials, then we ought to see a difference in conviction rates following the passage of the new laws in 1997. Figure 3.2 shows that there was, in fact, no difference in convictions after trial prior to the legislation versus after. However, there were slightly more hung juries.

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1 Chi-square = 12.73, $p < .01$
2 Chi-square = 6.02, $p < .05$
3 $F[1,375] = 24.25$, $p < .01$
4 Chi-square = 38.67, $p < .01$
5 Chi-square = 17.72, $p < .01$

FIGURE 3.1

SAN DIEGO: CASE-PROCESSING
(IN DAYS)

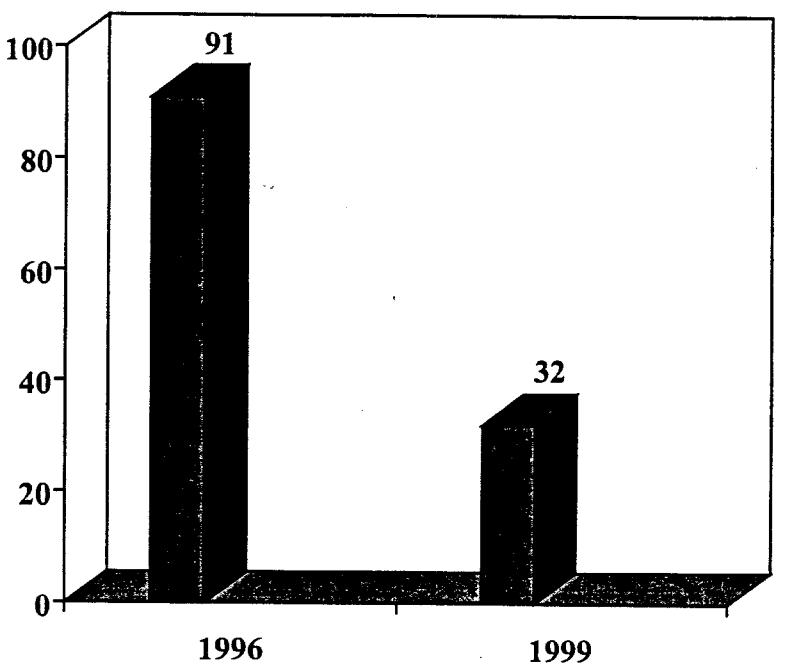
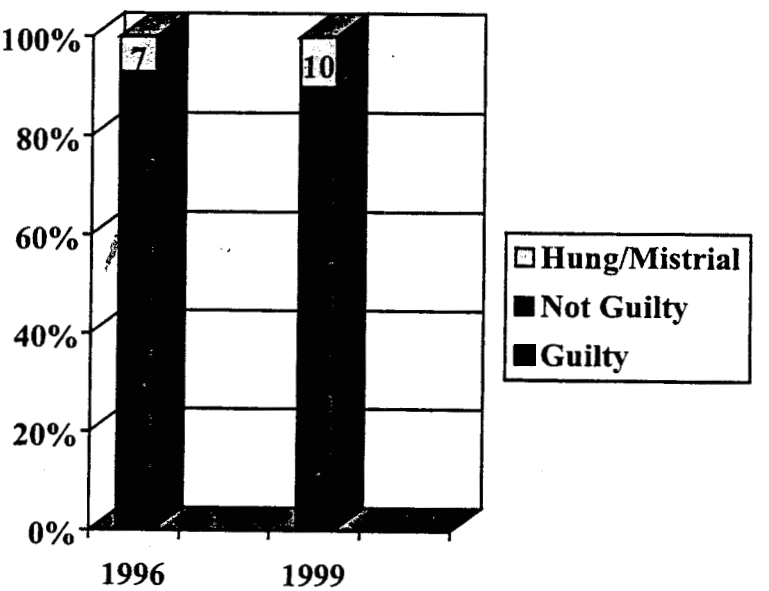


FIGURE 3.2

SAN DIEGO: CASE OUTCOMES
1996 AND 1999 TRIALS



We also looked to see whether there were any differences between the 1996 and 1999 samples in whether prosecution evidence was admitted in trials by judges. Because the number of cases was small, we were forced to create categories of evidence. The categories were created as follows:

- **Statements.** We combined statements and admissions made by defendants with statements made by victims to the police or 911 operators.

- **Witnesses.** We combined eyewitness testimony with police witness testimony, medical testimony, and expert witness testimony.

- **Corroborating evidence.** We combined physical evidence with photographic evidence, medical records, copies of restraining orders, and prior violence by the abuser.

Within each of the three categories, we looked to see whether there were any differences in whether prosecution evidence was admitted or not between the 1996 and 1999 samples. The results are displayed in Table 3.1. They show that witness testimony and corroborating evidence were almost universally accepted by judges in both 1966 and 1999. In 9 cases out of 10 or better, judges allowed prosecutors to introduce these forms of evidence at trial. Prosecutors were less successful with defendant or victim statements in 1996, when they were admitted in only 72% of cases in which prosecutors tried to introduce them. However, in 1999, statements were admitted in 89% of cases where prosecutors tried to introduce them. The numbers are too small to conclude that differences between the years are reliable, but the results suggest that prosecutors had greater success introducing statements from defendants and victims into evidence in 1999 than in 1996.

Because we had a large trial sample in San Diego (N=90), we were able to examine the effects of evidence on trial outcomes in ways that we could not do in the other sites. We conducted two multivariate logistic regression analyses to determine the independent effects of victim and defendant statements, witness testimony, and corroborating evidence upon trial outcomes. The first analysis examined the effect of the three forms of evidence plus victim testimony for the prosecution or defense in all trial cases from 1996 and 1999 combined. The second analysis was limited only to cases in which the victim did not testify for the prosecution – in other words, no-drop cases. Here, we examined the effects of the three categories of evidence plus whether or not the victim testified for the defense. The results of the analyses are presented in Table 3.2. The table shows that *none* of the forms of evidence significantly influenced the outcome of trials among the entire sample or among no-drop cases.

TABLE 3.1

Admission of Prosecution Evidence by Trial Judges in 1996 and 1999

	1996		1999		Total	
	Admitted	Not Admitted	Admitted	Not Admitted	Admitted	Not Admitted
Statements	72%	28%	89%	11%	81%	19%
Witnesses	95%	5%	100%	0%	98%	0%
Corroborating	96%	4%	89%	11%	93%	7%

TABLE 3.2

Effects of Prosecution Evidence Upon Trial Outcomes
(Logistic regression results)

	All Trial Cases	Only No-Drop Cases
	Wald Coefficient	Wald Coefficient
Victim or defendant statements	0.05	0.03
Witness testimony	0.78	0.64
Corroborating evidence	0.00	0.18
Victim testified for prosecutor	0.01	----
Victim testified for defense	2.18	2.11

CHAPTER 4: EVERETT, WASHINGTON

Prosecuting without the victim's cooperation has a relatively long history in Everett. As far back as 1985, the Snohomish City Attorney's Office had attempted "evidence-based" prosecution of domestic violence misdemeanors. In some cases where victims were reluctant to cooperate with authorities, attempts were made to admit into evidence excited utterances made by the victim to police officers or to 911 operators. Children, sometimes as young as six years of age, were called upon to testify. Victims who recanted were put on the stand by prosecutors and used to introduce prior violent acts of the defendant as a way to help determine whether the victim's recanting was the result of threats against her. Innovative as the approach was, it was used very sparingly, reserved for cases in which defendants had extensive criminal histories or were otherwise considered serious threats to victims. Even so, prosecoutors' efforts to introduce forms of evidence that would permit them to win convictions without victim testimony were often rejected by judges.

According to the City Attorney, what was needed to effect evidence-based prosecution was an aggressive domestic violence prosecutor who was not afraid to try and to lose cases. The introduction of Violence Against Women (VAWA) funding provided an opportunity for this to happen. In 1997, the Everett Police Department applied for and received a VAWA grant for $314,000. The funds permitted the creation of a Domestic Violence Unit that brought together prosecutor, police, and victim coordinators under one roof in order to increase collaboration. This arrangement was unique in the four jurisdictions in our study. An experienced domestic violence prosecutor was hired from Seattle to bring a more aggressive style of prosecution to the Everett domestic violence caseload. He was teamed with specialized domestic violence police officers conduct follow-up investigations and assemble evidence. A victim coordinator works with victims, who stays in contact with victims, educates them about what prosecution can do for them, and prepares them for court testimony. The Unit is supervised by an oversight committee, which includes victim advocates, representatives of a local navy installation, hospital administrators, court administrators, and police managers. A second year VAWA grant increased the Unit's operating budget to $440,000 and created an intern program for law students.

Since the Unit began, the City Attorney's Office has, indeed, adopted a more aggressive style of prosecution. This has included pursuing a no-drop policy, pushing the court to set higher bail amounts, and mandating defendants to a Duluth-style batterer treatment program rather than anger management classes.

Domestic Violence Case Processing in Everett

Domestic violence is broadly defined in Everett to include family members and persons who are or have resided together as well as spouses and romantic intimates. Police in Everett have the unusual power to file cases directly with the court. Since 1983, when officers respond to domestic violence calls, they are obligated to arrest when they have probable cause that a felony or misdemeanor has been committed. If such cause exists, officers are encouraged to determine the "primary aggressor" in the domestic incident and to arrest that party if they can be

found. Following the arrest, officer's file charges with the municipal court. It is policy in Everett that neither police supervisors nor the City Attorney's Office exercise discretion in deciding whether or not to charge misdemeanors where the defendant has been booked. The City Attorney's Office can, and does, review these cases and may amend charges at arraignment.

Cases in which probable cause exists but the accused is absent when officers arrive constitute about two-thirds of all domestic violence crime reports. Police officers turn these cases over to the Domestic Violence Unit. Here, the City Attorney's Office is in a position to exercise some discretion. The Unit's police officers review evidence and review the accused state criminal history as well as calls for police service that may not have resulted in arrest. (Keeping a history of calls for service is a practice, which was started as part of the VAWA project.) The victim coordinator contacts the victim. Based on the results of their investigation *and upon the willingness of the victim to cooperate*, a decision is made whether or not to file charges. Victim cooperation is seen, as essential in these cases since defendants who were absent from the scene cannot be identified by the police officer. The City Attorney's Office estimates that they file charges in only one in five cases in which suspects are not arrested. If prosecution is decided, a summons is issued to the accused requiring him or her to appear in court within two weeks.

Defendants in custody may post bail from the detention facility based upon a standardized bail schedule. For misdemeanor assaults, bail historically had been set at $1,000, with a $100 cash alternative. However, the City Attorney's office was successful in convincing the court to raise the scheduled amount to $10,000 without a cash alternative. This was seen as important for two reasons. First of all, it helped ensure that defendants would not skip out on arraignment. According to the domestic violence prosecutor, this happened in 10-15% of cases under the old bail schedule. Second, the new bail schedule was designed to help prevent victims and defendants from reconciling before arraignment. If reconciled, it would be difficult to persuade a judge to issue a no-contact order. According to the domestic violence prosecutor, the change in the bail schedule was effected without participation or serious objection from defense attorneys.

Arraignment is held the next morning for custody cases, where the prosecutor files an amended complaint. About 15% of defendants plead at this time, although the domestic violence prosecutor says he discourages the practice. Continued cases are set for a pretrial hearing date in preparation for a judge or jury trial, and bail is typically reduced. At arraignment, defendants are asked to waive their right to a jury trial, and most do. No contact orders are issued as a condition of pretrial release at arraignment, if one has not already been issued by a judge via telephone at a jail hearing. Violation of the order is a class C felony. The orders normally stay in effect for one to two years from issuance unless it is lifted sooner by a judge upon case dismissal or upon entry of the defendant into a treatment program. Trial dates are scheduled once each week. This is the time that most pleas are taken.

The majority of defendants plead guilty. In fact, the Domestic Violence Unit claims to have raised the conviction rate from 30% in 1996 to 1997 to 70% currently. Only a small fraction of the Unit's annual caseload of 1,200 proceeds to trial. The Unit's prosecutor estimates about 60 bench trials and half that number of jury trials per year.

Defendants with no priors who plead guilty are typically given suspended sentences and two years probation, including batterer treatment. About one in four defendants are offered diversion to treatment. In these situations, cases are continued until the defendant successfully completes treatment. By state statute, defendants are prohibited from possessing firearms for the duration of probation. The City Attorney's Office seeks jail terms for defendants with prior domestic violence convictions and defendants who have made threats to kill the victim.

The City Attorney's Office has pushed for enrollment in a 52-week Duluth-type treatment program, rather than anger management classes. The cost of the program ($40-50/week) is borne entirely by defendants with no provisions for covering costs of defendants who are indigent. Cases of defendants who fail to attend classes are referred to the Probation Department for action. Show cause hearings are set, and judges typically impose some jail time before sending defendants back to class.

Prosecuting Cases Without the Victim's Cooperation

The ability of the Domestic Violence Unit to pursue cases regardless of whether victims cooperate or not begins with thorough police work. The Unit began training police officers to routinely photograph crime scene evidence and victim traumas. Officers were trained to record statements made by victims. They were also taught to make notes about the victim's emotional state upon their arrival that would lay the legal foundation for entering the victim statements in court as excited utterances. The Unit's prosecutor takes seriously the critical role arresting officers play in building a successful case, and accordingly provides regular feedback to them on their cases. It is the practice of the Domestic Violence Unit to send all arresting officers notes of thanks for good police work and information about how the case was disposed.

