PROSECUTING DOMESTIC VIOLENCE CASES WITH RELUCTANT VICTIMS: ASSESSING TWO NOVEL APPROACHES IN MILWAUKEE

EXECUTIVE SUMMARY

Submitted to:

The National Institute of Justice

Submitted by:

The American Bar Association's Fund for Justice and Education

on behalf of

The Criminal Justice Section

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October 1997

DISCLAIMER

This research was supported by two National Institute of Justice grants: 94-IJ-CX-0052 and 95-IJ-CX-0105. The viewpoints expressed herein are solely those of the authors and do not necessarily represents the views of the National Institute of Justice or the American Bar Association or the American Bar Association Criminal Justice Section.

ACKNOWLEDGMENTS

The research that led to this report involved the collaborative efforts of many individuals. We foremost thank officials in Milwaukee who so willingly shared their experiences with us and endured endless questions about "how things were working and lessons learned". Without their candor, thoughtful insights, and ready access to their records, this research would not have been possible. They allowed us to probe difficult issues, because they truly wanted to learn what was working and where improvements could be made to help domestic violence victims in the future. In particular, we thank Mr. E. Michael McCann, the District Attorney, and his supervisory and line staff; the Honorable Elsa Lamelas who initiated and guided the specialized domestic violence court through its inception and first couple of years of operation; and especially Mr. Bruce Harvey, Justice System Review Coordinator, who helped conceptualize the idea of a specialized domestic violence court and bring it to fruition and who assisted us in so many ways throughout the research.

The perceptions and histories of domestic violence victims in Milwaukee gleaned through our interviews with them were invaluable in assessing the impact of the Milwaukee domestic violence experiments. They shared their feelings about the court process; their histories of abuse; their expectations of the court; and their satisfaction with how their case was handled. We hope that their willingness to speak will help improve the system for future victims.

This research is the result of two National Institute of Justice grants. We had the privilege to work with two monitors, both of whom were responsive and helpful throughout the project: Mr. Bernie Auchter and Ms. Laurie Bright.

Finally, we thank our sponsoring entity, the American Bar Association's Criminal Justice Section, and especially its director, Mr. Thomas Smith and Section Administrator, Ms. Betty Harth and Ms. Ellen Vollrath and Ms. Glenda MacMullin of the Grants and Administration Office for their assistance and guidance.

INTRODUCTION

After years of attempting to improve the criminal justice system response to domestic violence, it has become clear that the failure of victims to cooperate with authorities keeps conviction rates far below conviction rates in other types of crimes. Some experts have suggested that mandatory arrest statutes have pulled into the courts many cases in which victims never wanted the batterer charged and prosecuted. Others have suggested that victims are convinced to change their minds during the court process because of intimidation attempts by the defendant or difficult demands by authorities. Officials in Milwaukee introduced two novel approaches designed to address these key issues and provide answers to the questions of how to deal with victim reluctance in domestic cases.

This report describes two NIJ-funded projects which examined the Milwaukee domestic violence experiments. The first evaluated the effectiveness of a specialized domestic violence court that opened in September of 1994. The second examined the impact of a subsequent change in the district attorney's screening policy that admitted more cases into the special court. The specialized domestic violence court had as its primary intent to speed up the disposition of cases in order to (a) reduce backlogs; (b) reduce the amount of time the victim had to change her mind about prosecution, thereby increasing convictions; and (c) reduce opportunities for pretrial violence. The liberalized prosecutorial screening policy was intended to determine whether arrests which the district attorney normally rejected for prosecution because victims failed to attend the prosecutor's charging conference could nonetheless be successfully prosecuted. To find out, the district attorney's office doubled the number of domestic arrests filed with the court. This dramatic change occurred literally overnight, and over the strenuous objections of judicial administrators.

The Criminal Justice Response to Domestic Violence

During the 1970s, the police and criminal courts came under attack for being lax with perpetrators of domestic violence. Critics charged that batterers were not being arrested as often, prosecuted as vigorously, or sentenced as severely as other violent criminals. Research findings from the 1970's documented that the police did not arrest in the majority of domestic violence incidents (although it was unclear if police were actually less likely to arrest in domestic cases than in other violent situations, given similar incident characteristics) (Black and Reiss 1967; Erez 1986).

Similarly, researchers were finding that court officials were giving short shrift to domestic cases when arrests were made. A study by the Vera Institute of Justice (1977) in New York found that domestic cases were far more likely to be dismissed than other cases. Even when defendants were convicted, they received lighter sentences than defendants in other kinds of cases. Davis and Smith (1982) found that the presence of a victim/offender relationship led to lower assessments of case worth by screening prosecutors, even when charge severity, victim injury, and use of a weapon were taken into account.

