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Digital photographic evidence and the adjudication of domestic violence cases

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Abstract

This study reported the impact of digital photographic evidence on domestic violence case outcomes in two Indiana counties. It analyzed whether outcomes differed between cases with digital photographic evidence (treatment group) and cases with no photographic evidence (comparison group). Examined impacts included guilty pleas, convictions, and sentence severity. Data included in the analysis came from case files and police and prosecutor interviews. Findings suggest that digital photographic evidence can be a useful prosecutorial tool – treatment group members were more likely to plead guilty, be convicted, and receive more severe sentences.

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Introduction

In a 1982 report, the [United States Commission on Civil Rights \(1982\)](#) found that there was a literal “lack of prosecution” in domestic violence cases. Since then, numerous constituents called for increased enforcement of domestic violence laws and an improvement in the methods used to investigate and prosecute these cases. As a result, major changes have taken place. Across the country, mandatory arrest policies, civil protection orders, and no-drop prosecution policies have been instituted with the intention of protecting victims from future abuse and halting the cycle of violence; however, evaluations of these programs and policies offered mixed results ([Cahn, 1992](#); [Ford & Regoli, 1993](#); [Maxwell, Garner, & Fagan, 2001](#); [Mills, 1998](#); [Sherman & Berk, 1984](#); [Sherman, Schmidt, & Rogan, 1992](#)).

Some practitioners claim that one way to curb the rate and lethality of domestic violence is to halt the pattern of escalation by intervening early in the battering cycle.¹ If this supposition is correct, then jurisdictions that are able to successfully prosecute lesser batteries and assaults may be able to reduce the number of future violent episodes—saving justice system resources and quite possibly, human lives. Unfortunately, attempting to prosecute misdemeanor domestic batteries can be difficult for three major reasons: (1) injuries can be portrayed as minimal ([Blitzer, Garcia, & Leitch, 2001](#)); (2) minor altercations (where little evidence is available) can disintegrate into “he said/she said” battles; and (3) victims may either refuse to assist the prosecutor and/or reconciliation between batterer and victim can occur before a case reaches the adjudication phase – forcing prosecutors to mount victimless prosecutions ([Schmidt & Steury, 1989](#)).

One way to improve the likelihood of conviction in domestic violence cases is to improve the quality of evidence submitted to the court. Digital photography is one way to do that. Where injury is not easily

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apparent or where victims are reluctant to cooperate, digital images offer the court an accurate depiction of the event. This technology allows investigators to record even slight injuries such as abrasions and contusions – injuries that are rarely depicted well on instant film. Another positive aspect of this technology is that it provides immediate feedback to the investigator. After snapping the picture, an officer can see if the image he/she was attempting to capture is adequate. If not, lighting, stance, framing, and angle can be adjusted.

While 35 mm photos remain superior in quality to all other film types, they are a rare form of evidence in misdemeanor domestic battery cases (Blitzer & Jacobia, 1997). The most common form of photographic evidence in minor battery cases tends to be images caught on instant film. In a number of jurisdictions, the only way to obtain 35mm photographs is to call a police photographer to the scene. Since this practice can be time consuming and expensive (and most of the cases in question are misdemeanors), few officers go to such lengths in their initial investigations. If crime scenes are not well documented or if 35mm film cannot be processed, major evidence can be lost and a case doomed. One way to ensure that evidence of a minor assault has been preserved is to equip patrol officers with digital cameras.

Although new technologies have been developed to assist in the protection of victims of domestic violence (e.g., personal duress alarms and electronic monitoring of offenders) and the investigation and prosecution of domestic violence cases (e.g., digital photography), there has been little to no systematic analysis of the usefulness of these technologies during adjudication. Therefore, the study described in this article was heuristic in nature – examining the impact of a specific type of evidence (i.e., digital photographs) on the adjudication of misdemeanor domestic battery cases in two Indiana counties.

Review of justice responses to domestic violence

Prior to the last two decades, domestic violence (e.g., battery and assault incidents among intimates) was believed to be a private matter (Ellis, 1994) and best dealt with outside the auspice of the formal legal system (Binder & Meeker, 1992). In spite of this, many individuals studying spousal assault in the late 1970s and early 1980s lobbied for changes in legislation and law enforcement policies regarding domestic violence (Mills, 1998). For example, they proposed mandatory arrest policies, believing that the arrest experience would deter future violence (Dobash & Dobash, 1979; Klinger, 1995).

Early research by Sherman and Berk (1984) supported the claims of pro-arrest advocates that arrest was the most successful intervention for reducing future violent episodes. Findings from five replication studies, however, offered conflicting outcomes. At three of the sites, arrest was found to increase the likelihood of future violence (Pate & Hamilton, 1992; Sherman et al., 1992). Arrest, however, was shown to have the most favorable impacts (in terms of recidivism) on defendants who were married and gainfully employed (Sherman et al., 1992). While the true efficacy of mandatory arrest policies remained in question, law enforcement agencies across the country continued practicing these policies. In an attempt to settle the debate, Maxwell et al. (2001) performed a meta-analysis on the raw data from the replication studies and concluded that arresting batterers was, in fact, consistently related to reduced subsequent aggression.

Mandatory arrest policies are probably the most thoroughly researched of the policy-driven responses to domestic violence. Empirical studies focusing on other policy responses are much less common, but include examinations of civil protection orders, court-ordered treatment, and mandatory prosecution policies.

Assessments of civil protection orders (CPOs) have shown they are not particularly effective at increasing the safety of victims (Harrell, Smith, & Newmark, 1993). Specifically, women who received CPOs were just as likely to report new violence as those that had no protection orders (Grau, Fagan, & Wexler, 1984).

Court-ordered treatment for batterers typically consists of educational and group counseling components that can be as brief in duration as a few weeks or as long as several months. Unfortunately, few of the individuals who most need treatment (i.e., those with the most lengthy abuse histories) are ordered to receive it (Davis & Smith, 1995). Moreover, there is little discussion in the literature identifying which treatment modalities work best for different types of batterers. What little is known suggests that findings are mixed regarding the relationship between court-ordered treatment and the cessation of violent episodes (Davis & Smith, 1995; Dutton, 1986).

Another major policy-driven response to domestic violence established in recent years is the “no-drop” or mandatory prosecution policy. These internal policies, instituted by chief prosecutors, usually mandate that charges be filed in all domestic violence battery/assault cases with a certain level of severity, regardless of the victim’s wishes (Cahn, 1992). Although little empirical research has been done to assess the

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