The Domestic Violence Unit's police investigators follow up on cases in which there is a possibility of obtaining more detailed evidence than was gathered by the responding officers. The investigators may take additional photos of victim injuries, speak to victims about the incident, or interview possible witnesses to the incident. They are responsible for obtaining copies of 911 tapes for possible use in court. These officers also are responsible for serving subpoenas to victims. In the process, the officers reassure victims and give them information on what to expect when their case goes to court.

When cases go to trial and victims express their unwillingness to prosecute by being absent, the prosecutor relies on the evidence that law enforcement officers have been able to amass. Eyewitnesses -- neighbors or children -- may be called upon to testify. Photos of injuries sustained by victims may be introduced and corroborated by medical records and/or testimony of hospital staff. The prosecutor will seek to enter into evidence excited utterances made by the victim to 911 operators or to police officers, paramedics, or neighbors. Essential for admission of any excited utterances reported by witnesses or captured on 911 tapes is police officer testimony that the victim was undergoing emotional distress at the approximate time that the statements were made. The prosecutor and defense attorneys agreed that the police have mastered well the art of laying the foundation necessary to admission of excited utterances.

The Domestic Violence Unit's victim coordinator works with victims, letting them know what is likely to happen in court. Victims are told that the decision to prosecute does not rest with them. Those who are worried that prosecution will harm the batterer are reassured that the City Attorney's Office will seek treatment rather than a jail term, and that treatment is necessary to prevent recurrence of violent incidents. Women who have serious concerns that prosecution will place them in greater jeopardy are put in contact with victim service providers who can aid them with shelter placement or relocation. Victims are subpoenaed to come to court on the day of trial, regardless of whether they want to testify against the accused or not. In about a half dozen cases a year involving serious histories of violence, the City Attorney's Office has brought in reluctant victims on a material witness warrant and put them on the stand as hostile witnesses.

Also useful to the prosecutor is establishing prior violent acts committed by the defendant. Under the state's 404B rule, such acts normally may not be introduced by the prosecutor, but there are two exceptions. One is that prior violent acts can be used to impeach the testimony of defendants testifying on their own behalf. The other situation in which they may be introduced is to examine why a victim is recanting on the witness stand. In this instance, prior violent acts of the defendant may help the jury to understand what may have led victims to change their stories.

In Everett, as in other cities that have experimented with no-drop strategies, one of the main obstacles faced in trials without friendly testimony from a victim is trying to get judges to allow excited utterances into evidence. Judges have gone through state-sponsored training on domestic violence. Currently the prosecutor is having a fair degree of success in getting one of the two municipal court judges to admit such evidence, but has had less success with the other judge. But it is probably fair to say that the Everett City Attorney has not had the same degree of success with having evidence admitted that the San Diego City Attorney has had.

According to one of the Municipal Court judges, adoption of the no-drop policy has led to a more adversarial relationship between prosecution and defense. He perceives that more cases now proceed to trial and that the result has been longer domestic violence calendars. This assertion was disputed by both the City Attorney and a public defender.

The City Attorney summed up what he felt was needed to successfully execute a no-drop policy. The elements he saw as important included an aggressive prosecutor, good law enforcement work, and willingness and resources to try cases and lose.

Examination of Data From Case Records

Everett was the site in which we had the best data on impact of the no-drop policy on the prosecution of domestic violence cases. We examined data from a sample of 156 cases prior to the start of the policy and 200 cases following its start. We were able to compare processing time, trial rates, and guilty plea rates. The pre-no-drop case files did not contain data on sentences, so we were not able to compare rates of jail terms, no contact orders, or conditions of probation.

We had limited data from the pre-no-drop sample to compare case characteristics between the two time periods. Our data did not show any significant differences from one time period to the other in nature of victim/offender relationship or in defendant gender. We did, however, note a significant difference in the nature of the top charge between time periods. The pre-no-drop sample contained relatively more assaults (83% vs. 81%), more violations of probation (16% vs. 13%) and relatively fewer "other" charges (1% vs. 6%) compared to the post-no-drop sample.[6] We do not have any explanation for the minor shifts in charges.

We compared time between arraignment and case disposition before and after the no-drop policy went into effect. Figure 4.1 shows that processing time declined from 109 days to 80 days.[7] Figure 4.2 compares case outcomes before and after the change in prosecutorial policy. It shows that dismissals declined dramatically from 79% of dispositions to just 26% of dispositions.[8] Conversely, adjudications of guilt (by plea or trial) increased from 19% to 53% and diversion dispositions increased from 2% to 22%. Figure 4.3 shows that the implementation of the no-drop policy also was accompanied by a large increase in trials, from 1% to 10%.[9] Four in five of the trials held after the shift in policy were won by prosecutors.

From this analysis, we conclude that the implementation of the no-drop policy had a major effect upon case outcomes. Dismissals dropped sharply as prosecutors stood ready to proceed even without a victim present in court and willing to testify. The increase in trials indicates a more adversarial atmosphere following the introduction of the new policy. Faced with an offer of a guilty plea even when victims were uncooperative, defense attorneys apparently were willing to challenge prosecutors where evidence was at issue. The faster processing time we observed may have been the result of better organization by the prosecutor. Alternatively, it may reflect the fact that pleas normally are quicker dispositions than dismissals that result after the court has given victims multiple chances to appear in response to subpoenas.

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6 Chi-square (2) = 8.27, $p < .05$.
7 $F(1,345) = 5.58$, $p < .05$.
8 Chi-square (2) = 105.65, $p < .01$.
9 Chi-square (1) = 14.21, $p < .01$.

FIGURE 4.1

EVERETT: DAYS TO CASE DISPOSITION

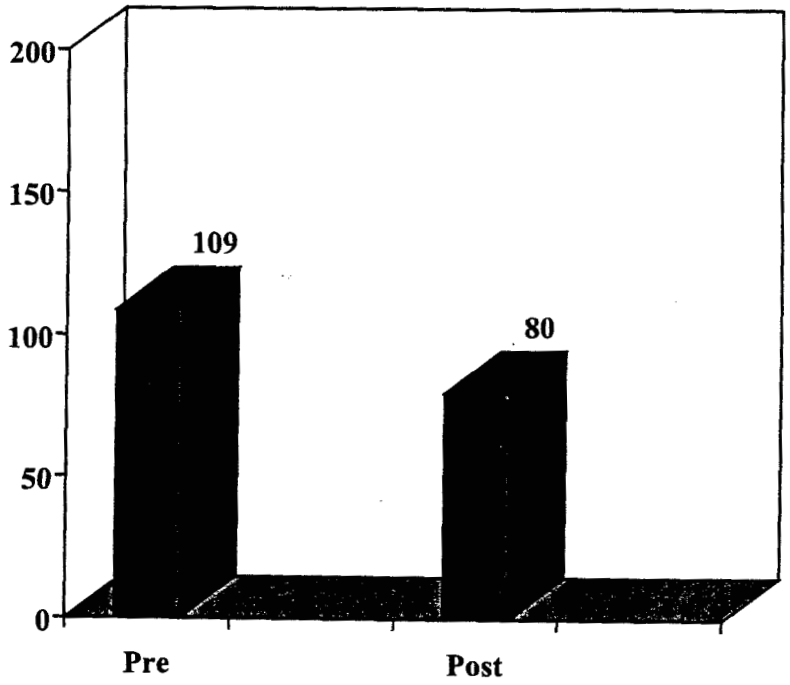


FIGURE 4.2

EVERETT: CASE OUTCOMES

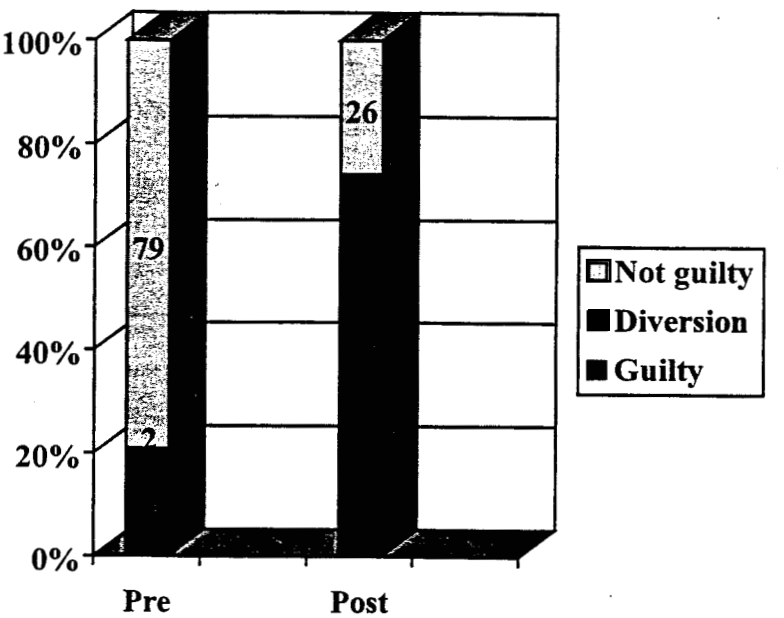
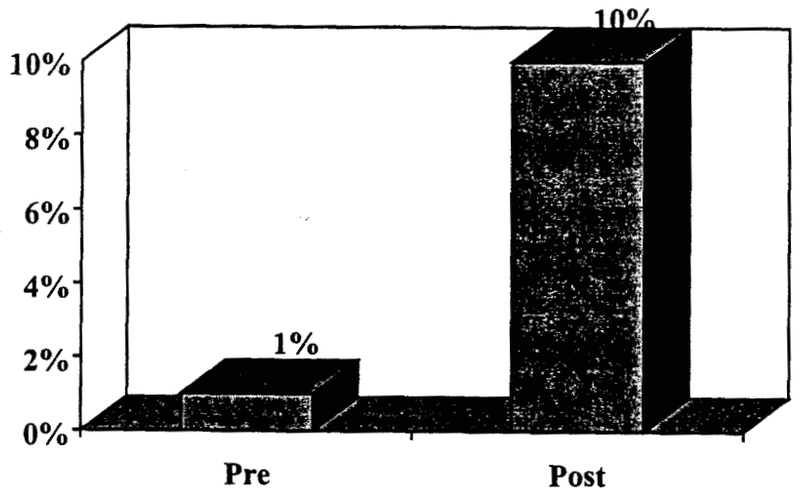


FIGURE 4.3

EVERETT: PROPORTION OF CASES RESULTING IN TRIALS



CHAPTER 5: KLAMATH FALLS, OREGON

History of the Domestic Violence Unit

According to the District Attorney (Ed Caleb), until January of 1996, they had their "domestic violence policy backwards". They would only take the case if the victim came into the office and swore out a complaint. Further, the victim could decide to drop the case at any time and the prosecutor would dismiss it.

In January of 1996, a meeting was held at the Crisis Center that was attended by the District Attorney, police, doctors, mental health workers, and advocates. The meeting was called because the domestic violence problem was "out of hand". The District Attorney became convinced based on conversation with victim advocates that a women in crisis could not make an informed decision about prosecuting the batterer and it was up to the prosecutor to go forward with the case despite the victim's wishes. Mr. Caleb had read about the San Deigo no-drop policy and he became convinced it was the best way to proceed.

In Oregon, the District Attorney is also the chief law enforcement officer. As such, Mr. Caleb was able to engage local that law enforcement departments to train officers on techniques to collect better evidence in domestic violence cases. After the training, the District Attorney found that the quality of police reports "improved dramatically" although he noted that they could be better. The office hired a full time domestic violence investigator. When police do an insufficient job in collecting evidence, their investigator is available to follow up with the cases. The supervising prosecutor in the Domestic Violence Unit routinely does training with law enforcement on domestic violence and stalking and he has developed special forms and checklists for officers to complete in domestic violence cases. Police routinely take pictures (the film and cameras are paid for by the grant—see below) but the investigator may have to go back and take more as the quality was not good or the bruising did not show until latter. They deal with 3 police departments—the city police, the county sheriff, and the state police. Last October, they brought in experts from around the country to provide cross training for victim advocates, law enforcement, and prosecutors. They believe cross training fosters a better understanding of, and respect for, each other's roles.

In 1996, victim advocates met with the District Attorney to ask him to partner in their application to the Violence Against Women's Office pro-arrest program. The District Attorney agreed and together they applied for $400,000. They received the grant and a subsequent one the next year for $600,000. The office is resource rich as a result. In the first year the grant supported a full time deputy district attorney; 2 probation and parole officers, 2 victim advocates (the advocates work out of the Crisis Center), a unit coordinator, and a clerical person. In the second year, they were able to add a full time second deputy district attorney, an attorney to supervise the unit and an investigator. For a small office that handled approximately 400 misdemeanor and felony cases last year, they have a very large number of dedicated domestic violence staff.

Klamath County's No-drop Policy

In Klamath Falls, the District Attorney's central aim in enforcing a no-drop policy is to obtain and maintain no contact orders. It is believed that it is essential to have a period of time during which the batterer is kept away from the victim. Because they believe that victims themselves are not capable of making this choice during the crisis period, the District Attorney's office strives to obtain and enforce no contact orders. In Klamath Falls, defendants are routinely arrested on probation violations for violating no contact orders. In fact, the District Attorney's office believes so strongly in the importance of no contact orders that prosecutors go to court to oppose women who seek to have them lifted.

The Klamath Falls no-drop policy states that the victim cannot dictate whether a case is prosecuted. The only time the prosecutor drops a case is if there is insufficient evidence to proceed. They are able to win cases without the victim's cooperation. The District Attorney estimated that they are securing guilty pleas in 80% of their cases. Pleas usually happen at the Mandatory Appearance date (the first court date after arraignment). According to the District Attorney's office, they are winning about 50% of their trials. Good evidence collection is key and they have had success in introducing the 911 tape and excited utterances made to the police and other witnesses (they have had greater success with some judges than others). The District Attorney's office had a recent setback when an Oregon Appeals Court (State v Moore) ruled that 911 tapes and excited utterances could only be introduced if the prosecutor proves the victim is not available. According to the prosecutor in charge of the Domestic Violence Unit, this "overturned a 200 year history of allowing hearsay exceptions". It means the prosecutor must document all their efforts to find the victim and are obligated to bring the victim back from another state where she may have moved. This can be prohibitively expense. They are hoping to get the ruling reversed.