Women's rights advocates and others have been vocal in their criticism of the criminal justice response to domestic violence. They have argued that domestic cases are treated differently than other crimes because criminal justice officials were reluctant to bring the full power of the law to bear against men who battered their wives. Parnas (1973, p.734) summarized the response of court officials to domestic cases as follows:

> There is a tendency on the part of those in a position to respond to either ignore them altogether or, more usually, to respond in such a way as to get rid of such cases as quickly as possible.

As the 1970s unfolded, political pressure mounted to treat domestic assaults in the same way as other assaults. State legislatures were lobbied and suits brought against police departments in several major cities, including New York and Oakland, CA for failing to arrest domestic violence perpetrators (Sherman 1992). A suit in Connecticut resulted in an award of $2.3 million in compensatory damages to a victim.

Pressure for change in the police response to domestic violence was given a big boost by a highly touted research project conducted in Minneapolis. In this research, police responding to domestic incidents followed instructions to arrest, order the batterer from the scene for eight hours, or give some form of advice or mediation. The research had a strong design because the option used in a particular incident was determined by lottery. This procedure was intended to ensure that any differences observed in recidivism among the three groups of incidents were due to the police response, and not to pre-existing differences between the groups. Repeat violence in cases in the sample was tracked for six months through police complaints and victim interviews.

The experiment in Minneapolis concluded that arrest was more effective in reducing subsequent violence than traditional police practices of mediation and separation (Sherman and Berk 1984). The U.S. Attorney General's Task Force on Family Violence (1984) issued a report encouraging that domestic violence calls be given priority and that arrests be the preferred response.

The publication of the Minneapolis experiment and the Attorney General's Task Force report radically altered the response of the law enforcement community to domestic violence. Statutes on police protocol in responding to domestic incidents 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).

The effect of the range of reforms in domestic violence law enforcement and prosecution was that many more spouse abusers were arrested and prosecuted than in earlier years (see, for example, Jaffe, Hastings, Reitzel, and Austin (1993) for a discussion of the impact of mandatory arrest in a single jurisdiction). However, increasing the number of offenders caught in the criminal justice system has not necessarily improved the problem that advocates had highlighted in the first place viz., the failure of domestic cases to be prosecuted to as full an extent as other cases. In fact, it has been argued by Cahn (1992) that the increase in arrest volume in some places has seriously strained resources of criminal justice agencies and placed pressure on prosecutors to dismiss domestic cases at earlier stages in the process.

Victim Reluctance to Prosecute

What has become clear in the past twenty years of reform attempts is that the central problem in prosecuting domestic violence cases is the reluctance of victims to cooperate fully with prosecutors. In spite of attempts at reform, dismissal rates for domestic cases remain high in many jurisdictions (Davis and Smith, 1995). Davis (1983) reported that more than half of a sample of victims interviewed shortly after arrest either did not want to prosecute from the outset, or had changed their minds by the time that their case had run its course. At an NIJ cluster meeting on domestic violence research projects in July, 1996, there was a strong consensus that the most serious impediment to full prosecution of domestic cases is victims who refuse to cooperate from the start or who change their minds during the course of the case.

Court experts, advocates, researchers and others disagree about the reasons for victim reluctance. We found in earlier work that domestic violence victims are far more likely than other victims to be motivated by self-protection in calling the police and prosecuting (Davis and Smith, 1982). Once an arrest has been effected and/or a restraining order obtained, many victims of domestic violence feel safer and thus are not highly motivated to cooperate in prosecuting the batterer.

It has been suggested that intimidation by batterers is also a key cause of victim reluctance to cooperate with authorities. Davis, Russell and Kunreuther (1980) noted that threats and physical attacks were much more likely to be reported by victims of domestic violence than by other victims. Connick and Davis (1983) reported that few victims threatened stated that the threats led them to consider dropping charges, but also noted that truly intimidated victims were probably unlikely to agree to be interviewed by researchers.

Economic dependence on the batterer may also lead to victim reluctance (Klein, 1994). Batterers who are arrested and spend time in pretrial detention, or who are jailed after conviction, are in danger of losing their jobs. Women and children who depend on them are also affected. Women who pursue prosecution and break off their relationship with abusers must be prepared to support themselves and children. However, many battered women lack the employment skills to make it easily on their own.

Victims may fail to cooperate with authorities because they are emotionally involved with the abuser. In spite of violence, battered women often have strong feelings for their spouses or boyfriends. These emotional ties may be even more complicated by self-doubt, guilt, and low self-esteem for some women (Buzawa and Buzawa, 1996).