The no-drop policy benefits from two Oregon provisions that allow the prosecutor to introduce certain evidence. The first is statute 404.1 specific to domestic violence cases that allows the prosecutor to introduce previous domestic violence incidents even if there was no arrest or conviction. This can be introduced whether the defendant testifies or not. The second is a court decision, State v John, that allows the judge to decide whether the prosecutor can introduce prior convictions to impune the character of defendants who testify.

The District Attorney's office was instrumental in the passage of a law that prohibits interfering with someone trying to call the police (such as pulling the telephone out of the wall). This change has proven useful in cases in which victims choose not to testify.

The Domestic Violence Unit's Operation

The unit is supervised by a deputy district attorney with the assistance of a unit coordinator who coordinates the activities of the partnering agencies. Every Friday, the entire domestic violence team and their partnering agencies meet to discuss general issues and individual cases. The partnering agencies are Services to Children and Families; the sheriff's department, the state police, the city police, probation and parole, the Crisis Center, and the prosecutor.

After the unit started, the District Attorney's office experienced a 50% increase in cases "overnight" due to the better evidence collection and dedicated and trained domestic violence staff. When they started, there was a concern that victims would not call the police because of the mandatory arrest law and the prosecutor's no-drop policy. The District Attorney said "we did not experience that", rather victims are continuing to call the police. Mr. Caleb did say that mutual arrests are a problem in the county and that the primary aggressor provision is not being adequately enforced.

The prosecutor in charge of the Domestic Violence Unit screens all of the domestic violence cases to determine whether to file charges. He estimates that he accepts 80-90% of the cases. In making that determination, the prosecutor considers the perpetrator's criminal history and the dynamics of the situation. He talks to the victim advocate who responded to the scene to learn about the victim's feelings, demeanor, and credibility. The prosecutor does not usually speak to the victim until the case goes to trial (they had 20 trials last year) or to obtain her opinion about the plea bargain. Prosecutorial policy does not allow diversion.

An important component of the no-drop policy is that a good case be built from the very beginning and starts with the assumption that the victim will recant. With the District Attorney's special unit, that is possible. In every domestic violence call, a patrol officer is dispatched and two advocates—one from the Crisis Center and one from District Attorney's office. The advocate from the Crisis Center talks to the women about her choices; works on a safety plan; makes referrals for services; explains what Child Protective Services (CPS) will do if the violence occurred in the presence of children; and talks to the children about safety issues. The advocate from the District Attorney's office explains the legal process and what is going to happen in the case.

If domestic violence is committed in the presence of the children, it becomes a felony assault by Oregon statue (Oregon is but one of a few states in the country with such a law). For years the Crisis Center and child protective services have been antagonistic as advocates saw CPS as removing the children after a domestic violence incident thus twice victimizing the mother. According to the prosecutor, that has changed and they have formed a partnership. The unit coordinator said that children are still removed from the home in some cases and that CPS routinely visits the home after a felony domestic violence assault to determine if the children are safe. This may result in their removal. The advocate needs to explain to the victim why the children are being removed. According to the advocate, victims need to understand: "once you are in the system, all the ranting and raving in the world will not get you out of the system".

There are certain non-negotiables in pleading guilty (or being found guilty) in domestic violence cases. Prior to the disposition of the case, there is a mandatory no contact order issued stating the defendant cannot see the victim (he can make arrangements to see the children outside of the victim's presence). The only person who can lift the no contact order is the judge upon the victim's request but judges do not want the liability of lifting such orders so it almost never happens. As discussed above, the prosecutors and advocates think it is critical that the offender be kept away from the victim. She cannot make informed decisions when he is pressuring her and she is in crisis. Defense attorneys think this rigid policy makes no sense and that cases should be treated on an individual basis. Some families should be allowed to stay together and it is not up to the prosecutor or judge to make that decision for the women. Since there are only 2

courtrooms to handle all the cases in the county, a defendant may have to wait 1-2 years for trial and during all that time he cannot see the victim. For those who want to remain together, this creates a strong incentive to plead guilty early in the process. Most defendants plea at the Mandatory Appearance date which is 1-2 weeks after the arraignment. After the plea, however, there is another no contact order issued for 3 months—this is mandated by Oregon law and cannot be negotiated and can be extended by the probation officer without going back to the judge. Because the caseload in Klamath Falls is low relative to the number of personnel assigned to domestic violence cases, there are resources available to monitor no contact orders and they are strictly enforced.

Another non-negotiable plea condition is that the defendant be placed on a minimum 12 months probation (18-24 months may be ordered if he has prior convictions) and successfully complete batterer treatment (anger management used to be allowed but that changed with the start of the unit in 1996). Thus the system maintains a firm hold on the batterer. Because Klamath Falls is a small town where "everybody knows everybody" it is easy to find out if no contact orders are violated. The district attorney's investigator actively goes out to houses to see if the no contact order is being violated and can make an immediate arrest.

The Batterer's Treatment Program

The only criticism the District Attorney had of the VAWO grant was that it cannot support batterer treatment (VAWO guidelines do not permit it) which he said was a "bad decision". The batterer treatment program is supported through the fees that offenders pay. They have one provider who runs a batterer treatment program. Prosecutors and advocates are highly supportive of the program, but the public defenders were very critical of it. The prosecutors portrayed the program as very strict. They view that as essential in treating batterers. It is based on the Duluth model of holding batterers accountable. It is designed to be 12 months long (for 6 months, the offender attends weekly sessions and for 6 months, he attends monthly sessions). The offender must pay $30 per week for treatment (the prosecutor said very few exceptions are made for indigents who cannot pay but the defense attorneys countered saying that there are no fee waivers granted for indigents which they saw as a great hardship to batterers and their families). If the offender is failing in treatment, for example he fails to attend class, fails to turn in his homework, or fails to participate in class for two weeks in a row, he must begin the one-year course all over again. Prosecutors thought this accountability was the appropriate approach to batterers but public defenders thought it far too punitive and rigid making it impossible for many of their clients to ever successfully complete the program. They further stated that the person who runs the program has a sole monopoly on batterer treatment in the county and they thought her style was male bashing and that she has far too much power. Interestingly, the public defenders said the same provider treats child sexual offenders and with them "she does a good job". Probation officers attend the treatment sessions and can arrest probationers "on the spot" for failing in the treatment program and can demand a urine analysis and arrest those who test positive for drugs. In addition, the treatment program recently implemented a policy of imposing lie detector tests on participants who appear untruthful during sessions. They view this as a helpful tool in making abusers admit to what they did during battering incidents and to admit to probation violations.

A large part of the frustration expressed by the defense attorneys stems from the belief that the no-drop policy results in many of their clients being prosecuted. They said that if a victim changes the story in the police report that she is threatened with perjury (the domestic violence unit coordinator said this is not true and victims are not threatened with perjury). They think the system is treating "the woman like a child". Many of their clients are being sent to treatment (this is a mandated sentencing condition that cannot be waived). While they believe some clients need the treatment, they believe a minority do not and there is no flexibility in the policy to allow that. Thus they see first time offenders who may be involved in a "simple" argument or fight with their spouse are being prosecuted, found guilty, and caught up in a treatment program they cannot complete. They further stated that some women are claiming abuse to obtain custody of their children. They argue that the cycle of abuse theory upon which the Duluth model is based is just that "a theory" and does not hold true in most cases.

The Role of Probation and Parole

There are two probation and parole officers funded by their VAWO pro-arrest grant. They work domestic violence cases exclusively and take a strong "hands on" approach. In addition to meeting with probationers during regularly scheduled office visits, they make "surprise" visits to homes of victims and probationers to enforce no contact orders; attend batterer treatment sessions and may order probationers to undergo a urine analysis at the end of the session if they suspect he is using drugs; meet with victims along with victim advocates to explain conditions of probation to the victim; and attend the weekly meetings of the domestic violence unit. Probation officers can also change conditions of probation (for example, if a batterer is not participating in treatment or tests positive for drugs, they can order him to attend an extra night of treatment increasing their obligation from 1 night per week to 2). The amount of time a probationer is on probation can be extended with the consent of the batterer if the probation officers believe he needs more time under supervision. All of this can be done without taking the case back to the judge. The goal is to maintain control over the batterer for as long as necessary to stop the violence. As one of the probation officers explained, they would much rather tighten the conditions of probation than send him to jail to serve his time because jail time will not stop the battering. It was estimated that 5-6 probationers are violated each week usually with the consequence of stricter conditions of probation.

Examination of Data From Case Records

Klamath Falls was the other site in which we had before and after data to judge the impact of the implementation of the no-drop policy. Unlike Everett, we did not have access to pre-no-drop case files in Klamath Falls. However we did have a case-by-case computer print-out of case outcomes for the first half of 1997 to compare with a representative sample of 214 1998 cases drawn after the implementation of no-drop. Because of these data limitations, we were not able to compare the pre- and post-no-drop samples for comparability on charges, criminal histories, or victim/offender relationships, nor were we able to compare sentences before and after the change in prosecutorial policy.

The before and after comparison in Klamath Falls bore a striking resemblance to the same data in Everett. Dismissals and acquittals dropped from 47% prior to the policy change to just 14% after. In Everett, we saw an increase in the use of pretrial diversion following the

implementation of the no-drop policy. But in Klamath Falls, the proportion of diversion dispositions dropped from 6% prior to no-drop to 0% after. Adjudications of guilt rose from 47% to 86% (see Figure 5.1).

The proportion of cases resulting in trials jumped in Klamath Falls just as it had in Everett. Trials in Klamath Falls rose from 1% prior to the no-drop policy to 13% after (see Figure 5.2). Just as was the case in Everett, the prosecutor in Klamath won the majority (63%) of trials after the no-drop policy was put into effect.

FIGURE 5.1

KLAMATH FALLS: CASE OUTCOMES

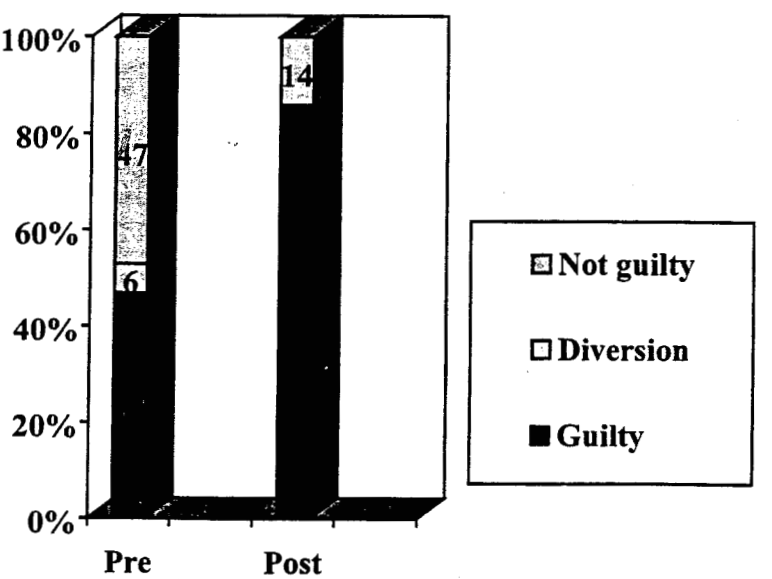
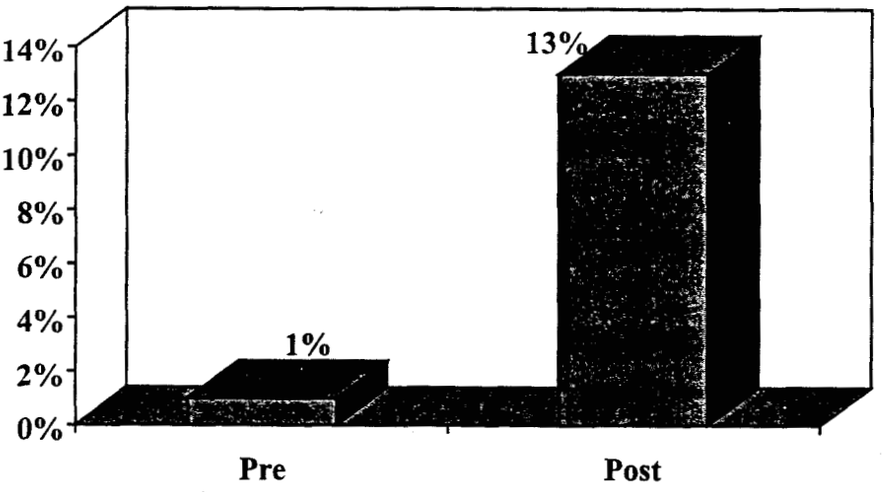


FIGURE 5.2

KLAMATH FALLS: PROPORTION OF CASES RESULTING IN TRIALS



CHAPTER 6: OMAHA, NEBRASKA

Over the past several years, Omaha has seen major changes in the way that domestic violence cases are prosecuted. In the mid-1990s, a task force was formed by persons in the Omaha criminal justice system and city government with a special interest in domestic violence. The task force produced a report, *How Do We Stop the Violence in Omaha?*, and set the stage for the creation of Omaha's Domestic Violence Coordinating Council (DVCC). Started in March, 1996, the DVCC has about 50 members including broad-based representatives from law enforcement, prosecution, probation, and defense agencies in the criminal justice system. Also represented on the DVCC are city government, education, the clergy, and the local business community.

Omaha has made a number of major changes in how domestic violence cases are processed in addition to its victimless prosecution policy. The changes implemented in Omaha were modeled after San Diego's prosecution methods that Omaha officials heard about in an Atlanta conference in 1996.

Through the DVCC, funds to enhance domestic violence prosecution were successfully solicited through from the federal VAWO and COPS offices and the Scott and Logier Foundations. Together, these funds provided in excess of $1,000,000 per year to support domestic violence investigations, arrests, and prosecutions. The new grant funds were used to make a number of significant changes in the way that domestic violence cases were handled in Omaha. The biggest change was that jurisdiction over domestic violence misdemeanors was transferred from the city attorney to the county attorney in April 1997. Although the city attorney boasted a conviction rate in excess of 90%, domestic violence advocates and many criminal justice officials as well felt that the sentences offenders were receiving were insufficient to deter future violence. They also complained that victims were required to come to court to sign an affidavit or the city attorney would not file charges with the court. Now, victims are not asked to sign statements at the crime scene (or later). This policy sends a message to the abuser that it is the county attorney, not the victim, who is bringing charges against the accused.

Grant funds were used to establish a special domestic violence prosecution unit in the county attorney's office to aggressively prosecute these cases. Staffed by five persons, the unit adopted a no-drop policy so that cases would be pursued even when victims refused to cooperate with officials.

Another recent change financed with grant funds was the creation of a specialized unit within the police department to conduct follow-up investigations on domestic violence calls. Four domestic violence officers conduct follow-up on all felony domestic violence arrests and obtain arrest warrants when probable cause exits for perpetrators who flee the scene before patrol officers arrive. The unit also makes extensive use of the police department's victim advocates who deal with all types of victims, but specialize in domestic violence.

New legislation has established special domestic violence orders of protection. These

orders can be issued ex parte and remain in effect for one year if the defendant does not request a hearing. They can include custody of children and domiciles.

Grant monies have helped instigate other changes as well. Patrol cars have been equipped with Polaroid cameras to photograph domestic violence crime scenes and victim injuries. A training program has been created to help doctors detect symptoms of domestic violence in their patients. Currently, the DVCC is working with state officials to develop a certification program for batterer treatment facilitators.

Case Processing

Since March 1997, police department policy has mandated an arrest in domestic incidents if probable cause exists and the suspect is present at the incident scene. If the suspect leaves prior to arrival of the police, the case is turned over to a special police domestic violence investigation unit that attempts to obtain and execute an arrest warrant. Members of the DVCC expressed a belief that the policy is followed faithfully by officers. Police officers and deputy sheriffs responding to domestic violence incidents are trained to take photographs of victim injuries and other physical evidence and to file supplemental domestic violence reports. Law enforcement officers may call a victim caseworker to the crime scene to provide crisis intervention services to victims. Caseworkers may be either from the police department victim advocate unit or from the YWCA staff of 21 persons who assist female victims of violence.

The first priority is to obtain an order of protection for victims. Petitions may be filed in either county or district court. Victims are assisted in petitions for protection orders by YWCA staff. The YWCA staff help victims complete the paperwork and also are available to accompany victims to court. Last year, the YWCA staff helped 844 victims petition for an order of protection.

The case issuance rate in Omaha is quite high relative to other jurisdictions. The prosecutor rejects just 12% of cases in which police make an arrest, resulting in approximately 450 domestic violence misdemeanor filings monthly. Prosecutions are conducted by the county attorney's domestic violence unit, consisting of three attorneys and a supervisor. In many cases, the prosecutor has the option of filing city charges, state charges, or both. The main difference is that, if city charges are filed, the defendant does not have a right to a jury trial. The prosecutor's preference is to file state charges because potential sentences are up to twice as long. Both prosecution and defense representatives agreed that, to encourage pleas, many defendants are charged with both state and city offenses.

Two county attorney victim liaison specialists work with law enforcement agencies and contact victims, encouraging them to cooperate with authorities in the prosecution. They help the prosecutors to assemble their case and to argue for high bail before the court. As a matter of routine, the victim liaison workers order copies of 911 tapes. The county attorney advocates attempt to explore the willingness of victims to cooperate early on in a case, and feed that information back to attorneys.

YWCA staff continue to work with victims throughout the course of their court case.

They provide counseling services, relocation assistance, a series of three educational classes for victims, and they also accompany victims to criminal court. Federal funding recently has provided funding for an outreach advocate who works exclusively with the Latino community.

The conviction rate for domestic cases in Omaha is exceptionally high -- about 85% of cases result in a guilty plea or conviction at trial. The conviction rate is surprising given the low number of cases that are refused by the office. Omaha is unusual in that many domestic violence defendants plead at arraignment (usually the day following arrest), often without counsel present. This is part of a county attorney strategy to seek pleas as early as possible to give victims as little time as possible to recant.

The type of sentence for convicted offenders depends heavily on defendants' prior offenses. First time offenders typically are sentenced to 6-12 months probation with participation in one of the five local batterer treatment programs. Recidivist offenders are likely to get jail time. There is, however, a wide disparity in sentencing practices between the dozen county court judges, with some judges imposing jail sentences even on first offenders and others reluctant to mandate batterer treatment as part of a probation sentence. The process of judicial assignment to cases in Omaha permits attorneys to "judge shop". The well-known disparities between judges in sentencing contributes to that practice.

Once an offender is sentenced, probation post-conviction specialists maintain regular contact with victims coincident with dates offenders are required to report to their probation officers. If victims report new violence, probation officers can effect an arrest even if the incident was not reported to the police. The Probation Department has eight domestic violence officers. Several of these officers prepare pre-sentence reports for the court to use in sentencing. The Probation Department has two victim specialist to maintain communication with victims. However, we were told that sanctions are not reliably applied against probationers who fail to attend required treatment sessions because judges are reluctant to issue violations of probation for this reason alone.

No-Drop

A crucial component of successful victimless prosecution is good collection of crime scene evidence by law enforcement agencies. Omaha officials have anticipated this need by establishing special training for police officers and deputy sheriffs in the police academy and in-service programs. The cameras that have been purchased with grant funds add important injury photos to the prosecutor's case. Prosecutors are working with the police on collecting better information on witnesses to domestic incidents and on encouraging victims to record their own statements on paper or on tape. (Although prosecutors acknowledge that it may be hard to convince judges to allow victim statements as evidence.)

In other sites, we observed a close working relationship between prosecutors handling misdemeanor domestic violence and police domestic violence units. In Omaha, as in other sites, the police domestic violence unit chases down misdemeanor domestic violence suspects after arrest warrants have been issued. However, the unit concentrates its post-arrest investigative efforts largely on felony cases.

Another element critical to the success of a no-drop policy is good management of victims by victim advocates. Here, Omaha also has instituted a thorough program. Victim liaison workers in the county attorney's office and victim advocates at the YWCA and the police department all work with victims to allay fears and encourage cooperation in prosecution. Victim caseworkers attempt to ascertain reasons why victims are reluctant to prosecute and to fashion a case outcome that will help to meet the needs of individual victims. In extreme cases where victims have serious concerns for their safety, advocates may intercede with the county attorney's office on the victim's behalf.

Victims are not required to attend court hearings until the trial date arrives. If they fail to respond to a subpoena or if they show up but recant, current county attorney policy is to go forward with prosecutions even when victims are unwilling to cooperate, depending on the strength of evidence, seriousness of the crime, and criminal history of the defendant. This is a less stringent no-drop policy than originally stated by the office, but is more in line with actual Omaha practice.

Based on conversations with prosecutors and with the public defender, it is unusual for the prosecutor to push for trials in cases where victims are unwilling to cooperate. Much of the reason for the rarity of prosecution without the victim's cooperation is the reluctance of some judges to admit evidence needed to win convictions without the victim's testimony. Prosecutors have attempted to use supplemental police testimony, medical records, photographs of injuries and the crime scene, 911 tapes, and police reports of excited utterances by victims to support their allegations when they cannot get the victim to testify. Prosecutors had some early success in getting judges to admit hearsay evidence about victim statements in the form of 911 tapes or reports of arresting officers. However, the defense bar began filing briefs and conducting appeals to prohibit introduction of these forms of evidence based on the principle that no foundation had been established. Now, judges are reluctant to admit excited utterances because they lack proper foundation. Prosecutors also told us that they have had problems with identifying defendants not picked up at the scene if victims are absent or unwilling to make an identification in court. As a result, the county attorney's office has a mixed record of winning trials in which victims refuse to testify or testify for the defense.

Omaha officials we spoke with were divided in their opinions about strict adherence to prosecuting regardless of the victim's wishes. Officials we spoke with thought that it was a good idea not to make the victim responsible for bringing charges. But some officials (particularly in probation and victim advocacy organizations) thought that the state should not go forward without talking to victims first and taking their interests and safety into account in the decision to prosecute. Surprisingly, the public defender largely concurred with the prosecutor's position on when to prosecute and when not to prosecute. He believed that the victim's opinion ought to be a valid component in prosecutorial decision-making. But he stated that the prosecutor's decision to file a case should be made on the basis of proof beyond a reasonable doubt with admissible evidence, exclusive of the victim's desire or lack of desire to prosecute the case.

Proponents of no-drop in Omaha were unanimous in believing that the obstacle to successful implementation is judicial unwillingness to admit forms of hearsay necessary to

introduce the victim's initial story into evidence. Proponents believed that judicial training in domestic violence was essential to encourage judges to better understand the nature of domestic violence and the perceived need to proceed without victim cooperation in order to prevent future tragedies.

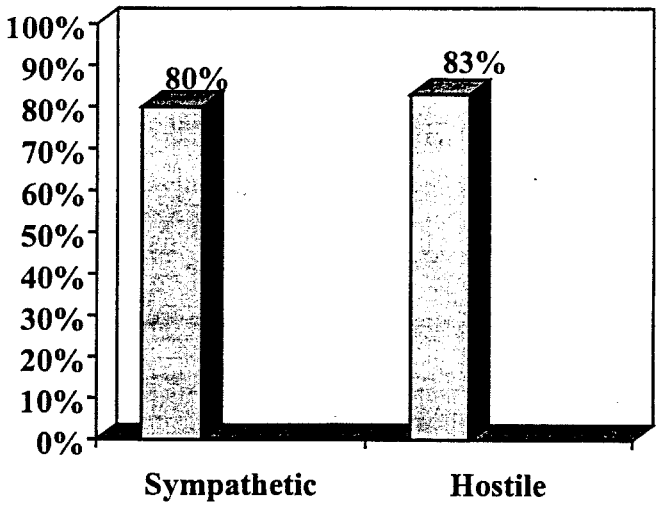
Examination Of Data From Case Records

In Omaha we were unable to obtain information on case dispositions before and after the implementation of the no-drop policy. The shift in responsibility for prosecuting misdemeanor domestic violence cases from the city attorney to the county attorney coincided with a major improvement in record keeping. So we asked another question in Omaha.

We heard from Omaha officials that there was a large difference between judges in willingness to admit evidence in the absence of victims on the trial date. Some judges were characterized as receptive to admitting hearsay evidence while others were thought to be reluctant to do so. Using information gleaned in our interviews with officials, we categorized judges as either sympathetic or hostile to admitting evidence needed for no-drop to work. We then analyzed dispositions when victims were absent on the trial date according to the perceived receptivity of judges to no-drop. We expected to find more frequent use of no-drop (i.e., fewer trial date dismissals) when sympathetic judges presided. However, the results, displayed in Figure 6.1 suggest that there was little difference in dismissal rates between judges rated as sympathetic and judges rated as hostile to no-drop. The small numbers preclude any definitive statements but, for both groups of judges, roughly four in five cases were dismissed when victims were absent on the trial date.

FIGURE 6.1

OMAHA: DISMISSAL RATES FOR JUDGES SYMPATHETIC AND HOSTILE TO PROSECUTOR



CHAPTER 7: CROSS-SITE COMPARISONS

In this chapter, we first compare case characteristics and then outcomes across sites. In making these comparisons, we used only recent (i.e., 1998-1999) data from each site. That is, archival or baseline data were not included in the analyses.

Case Characteristics

In general, we found substantial differences in the kinds of cases prosecuted in each of the sites. Table 7.1 shows that relationships between victim and defendant differed significantly.[10] In all the sites, the majority of cases involved non-married romantic couples. But in Omaha and San Diego virtually all cases involved intimate relationships between married or unmarried couples. The other two sites included cases between non-intimates as well on their domestic violence calendars. Twenty percent of the domestic caseload in Everett and 10% in Klamath Falls involved such non-intimate relationships, primarily among family members.

Table 7.1 also displays differences in the four sites in the top charge at arraignment. Of course, each site had different statutes, but we grouped together all assault charges, all violation of probation or violation of restraining orders, and "others". Across all sites, assaults were, by far, the most common charges. In both Everett and San Diego, four in five charges involved some form of assault. The proportion of assaults in Omaha was lower and, in Klamath Falls, lower still.[11] Klamath Falls was unique in that three of ten cases did not involve assault or violation of probation (VOP) charges. Most of the "other" charges in Klamath Falls involved harassment or menacing.

In all sites, half or more cases involved visible injuries to victims (see Table 7.1). Although differences between sites were statistically significant, they were not large in magnitude.[12] Only 14 percentage points differentiated Omaha and Klamath Falls (where 62% of victims had visible injuries) from San Diego (where 48% had visible injuries). In a large majority of cases across all sites defendants did not use a weapon against the victim (see Table 7.1). Involvement of weapons ranged from 22% in San Diego to just 3% in Everett.[13]

We observed significant differences between jurisdictions in the gender of both defendants and victims. In all sites, at least four in five defendants were overwhelmingly male (Table 7.1). Everett was most likely to prosecute women, with female defendants constituting 20% of their domestic caseload. Women were least likely to be prosecuted in Klamath Falls,

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[10] Chi-square(6) = 101.87, $p < .001$

[11] Chi-square(6) = 73.27, $p < .001$

[12] Chi-square(3) = 11.04, $p < .02$

[13] Chi-square(3) = 34.29, $p < .001$

TABLE 7.1

Comparison of Case Characteristics Across Sites

	Everett	Klamath	Omaha	San Diego	p
Relationship					< .001
Married	22%	33%	21%	35%	
Intimate	58%	58%	79%	65%	
Other	20%	10%	0%	1%	
Top Charge					< .001
Assault	81%	59%	71%	80%	
Viol. Prob	13%	11%	20%	8%	
Other	6%	31%	10%	12%	
Visible Injury					< .02
No	45%	39%	38%	52%	
Yes	55%	61%	62%	48%	
Weapon Used					< .001
No	97%	81%	89%	78%	
Yes	3%	19%	11%	22%	
Defendant Sex					< .01
Male	80%	93%	88%	84%	
Female	20%	7%	12%	16%	
Victim Sex					< .01
Male	23%	10%	13%	19%	
Female	77%	90%	87%	81%	
Prior DIV					< .001
No	69%	48%	61%	72%	
Yes	31%	52%	39%	28%	

where they made up just 7% of the caseload.[14] At least three in four victims in each site were women. The proportion of male victims across sites mirrored the pattern of female defendants. Everett had the largest proportion of male victims at 23%, while Klamath Falls had the smallest proportion at 10%.[15]

Everett, San Diego, and Omaha were fairly comparable in the proportion of defendants who had prior domestic violence offenses. In each city, roughly one-third of the caseload involved defendants with prior domestic violence records. The proportion with domestic violence histories in Klamath Falls was larger, where 52% of defendants had domestic violence records.[16]

Court Outcomes

Figure 7.1 depicts case outcomes in the four no-drop sites. We saw earlier that Everett and Klamath Falls, the two sites where archival data were available, had both experienced a large increase in convictions following the institution of their no-drop policy. Yet, there were still large differences in convictions between the sites after adoption of no-drop. San Diego had an extraordinarily low (3%) dismissal rate relative to the other sites. Omaha (31%) and Everett (24%) had the highest dismissal rates, while Klamath Falls (9%) fell in the middle.[17] We note, however, that all sites had low dismissal rates relative to national norms for domestic violence misdemeanors. Everett was the only site which used diversion as a disposition, with diverted cases comprising 22% of dispositions.

Trial rates also varied considerably between sites (see Figure 7.2).[18] San Diego, where no-drop has been practiced for years and is accepted, if grudgingly, by defense attorneys had the lowest rate, with just 2% of cases resulting in trials. Omaha also had a 1% rate of cases being taken to trial, although for much different reasons than San Diego. In Omaha, the prosecutor gave up on most cases where victims were not cooperative, thus avoiding the adversarial confrontation that might have resulted in trials. Everett and Klamath Falls had the highest trial rates, at 10% and 13% respectively. As noted earlier, the trial rates in both of these jurisdictions leapt following the adoption of the no-drop policy. It will be interesting to see whether trial rates in these jurisdictions decline over time as they have in San Diego when defense attorneys came to respect the prosecutor's resolve to proceed without a cooperative victim.

We saw a good deal of variation as well in sentencing between the four research sites. Some jail time was included as part of sentences in three in four cases in Klamath Falls, and

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[14] Chi-square(3) = 15.01, $p < .01$

[15] Chi-square(3) = 15.39, $p < .01$

[16] Chi-square(3) = 29.29, $p < .001$

[17] Chi-square(6) = 220.97, $p < .001$

[18] Chi-square(3) = 40.35, $p < .001$

FIGURE 7.1

CASE DISPOSITIONS

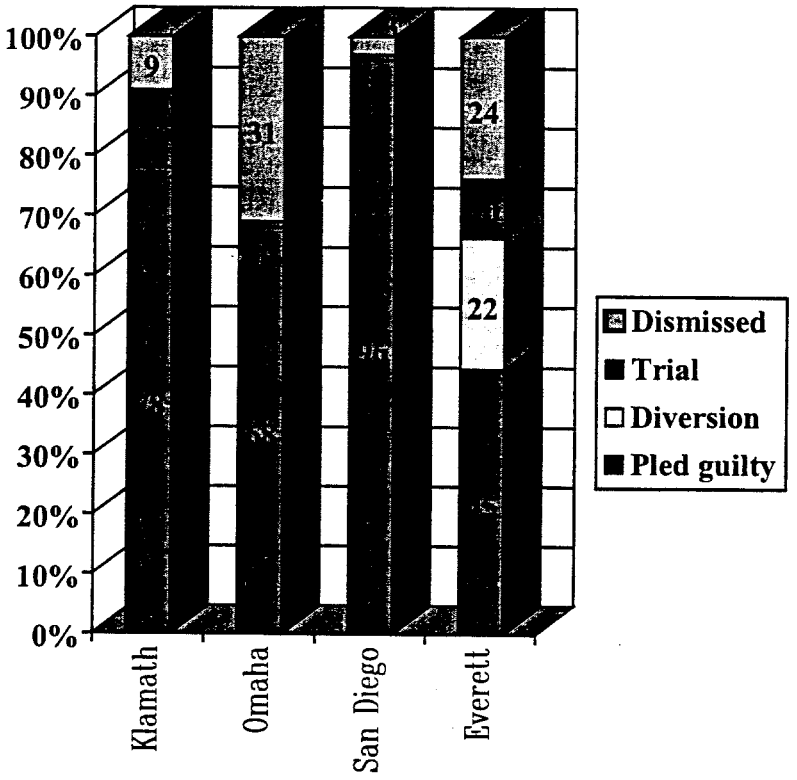
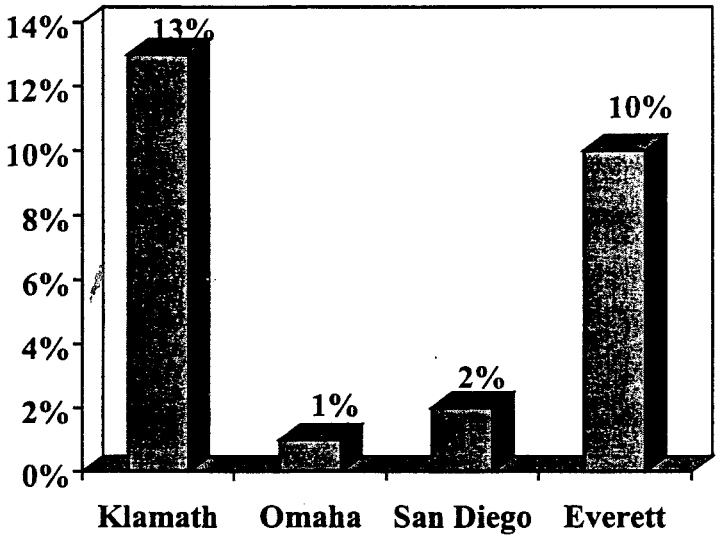


FIGURE 7.2

COMPARISON OF TRIAL RATES ACROSS SITES



most cases in Omaha and Everett. In San Diego, however, just one in five convicted offenders received jail time (see Figure 7.3).[19] We speculate that sparing use of jail time may be part of an accommodation made by the City Attorney in San Diego to persuade defense attorneys not to contest prosecutions where victims were uncooperative.

"Progressive" thinking on sentencing of domestic violence misdemeanor offenders includes probation, batterer treatment, and no-contact orders. This was the pattern we found in three of our sites. Probation was overwhelmingly included as part of sentencing in San Diego (ordered in 98% of convictions), in Klamath Falls (ordered in 90% of convictions), and in Everett (ordered in 78% of convictions).[20] Average probation terms were longest in San Diego (36 months), followed by Everett (24 months), Klamath Falls (15 months), and Omaha (12 months).[21]

In the same three sites, a large majority of convicted batterers also were ordered to enroll in batterer treatment programs (see Figure 7.4). In San Diego, 87% of offenders were ordered into batterer treatment, while in Klamath Falls the proportion was 71% and 60% in Everett.[22] Similarly, no contact orders were issued at sentencing in nine in ten cases in Klamath Falls, six of ten cases in San Diego, and five in ten cases in Everett (see Figure 7.5).[23] The extremely high proportion of no contact orders in Klamath Falls underscores the prosecutor's emphasis not only on winning convictions, but on exerting control over batterers after conviction as well.

But we found a different situation in Omaha with respect to the sentencing of domestic violence offenders. Only 26% of offenders were sentenced to probation and just 12% to batterer treatment. No contact orders were included in the sentence for fewer than one in ten offenders. What happened to convicted batterers in Omaha? First of all, the vast majority of jail sentences in Omaha were exclusive of probation. Offenders served longer jail terms in Omaha (median sentence 30 days) than in Klamath Falls and Everett, where offenders sentenced to jail typically served less than a couple of weeks followed by probation. Omaha also differed from the other sites in the use of fines. About one in five convicted offenders in Omaha were sentenced to pay fines, usually without being placed on probation.

Finally, we examined case processing time, and found significant differences across the sites (see Figure 7.6).[24] San Diego and Omaha had the shortest times from arraignment to disposition at 32 and 43 days, respectively. Processing time in Everett was 80 days. Cases took by far the longest to be disposed in Klamath Falls, where processing time was 123 days.

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[19] Chi-square(3) = 108.81, $p < .001$

[20] Chi-square(3) = 284.92, $p < .001$

[21] $F[3,435] = 856.28$, $p < .001$

[22] Chi-square(3) = 239.11, $p < .001$

[23] Chi-square(3) = 105.29, $p < .001$

[24] $F[3,811] = 66.74$, $p < .001$

FIGURE 7.3

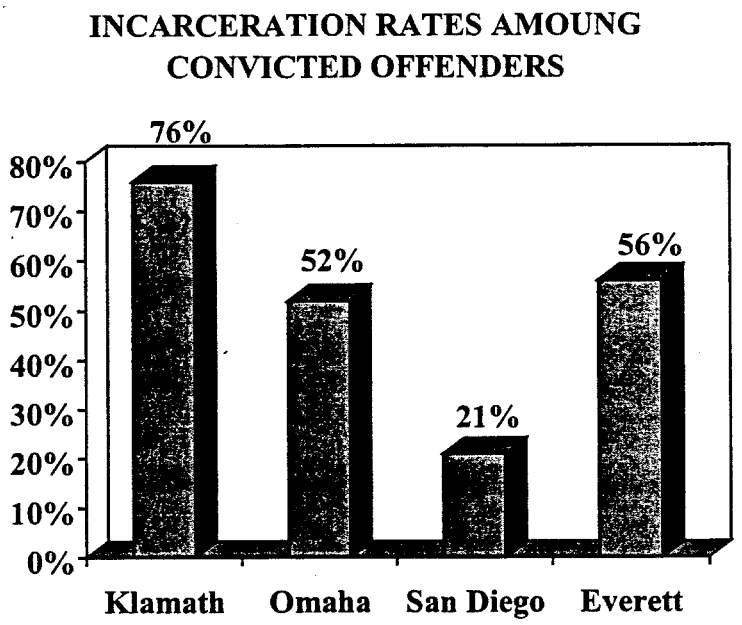


FIGURE 7.4

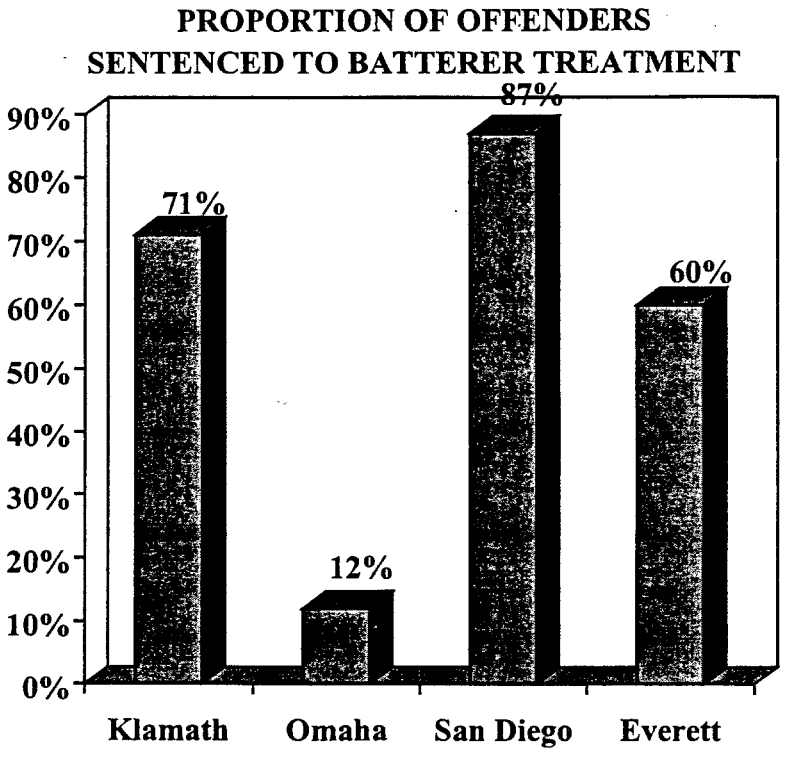


FIGURE 7.5

PROPORTION OF OFFENDERS SENTENCED TO NO CONTACT WITH VICTIM

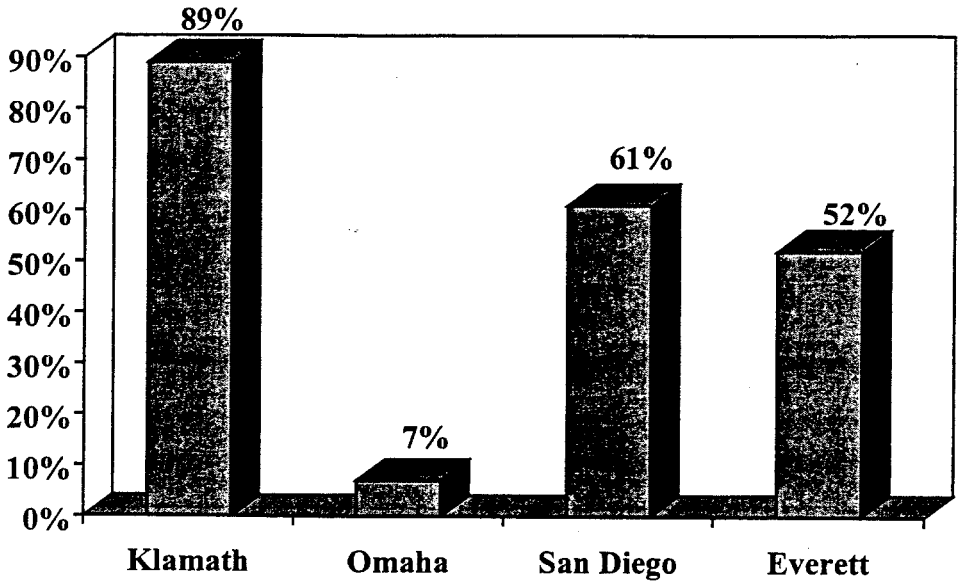
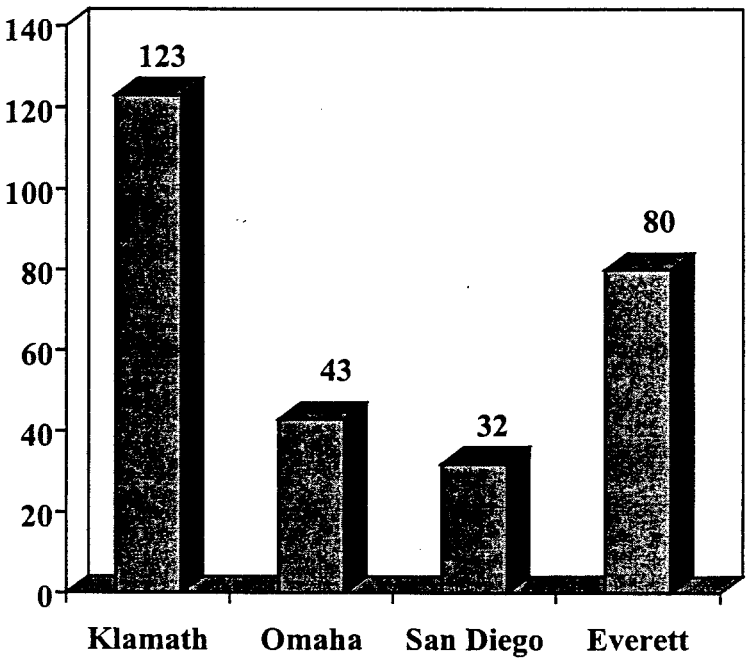


FIGURE 7.6

AVERAGE DAYS TO CASE DISPOSITION



Adherence to No-Drop Policy

In conducting this study, we came face-to-face with a basic question. All of the sites declined to prosecute a substantial number of domestic violence arrests -- typically about 3 in 10 cases brought by the police. But once a case was accepted for prosecution, the no-drop policies dictated that they be pursued as vigorously as possible. Nonetheless, as we interviewed officials we came to sense that no-drop policies did not completely remove prosecutorial discretion in cases where victims failed to cooperate. In some measure, the decision to proceed without a cooperative victim depended on the seriousness of the offense, the defendant's criminal history, and the strength of evidence that could be introduced in lieu of the victim's testimony. We came to suspect that, in some of our sites, discretion about whether to proceed without the victim was quite broad. That raised the elementary question of how we could assess the extent to which jurisdictions adhered to a strict no-drop policy.

We therefore strove to develop criteria to judge whether the no-drop policy was rigorously being applied on a case-by-case basis. We reasoned that a no-drop policy only came into play *when victims failed to cooperate on the date a case was set for trial.* Cases settled prior to the trial date were not no-drop cases since the prosecutor did not yet need the victim's cooperation. If a case is scheduled for trial and the victim is uncooperative, prosecutors may request that it be dismissed or accede to the court's decision to dismiss. But, if a no-drop policy is being applied, then the prosecutor should refuse to acquiesce in a dismissal. Instead, he or she should either seek a negotiated plea or take the case to trial.

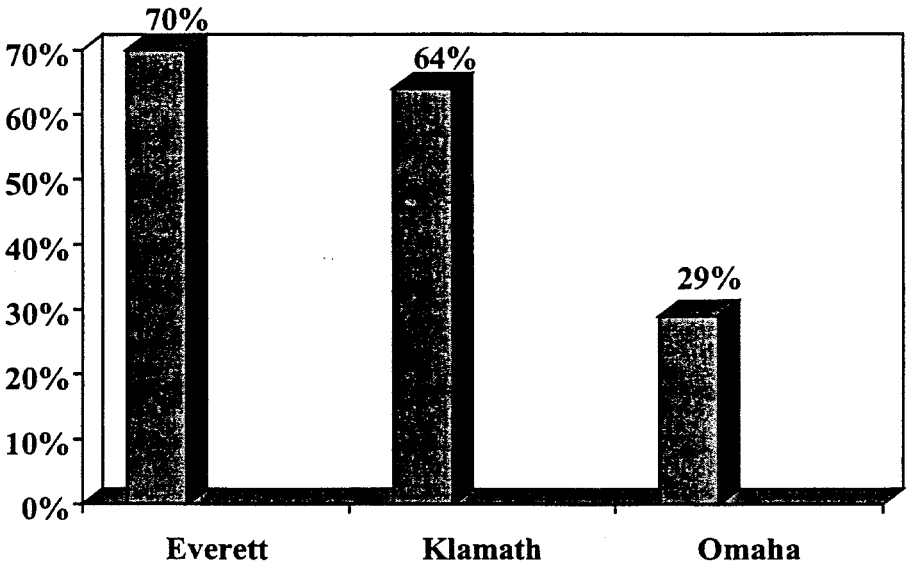
Figure 7.7 shows the proportion of cases settled on trial dates in which the prosecutor persisted (i.e., went to trial or negotiated a plea) without a cooperative victim in Everett, Omaha, and Klamath Falls. Everett and Klamath Falls were quite similar, where the prosecutor persisted in 6 or 7 in 10 cases where victims were absent or uncooperative on the date of trial. In both these jurisdictions, in other words, the prosecutor acquiesced in dismissals about one-third of the time when victims failed to cooperate on the day of trial. Omaha's adherence to no-drop was quite different. In Omaha, when victims were found to be uncooperative on trial dates, about seven in ten cases were dismissed -- the mirror image of Everett and Klamath Falls. These data suggest that adherence to the stated no-drop policy varied greatly among the three sites.

We have not included San Diego in the preceding analysis because only a few cases in San Diego reach trial dates. About four in five San Diego cases are settled at arraignment or a hearing date, before a trial date needs to be fixed. This is quite different from the other sites where at least half of sample cases had trial dates set. We speculate that the long history of no-drop in San Diego and the success of the City Attorney in getting hearsay and other critical evidence admitted has created a climate in which defense attorneys have recognized that it is in their interests to negotiate early pleas.

We analyzed the factors that led prosecutors in Everett, Omaha, and Klamath Falls to determine that a case was worth pursuing in the absence of victim cooperation. We examined the effect that type of charge, defendant criminal history, use of weapons, visible injury to victims, nature of victim/defendant relationship, gender of victim and defendant, and strength of evidence (a summary variable consisting of eyewitnesses, photographs, admissions by the

FIGURE 7.7

PROPORTION OF CASES NOT DISMISSED WHEN VICTIMS ABSENT ON TRIAL DATE



defendant, excited utterances, medical evidence, and physical evidence) had upon the prosecutor's decision to proceed without a willing victim. The results of a series of logistic regression analyses are displayed in Table 7.2. In essence, these analyses allow assessment of the association between each element in a set of predictor variables and an outcome measure (in our case, whether the case was dismissed vs. pled or sent to trial) while holding the others constant.

In Everett, the most powerful predictor of a no-drop decision was the defendant's criminal history. Cases were more likely to be prosecuted fully if defendants had a history of domestic abuse than if they did not. Cases were also more likely to be fully prosecuted when victims were uncooperative in Everett if the state had strong evidence, if the victim and defendant were romantic intimates (rather than husband/wife or family members), and if the defendant was male. In Omaha, strength of the evidence was marginally associated with the no-drop decision as was nature of the victim/defendant relationship and visible injuries to the victim. None of these factors was associated with no-drop decisions in Klamath Falls.

Our analyses suggest that no-drop decisions in Everett were governed by appropriate criteria -- criminal history, strength of the evidence, and nature of victim defendant relationship. We were also not surprised that gender of the defendant entered into the prosecutor's decision calculus. Prosecutors with whom we spoke in all the sites expressed protection of female victims from intimidation as one of the main motivations for introducing a no-drop policy. Our analyses did not isolate factors that were strongly related to no-drop decisions in Omaha and especially in Klamath Falls. It is possible (if somewhat surprising) that no-drop decisions were unrelated to the factors that we measured. But it is also possible that case records in these sites contained less accurate information than Everett, introducing a substantial degree of error into our analyses.

TABLE 7.2

Factors Related to No-Drop Decisions
(Wald coefficients derived from logistic regression)

Factors:	Everett	Omaha	Klamath Falls
Evidence	7.60***	2.94*	0.09
VOP case	0.15	0.00	0.29
Intimate relation	4.51**	3.63**	0.00
Prior DV case	13.36***	0.85	0.33
Defendant sex	5.23**	0.10	0.16
Victim sex	0.11	0.12	0.14
Weapon used	0.72	1.83	2.45
Visible injuries	0.02	3.00*	1.28

* $p < .10$
** $p < .05$
*** $p < .01$

CHAPTER 8: VICTIM INTERVIEWS

We interviewed 170 victims out of the 922 victims we attempted to reach. The response rate was just 18.4%, primarily because the telephone numbers listed for victims in the prosecutor's files were frequently disconnected or changed to an unlisted number. Some victims (16%) refused to be interviewed when we called them. Other victims (11%) had unpublished numbers and some victims (13%) were unable to be interviewed because of language barriers. Most of the victims (51%) were unable to be interviewed because the number that was given to us by the prosecutor's office was disconnected and the victim's number was not listed. The remaining victims (14%) were unable to be reached, despite exhausted efforts in contacting the victims. Those efforts included at least nine attempts (and usually more) to reach the victim. At least three attempts were made during the day, three at night, and three on the weekends.

Extensive efforts were made to reach victims. First, we contacted the number given by the prosecutor's office. If this number was disconnected or the victim no longer lived at that address, the interviewer called information to obtain the new number listed for the victim. To encourage victim participation, the victims were paid $15 to participate in the interview. For victims who refused to participate in the interview, we tried to alleviate any concerns about the interview. Among those who remained adamant about not being interviewed, we respected their decision.

The following is the response rate for each site.

- In Omaha, we interviewed 60 out of 290 victims we attempted to reach. The response rate was 21%. Only 10 victims who we were able to reach refused to be interviewed. Many of the victims (38) has unpublished numbers and most of the victims (134) were unable to be interviewed because their number was disconnected and not listed. Seven victims spoke Spanish and were unable to be interviewed. The remaining 41 victims were unable to be reached, despite exhausted efforts.

- In San Diego, we interviewed 52 out of 263 victims we attempted to reach. The response rate was 20%. Only 14 victims who we were able to reach refused to be interviewed. Few of the victims (5) has unpublished numbers and most of the victims (130) were unable to be interviewed because their number was disconnected and not listed. Some victims (17) did not speak English and were unable to be interviewed. The remaining 45 victims were unable to be reached.

- In Klamath Falls, we interviewed 36 out of 213 victims we attempted to reach. The response rate was 17%. Only 6 victims who we were able to reach refused to be interviewed. Many of the victims (29) has unpublished numbers and most of the victims (119) were unable to be interviewed because their number was disconnected and not listed. One victim spoke Spanish and was unable to be interviewed. The remaining 22 victims were unable to be reached.

- In Everett, we interviewed 22 out of 156 victims we attempted to reach. The response rate was 14%. Only 2 victims who we were able to reach refused to be interviewed. Many of the

victims (22) has unpublished numbers and most of the victims (84) were unable to be interviewed because their number was disconnected and not listed. One victim spoke Korean and was unable to be interviewed. The remaining 25 victims were unable to be reached.

Domestic violence populations are notoriously hard to reach because they are transient and because they often change phone numbers after arrests are made. However, compared to other studies and to our own past work, this is an extremely disappointing response rate. Frankly, we are perplexed by our difficulty locating victims. Our attempts were thorough and well-documented. Victims just were not reachable using the information we had obtained from prosecutor records. One possibility is that no-drop policies encourage some victims to go into hiding to avoid being subpoenaed. If that were true, that would explain why we had such little success finding victims and would also be an important finding about the effects of no-drop. But it is only speculation. We have no data that indicates why victims were so hard to reach.

Demographics of Victims

We had more success reaching victims in Omaha and San Diego than in Klamath Falls or Everett. Among the victims interviewed, 35% came from Omaha, 31% from San Diego, 21% from Klamath Falls, and 13% from Everett (Table 8.1).

At the time of the arrest, over a third of the sample were married to the defendant or were a boyfriend or girlfriend of the defendant. Ex-spouses and ex-dating partners were less common. The sample was overwhelmingly female, 84% (thus throughout this chapter we refer to the victim as female and the defendant as male). Ages of the victims ranged from 16 to 73, with a mean age of 35. Over three-fifths were Caucasian, one-fifth African American, and less than ten percent were Hispanic or from another race. One in five had less than a high school degree; two-fifths were high school graduates, and nearly half reported some college or a college degree. The majority, 71%, were employed while 15% were supported via governmental assistance, and 14% via other means (Table 8.1).

Victim's Wishes Regarding An Arrest

We asked the victim if she wanted the defendant to be arrested. Most, 76%, did. Among those who did not an arrest, an open-ended question followed asking the victim what she wanted in lieu of the arrest. Over a third wanted no action by the police, 16% wanted him to leave her alone; 13% wanted him to receive help; 11% wanted to send a message to him that what he did was wrong; 5% wanted the police to remove him; 21% named a host of "other" reasons, such as having the police take her to the hospital, getting property returned that he had taken, and having the police calm him done.

Most victims (82%) who did not want him arrested, expressed their views to the police. Obviously, the police did not act upon those views as all of the defendants in our cases were either arrested or issued a citation (with arrest being the most common response if he was on the scene when the police arrived) (Table 8.2). Listen to what one of the victims told us:

TABLE 8.1

DEMOGRAHICS OF VICTIMS

Location of Incident

Klamath Falls	21%
Omaha	35%
Everett	13%
San Diego	31%
	(n=170)

Relationship to Defendant

Spouse	37%
Boyfriend/girlfriend	34%
Ex-boyfriend/girlfriend	14%
Ex-spouse	5%
Family member	5%
Other	5%
	(n=170)

Victim's Sex

Female	84%
Male	16%
	(n=170)

Victim's Race

Caucasian	64%
African American	19%
Hispanic	9%
Other	8%
	(n=166)

Victim's Age

Minimum Age	16
Maximum Age	73
Mean Age	35
	(n=167)

TABLE 8.1
DEMOGRAHICS OF VICTIMS (CONTINUED)

Victim's Highest Grade of Schooling

Less than high school graduate	21%
High school graduate/GED	41%
Some college	26%
College degree or higher	12%
	(n=168)

Victim's Main Source of Income

Employment	71%
Governmental assistance	15%
Other	14%
	(n=168)

TABLE 8.2
VICTIM'S WISHES REGARDING AN ARREST

Did the victim want him arrested?

Yes	76%
No	24%
	(n=168)

What did the victim want in lieu of an arrest?

Nothing	34%
Wanted him to leave her alone	16%
Wanted him to get help	13%
Wanted him to realize he was wrong	11%
Wanted police to remove him	5%
"Other"	21%
	(n=38)

If the victim did not want him arrested, did she ask the police not to arrest him?

Yes	82%
No	18%
	(n=39)

- It was just an argument. We had a fight. I went to a grocery store to make a phone call. He (the defendant) walked in. The store clerk called the police when she heard them arguing. The clerk probably called because I was pregnant. The police came. Once the police come, someone has to go to jail.

Victim's Wishes Regarding Court Action

Did victims want the defendant prosecuted for what he had done? While 55% did, many, 45%, did not. Thus prosecutors were dealing with large numbers of victims who simply did not want the case pursued. However, once the case did go forward, there was apparently a change of attitude. Only 4% replied that they wanted the court to just let him go. Only 14% tried to stop the prosecution. The majority wanted a number of different court actions. Fully 71% wanted him to sentenced to jail. Court ordered treatment was desired by 79%. Among those who wanted a treatment order, most wanted anger management (59%), substance abuse treatment (25%), batterer treatment (21%), and/or individual counsleing for him (10%). It is interesting that so many more victims wanted anger management than batterer treatment. Prosecutors in all four sites relied heavily on batterer treatment as a way to prevent future violence and were adamant that anger management was not appropriate for batterers. A few victims, 6%, wanted the court to order restitution (Table 8.3).

Victim's Interactions with Court Officials

Over three-quarters of the victims interviewed said they spoke with someone from the criminal justice system. Most often, they talked to the prosecutor (87% gave that response); the detective (21% did), the victim advocate (18% did), the defense attorney (7% did), the judge (2% did), and/or the probation officer (4% did) (Table 8.4).

Victim's Willingness to Cooperate

Recall in Table 8.3 that 45% of victims did not want the case prosecuted. When asked if they told anyone their view, slightly over a third, 34%, responded affirmatively. Most (70%) informed the prosecutor, one in ten told the judge, and one in twenty told the victim advocate. But 23% told some combination of people (e.g., the prosecutor and victim advocate, the defense attorney and judge, the detective and victim advocate) (Table 8.5).

Once the victim expressed her opinion that the case be dropped, someone usually tried to convince her otherwise. Eighty six percent reported that someone tried to convince them to cooperate in the prosecution. Usually that person was the prosecutor (86% said the prosecutor tried to convince them of the wisdom in prosecution). Since victims most often related their feelings to the prosecutor, it is logical that it was the prosecutor who most often explained why the case would go forward. Far less often, the persuasion came from the detective, the victim advocate, the defense attorney, or the judge (Table 8.5).

What was said to convince the victim to cooperate? An open-ended question was put to the victim. A variety of reasons given to her by the official why she should cooperate or why the case would not be dropped. Over half the time, 53%, the victim was told

TABLE 8.3
VICTIM'S WISHES REGARDING COURT ACTION

Did victim want him to go to court for what he did to her?

Yes	55%
No	45%
	(n=122)

Did victim want him to go to jail for what he did?

Yes	71%
No	29%
	(n=170)

Did victim want the court to just let him go?

Yes	4%
No	96%
	(n=123)

If victim did not want him to go to court, did she try to stop the prosecution?

Yes	14%
No	86%
	(n=41)

Did victim want the court to order him into treatment?

Yes	79%
No	22%
	(n=121)

What type of treatment did victim want him to receive?

Anger management	59%
Substance abuse	25%
Batterer treatment	21%
Individual counseling	10%
	(n=98)

Did the victim want the court to order restitution?

Yes	6%
No	94%
	(n=123)

TABLE 8.4
VICTIM'S INTERACTIONS WITH COURT OFFICIALS

Did the victim talk to anyone from the criminal justice system?

Yes	76%
No	24%
	(n=165)

Who did the victim talk to?

The prosecutor	87%
The detective	21%
The victim advocate	18%
The defense attorney	7%
The judge	4%
The probation officer	2%

TABLE 8.5
VICTIM'S WILLINGNESS TO COOPERATE

Did the victim tell anyone she did not want him prosecuted?

Yes	34%
No	66%
	(n=121)

Who did the victim tell she did not want him prosecuted?

The prosecutor	70%
The judge	10%
The victim advocate	5%
Told several people	23%
	(n=40)

Did anyone try to convince the victim to cooperate?

Yes	86%
No	14%
	(n=72)

Who tried to convince the victim to cooperate?

The prosecutor	86%
The detective	14%
The victim advocate	13%
The defense attorney	3%
The judge	1%
	(n=71)

What did they say to convince the victim to cooperate?

Victim is not safe from him	53%
Victim cannot drop charges	39%
Defendant needs treatment	32%
Defendant needs to be held accountable	31%
Defendant could hurt victim's children	14%
Defendant could hurt other people	10%
Victim needs a no contact order	10%
Victim could have her children removed	3%
Victim could face perjury charges	1%
	(n=72)

she would not be safe from further harm by him if the case was dropped. Nearly two-fifths, 39%, were told that it was not in the victim's power to drop the case and that the state would proceed with, or without, her cooperation. Other common responses were that the defendant needs treatment (32%), the defendant needs to be held accountable (31%), the defendant could hurt the victim's children (14%), the defendant could hurt other people (10%), the victim needs a no contact order (10%), the victim's children could be removed by child protective services for failure to protect (3%), and/or the victim could face perjury charges if she changed the story she gave to the police (1%) (Table 8.5).

Let's hear directly from the victims we interveiwed:

- I was forced to prosecute him. I had no control. They said I was jeopardizing the custody of my children. I had no choice. They said they would arrest me if I did not cooperate. We could not handle his being out of the house financially. They also said that he needed to be held accountable. He needed treatment. He could hurt the children. It is not safe for the victim. Her kids could be taken away. She could face perjury. It is not up to the victim to decide to drop charges.

- They told me that they did not need my cooperation. They could get a conviction without me.

- I called and wanted the prosecutor to make the charges more lenient. The prosecutor and the police said it was out of my hands. The case would be prosecuted. I wanted him (the defendant) to get counsleing for alcohol and anger. In the long run, I am glad it was not up to me.

- I was mad at the time that they would not drop charges. Now, I am so happy they prosecuted. It was out of my hands. They had enough evidence to go through with it without my cooperation. I felt guilty I did this to him, but I am very grateful now.

Victim's Wishes Regarding a No Contact Order

Judges have the power to issue an order that the defendant have no contact with the victim while the criminal case is pending and/or may issue a no contact order as a condition of the sentence. How many victims wanted such an order? In cases in which a no contact order was issued, the majority of victims, 75%, wanted the order but 25% had the order issued when they did not want one. When the judge did not issue a no contact order, one-in-five victims wished he had. Over a third, 32%, wanted the judge to lift a no contact order that had been imposed. Most judges, 57%, refused to lift the order but many, 43%, did (Table 8.6).

Victim's Satisfaction with Criminal Justice Officials and Outcomes

For the most part, victims were fairly satisfied with the handling of their cases. Seventy percent were satisfied with the police, 4% reported feelings of being in-between satisfaction and dissatisfaction, and 26% were dissatisfied. Satisfaction with the prosecutor was slightly less but still substantial. Sixty-four percent were satisfied, 9% in-between satisfaction and dissatisfaction

TABLE 8.6
VICTIM'S WISHES REGARDING NO CONTACT ORDER

If the judge issued a no contact order, did victim want that order?

Yes	75%
No	25%
	(n=117)

If the judge did not issue a no contact order, did victim want such an order?

Yes	20%
No	80%
	(n=41)

If the judge issued a no contact order, did victim ask the judge to drop the order?

Yes	32%
No	68%
	(n=114)

Did the judge drop the no contact order when the victim requested it?

Yes	43%
No	57%
	(n=102)

27% were dissatisfied. Similar marks were awarded to judges. Sixty-seven percent were satisfied, 8% were in-between satisfaction and dissatisfaction, and 25% were dissatisfied. Case outcomes were ranked lower. Fifty-nine percent were satisfied, 13% were in-between satisfaction and dissatisfaction, and 29% were dissatisfied (Table 8.7).

While it is comforting to know the majority of victims expressed satisfaction with criminal justice officials, a significant majority, 25%, did not. Considering that many victims did not want the case to proceed and were unable to stop the prosectuion, it is easy to understand why some victims would be dissatisfied. The rates we found are consistent with other studies that have examined victim satisfaction.

Let's hear what some victims said about court officials and the case outcome.

- *Satisfied with the police.* The police protected me and my daughter. They gave me a cell phone. The cops drove by every hour. My signal to the cops if I was unsafe and needed help was to turn my light off.

- *Dissatisfied with the police.* My ten-year old son and daughter were there when the police came. The police made her children feel like they were not on their side. The police threatened to arrest me (the victim). They accused me of being a liar. They took out handcuffs to arrest him in front of the children.

- *Satisfied with the prosecutor.* The prosecutor did not listen to me when I recanted my story. They continued to prosecute. In the long run, I am so glad. He got punished.

- *Dissatisfied with the prosecutor.* They talk about "victims' rights". I did not have any rights. It was a catch 22. I know some victims fail to realize that violence is wrong and stay in a bad relationship. My case was different. They told me that it was the state's case and they were going to prosecute. I had no choice.

- *Satisfied with the judge.* The judge never made me feel that I caused the problem like they had in previous cases. The judge told me that it was the right thing to do. That made me feel good and the case ended in my favor.

- *Dissatisfied with the judge.* The judge was not concerned for my well being. He let people get up to testify against me. He let that happened—the defendant's parents got up and lied.

- *Satisfied with the outcome.* It made him (the defendant) responsible. He had to face his problems. He had to report to probation and be accountable for his actions. The counseling has helped. I never dreamt it would be so good.

- *In-between satisfied and dissatisfied with outcome.* The sentence was a little extreme with one year on probation. Three months on probation would have been good. He got counseling. He is going to counseling and that is okay.

TABLE 8.7
VICTIM'S SATISFACTION WITH CRIMINAL JUSTICE OFFICIALS AND OUTCOME

How satisfied was the victim with the police?

Satisfied	70%
In-between satisfied and dissatisfied	4%
Dissatisfied	26%
	(n=168)

How satisfied was the victim with the prosecutor?

Satisfied	64%
In-between satisfied and dissatisfied	9%
Dissatisfied	27%
	(n=148)

How satisfied was the victim with the judge?

Satisfied	67%
In-between satisfied and dissatisfied	8%
Dissatisfied	25%
	(n=134)

How satisfied was the victim with the case outcome?

Satisfied	59%
In-between satisfied and dissatisfied	13%
Dissatisfied	29%
	(n=157)

- *Dissatisfied with outcome.* They put him in a class. I don't think he needs to go to classes, because he only hurt me one time.

Victim's Interaction with the Defendant Since the Disposition of the Case

Most victims, 83%, reported that they have seen or heard from the defendant since the disposition of the case. But the frequency of their interaction with him had diminished. Only 7% said they had seen more of the defendant after, than before, the case disposition, 38% were seeing him about as often, but 55% reported they were seeing less of the defendant after, than before, the case was disposed.

With the important exception of verbal abuse, the vast majority of victims had not been bothered by the defendant. The minority, 14%, spoke of threats since the disposition of the case. Eight percent have had their property damaged by him. Nine percent have experienced renewed physical violence. But 37% said he had been verbally abusive towards her since the case ended (Table 8.8).

Impact of the Case on the Victim

Prosecution can potentially affect children for the good or the bad. On the positive side, children who are afraid of the defendant and worried about his hitting their mom, may be relieved when the system holds him accountable. On the negative side, children may be terrified that their dad was arrested and afraid the prosecution will take tear their family fairly apart. We asked victims what impact the prosecution had on their children. Nearly half, 45%, said it had no impact. Twenty three percent said it had a good impact. Slightly more, 27%, reported a bad impact and 5% noted both good and bad impacts (Table 8.9). Here is a sample of what victims had to say.

- *Bad impact.* Now he (the defendant) has no contact with my daughter. She misses the contact. He doesn't come around anymore.

- *Good and bad impact.* My son is 14 years old and confused. He hangs out with his dad behind my back. He has learned that his dad should not hit a woman. But now he has to sneak around if he wants to see his father.

- *Good impact.* The treatment helped us say together as a family. The initial separation (when there was a no contact order) was hard on the kids. The court costs and costs of the classes were hard on the family. But we are better off now.

How about the impact of the prosecution on the victim's relationship with the defendant? While 32% said it had no impact, two out of five victims thought it had a good impact. Only 19% reported a bad impact and 9% experienced both good and bad impacts (Table 8.9). Typical responses given by victims were:

TABLE 8.8
VICTIM'S INTERACTION WITH DEFENDANT SINCE THE DISPOSTION OF THE CASE

Has the victim seen or heard from the defendant since the disposition of the case?

Yes	83%
No	16%
	(n=167)

How often does the victim see the defendant?

More often than before the disposition	7%
Less often than before the disposition	55%
About as often than before the disposition	38%
	(n=140)

Has the defendant threatened to harm the victim since the disposition of the case?

Yes	14%
No	86%
	(n=141)

Has the defendant damaged the victim's property since the disposition of the case?

Yes	8%
No	92%
	(n=141)

Has the defendant been physically violent towards the victim since the disposition of the case?

Yes	9%
No	91%
	(n=141)

Has the defendant been verbally abusive towards the victim since the disposition of the case?

Yes	37%
No	63%
	(n=141)

TABLE 8.9
IMPACT OF CASE ON VICTIM

Did the prosecution have a good or bad impact on victim's children?

No impact	45%
Good impact	23%
Bad impact	27%
Good and bad impact	5%
	(n=109)

Did the prosecution have a good or bad impact on victim's relationship with the defendant?

No impact	32%
Good impact	40%
Bad impact	19%
Good and bad impact	9%
	(n=140)

Does the victim think it was good that the case was prosecuted?

Yes	85%
No	10%
Yes and no	5%
	(n=166)

Would the victim call the police in the future if he harmed her?

Yes	79%
No	11%
Maybe	10%
	(n=168)

- *Good impact.* His attitude has changed. The drinking has stopped. He is not violent anymore.

- *Bad impact.* After the incident, we still saw each other on weekends. He would always bring up the incident. He hated me because he had to go to meetings.

Prosecutors we spoke to in all four study sites believed that some victims who did not cooperate with the prosecution eventually come around and see the prosectuion as a good thing. Certainly, the victims we spoke to had very positive things to say about the wisdom of prosecuting. According to 85% of the victims, in hindsight, they came to see the prosecution as helpful. Indeed, only 10% said prosecution was not a good thing, and 5% said it was both good and bad. These are very high marks (Table 8.9). We heard many positive things from victims who in retrospect were glad they case was prosecuted against their wishes. We also heard a few negative remarks. In the voices of victims, we were told:

- If it hadn't been for the laws of arresting and prosecuting, I would have been back with him (the defendant). I am glad they stuck with it and enforced the laws.

- It is good for all victims that domestic violence cases are prosecuted. It lets abusers know they cannot do this to women. Prosecution shows victims that the government is on their side.

- I am glad it was done by the books and that it was taken out of my hands.

- I don't think they should have prosecuted him. It was his first offense. He was not a violent person.

- It was a waste of time. There was no domestic violence incident.

- I just wanted the police to take him away and calm him down. I didn't want an arrest or prosecution.

There has been discussion in the field as to whether no-drop policies dissuade victims from calling the police in the future, because they know they cannot drop charges. We asked the victims in our sample about that. The vast majority, 79%, said they would call the police if he did the same thing to her again in the future. Only 11% said they would not call, and 10% said it would depend (Table 8.9). On what? Most explained it would depend on the seriousness of what he did, whether he left on his own accord, or if a weapon was involved. At least for our sample, the knowledge that summoning the police may result in charges being filed that could not be dropped would not stop them from seeking help from the police.

Illustrative Cases

Two cases illustrate, from the victim's perspective, how they felt about the wisdom of a no-drop policy.

Case example one—no-drop viewed as a success by victim. According to Mike, he and his live-in girlfriend, Linda, had been drinking and had a protracted argument that led to physical acts. Mike told the police that he struck his girlfriend with an open fist in her head after she threw a glass of water at him. However, Linda later told the police that her boyfriend struck her while she was sleeping. In any event, Linda called the police and Mike was arrested.

Linda had wanted Mike to be arrested. However, afterward she felt bad because, she said, her drinking had led to the incident. When she had the change of heart, she tried to get the case dropped by talking to the prosecutor and judge in court. The prosecutor tried to convince her to cooperate because, he said, the defendant needed treatment. Mike pled guilty and was sentenced to three days in jail, a $500 fine and domestic violence treatment.

When we interviewed Linda, she was very satisfied with the outcome of the case and with the way it was handled by officials. She felt that both prosecutor and judge had listened to her story and understood that the she as well as her boyfriend were at fault in the incident. Linda credited the treatment program with helping the couple learn what causes anger. As a result of her boyfriend's program, she, as well as Mike, received help for their drinking problems and the couple started going to church. They continued to live together and had not experienced any more violent episodes at the time of our interview.

Case example two—no-drop not seen as successful by the victim. Karen and her husband, Paul, got into an argument one morning in their living room. Karen got up and slapped Paul across the face while he was sitting on the couch. Paul claimed to police that the slap had been hard enough to bend his glasses. Paul grabbed his wife and pulled her to the ground, according to Karen, by her hair. He then tried to take their daughter and leave. When she tried to stop him, Karen claims Paul kicked her in the area of her left hip. She then said that she tried to call for help and he ripped the phone out of the wall. That ended the argument for the time being.

Later that day, the couple began arguing again in a convenience store. A store employee told Paul he would have to leave if he did not stop yelling. Paul continued to shout and the employee called the police. The police report noted that Karen had a "red scratch to her upper right cheek" and a "large red mark" to the right side of her neck". A subsequent inspection of the home revealed a "phone cord ripped away from the wall and damaged" in the kitchen and "food spilled all over the kitchen floor". Paul admitted to officers grabbing his wife, taking her to the ground, and throwing the phone. He was arrested and charged with assault and criminal mischief.

Karen had not wanted the police called, and she did not want her husband arrested. After the arrest, she told the prosecutor, police investigators, the prosecutor's victim advocate, her spouse's attorney, and the judge that she did not wish the case to go forward. The prosecutor tried hard to persuade her that her husband needed to be held accountable, telling her that he

needed treatment and that he could hurt her or her children if he did not go into treatment. Karen was angry that, because her husband took a plea and was ordered to treatment, neither she nor he were allowed to make a statement to the court. She was upset with the police, the prosecutor, and the judge.

She saw no good coming from the prosecution. She felt that the prosecution had adversely affected her daughter, who she reported had been having nightmares about the police coming to the house and leading her husband away in handcuffs. Paul had been thrown out of the treatment group by his counselor for failing to participate constructively. Still, Karen had continued to live with Paul and reported no further physical or verbal abuse. Even though she could find no good result from prosecution of this incident, she said that she would not hesitate to call the police if her spouse was violent toward her in the future.

Conclusion

The interviews with victims showed that a very high proportion of respondents thought that it was a good thing that their case had been prosecuted. The high percentage is especially surprising because nearly half said they were initially opposed to prosecution. We also found that most victims were satisfied with their case's outcome and a plurality thought that the prosecution had had a positive effect upon their relationship with the defendant.

However, these potentially interesting findings were offset by the very low percentage of victims successfully interviewed. The fact that we were able to find and interview less than one-fifth of the sample makes it very unlikely that these results are representative of the population of victims in our four study sites. It seems quite probable that the victims who remained in one place and kept the same phone number are different in fundamental ways from those who relocate or change their numbers. Indeed, it is quite possible that those who do make themselves hard to find are hiding out from the defendant or from the prosecutor. If that is the case, then these victims would have a quite different perspective than the victims whom we contacted.

CHAPTER 9: LESSONS LEARNED ABOUT NO-DROP

The first lesson we learned is that no-drop is more a philosophy than a strict policy of prosecuting domestic violence cases. None of the prosecutors pursued *every* case they filed. Prosecutors were rational decision-makers who were most likely to proceed without the victim's cooperation if they had a strong case based on other evidence. Of course, definitions of what constitutes strong evidence varied from site to site, and some prosecutors were much more likely to persist in the face of an unwilling victim than others. But none chose to proceed with every case in which the victim was unwilling to cooperate. In at least some of the sites, criteria that went into the decision to go forward included the defendant's criminal history. Those with prior records of abuse were more likely to be prosecuted; the availability of other forms of evidence (cases with eyewitnesses, photos, and physical evidence) were more likely to be prosecuted; the nature of the victim/defendant relationship (unmarried romantic intimates were more likely to be prosecuted), and defendant gender (male defendants were more likely to be prosecuted than female defendants). In other words, the term, "evidenced-based" prosecution, probably fits practices at our sites better than the phrase, "no-drop." (Although the former term could be applied to *any* prosecutor's practice. After all, what prosecutor would not insist that his decisions were not evidence-based?).

The second lesson from our work is that adopting a no-drop policy can boost convictions dramatically. In the two sites in which we had pre- and post-implementation data, we found extraordinarily large increases in conviction rates, declines in processing time, and large increases in trials. We suspect that the increase in trials is a temporary phenomenon that will decline as defense attorneys come to accept the fact that the rules of the game have changed and come to realize that, even when victims are uncooperative, prosecutors can still win trials. If this happens, defense lawyers are likely to accept taking pleas even when victims refuse to cooperate with the prosecution.

The third lesson we learned is that, to implement no-drop requires significant case screening up front. Arrests with weak evidence need to be rejected by the prosecutor so that the prosecutor can credibly claim that he can prosecute the remainder fully regardless of what the victim wants or does. All of the sites engaged in significant screening of domestic violence cases, refusing to file as many as 30% of arrests. Some advocates might have a problem with this practice. Other jurisdictions accept virtually all arrests and then "let the chips fall where they may". Many cases are dismissed in the end, but no victim is excluded from an attempt at justice. Indeed, the Brooklyn, NY domestic violence misdemeanor prosecutor has referred to this prosecution model as the true version of a no-drop policy.

The fourth lesson we learned is that a successful no-drop policy requires judges who are "on board" with the idea of admitting hearsay or excited utterances from victims and statements from defendants or documentation of prior bad acts. In Omaha, where many judges were described as reluctant to admit these forms of evidence, the no-drop policy was weak and the prosecutor often relented when victims failed to cooperate. On the other hand, in San Diego, where state statutes were strongest and where there was a strong history of admitting such evidence, no-drop prosecution was highly successful. Judges in San Diego came to accept over

time that domestic cases could be prosecuted without victim cooperation and were willing to admit essential prosecution evidence. We often heard in sites that were having trouble introducing key evidence that judicial training was essential. However, defense attorneys are very much opposed to judicial training by victim advocates, arguing that it is simply indoctrination. The defense attorneys have a point in that federal and state money seems to be available to train judges to be sympathetic to prosecution arguments but not to train them in the defense perspective on these cases (viz, that not all domestic violence cases involve efforts at control by a primary aggressor but are "fights" that result from interpersonal conflict between two people with different points of view).

A fifth lesson that resulted from our work is that no-drop is very expensive. As we stated, successful implementation of no-drop involves significant training of police in evidence gathering, a realization that more cases will go to resource-intensive trials, and persuasion of judges to accept forms of evidence that historically have been considered controversial. Moreover, it is not enough to encourage arresting officers to do a better job gathering evidence, but it is also necessary to have specialized officers (working closely with prosecutors) to conduct follow-up investigations. In one of our sites, we estimated that each *misdemeanor* prosecution averaged about $1,000. This is a very expensive proposition and one that many jurisdictions may be unwilling to underwrite without the federal funding that has supported prosecutors in adopting no-drop policies. It will be interesting to see whether jurisdictions sustain a commitment to no-drop as federal funds for start-up programs recede.

Finally, our interview data suggested that prosecution may be seen by victims as beneficial, even those victims who initially did not want any criminal justice action past arrest. This is, of course, exactly what no-drop advocates would hope for. However, we stress that we were unsuccessful in locating the vast majority of victims we sought to interview, making it very unlikely that the interview results are representative of the victim populations in our study sites. Therefore, we can come to no conclusions concerning the very basic question of whether victims benefit when criminal justice professionals assume the exclusive right to decide when to prosecute and what outcome to seek.

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