Approaches to Overcome Victim Reluctance

Unless the problem of victim reluctance is dealt with, it will be impossible to prosecute batterers fully. There have been some attempts to address this problem directly. Many jurisdictions have added victim advocates who work with victims involved in prosecutions, keeping them informed about options and court actions and providing emotional and practical support necessary to ameliorate the demands made upon them by court officials. The Violence Against Women Act has expanded the number of advocate programs greatly. While providing supports for victims can easily be justified on humanitarian grounds alone, there is little data yet available to document whether it is a remedy for victim reluctance to prosecute.

So-called "no-drop" prosecution policies are another response to victim reluctance to prosecute. No-drop policies are based on the idea that relieving victims of responsibility for pressing charges removes the incentive for batterers to threaten or harm them during the pretrial process.

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 (1991a), 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.

To date, 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 victims randomly assigned to a condition in which they had the opportunity to drop the case had a lower rate of both pretrial and post-conviction violence than victims assigned to a no-drop condition.

Milwaukee's Domestic Violence Court

Milwaukee took a different approach to the problem of reluctant victims in domestic cases. Milwaukee officials reasoned that fewer defendants would threaten, or harm victims, and fewer victims would change their minds about cooperating with authorities if they could simply reduce the amount of time it took to dispose of domestic cases. This notion was based on common sense and has also been supported empirically. Research reported by Ford (1991b) shows that the longer a case takes, the more likely violence is to recur.

Milwaukee officials set up a special domestic violence court to implement their objective of shortening time to disposition. Previous special courts in Milwaukee had been very successful in reducing processing time for felony narcotics cases, homicides, and sexual assaults. Two previous NIJ-funded evaluations conducted by the current authors found that time from case filing to adjudication had been at least halved by these special courts (see Davis, Smith, and Lurigio, 1994; Schneider and Davis, 1995). Milwaukee officials were optimistic that the same could be done in domestic violence.

The special domestic violence court began operations in September, 1994. The paramount concern was to reduce processing time using methods that had proven to work in Milwaukee's other special courts. The Milwaukee District Attorney's Office also was determined to make greater use of body attachments -- judicial warrants for witnesses to appear -- to prosecute cases in the new special court even when victims were reluctant. These warrants were to be enforced by the sheriff's office, and women who failed to come in voluntarily were to be brought in under physical restraint.

Based upon our understanding of the intent of judicial and prosecutorial administrators, we designed the evaluation to determine whether the new court had affected the processing of domestic cases in the following ways:

Processing speed The primary goal of Milwaukee officials was to hasten the disposition of domestic cases. Past specialized courts in Milwaukee had reduced processing time to a fraction of its previous length for felony narcotics, sexual assault, and homicide cases. All of the other possible effects of the new court depended upon successful reduction of time to disposition.

Pretrial crime Pretrial violence and threats of violence were shown by our earlier work (e.g., Connick and Davis, 1983) to be widespread problems in domestic violence cases. If processing speed could be reduced dramatically, then Ford's (1991b) data suggest that pretrial crime would be cut as well.

Improved victim attendance in court The new court would improve victim attendance in court for several reasons. The reduction in time to disposition would give victims less time to change their minds about prosecuting. Reduction in pretrial crime would give victims less reason to change their minds due to intimidation. Finally, increased use of body attachments would increase attendance among uncooperative victims.

Increased conviction rates Earlier experience with Milwaukee's specialized violent crime courts had indicated that a benefit of reducing processing time was an increase in conviction rates. Schneider and Davis (1995) reported that homicide convictions increased from 84 to 93 percent following the successful campaign to reduce processing time in the special violent crime courts. They attributed the increase in convictions to better testimony from prosecution witnesses. The domestic violence court was expected to show a similar increase in convictions, brought about by reduced processing time and increased victim attendance in court.

Tougher sentencing Milwaukee's special homicide courts not only increased convictions, but also increased the proportion of those adjudicated guilty who were convicted on the original charge. This finding is highly significant in light of data from special drug courts in some cities which showed a *reduction* in the severity of sentences coincident with reductions in processing time (see Davis, Smith, & Nickles, 1995). In other words, it appeared that, in some jurisdictions, prosecution and judicial organizations had tacitly agreed to trade more lenient sentencing in order to gain cooperation of the defense bar to achieve quicker processing speed.

The question was whether, in Milwaukee's domestic violence court, convictions would increase (because disposition time was shortened and more pleas to the original charges were obtained) or whether convictions would decrease (because prosecution and judicial officials tacitly agreed to trade lenience for quicker pleas).

Decreased post-disposition crime If fewer cases were dismissed and more defendants were convicted on the original charges, then it seemed possible that new crimes committed after disposition would decline. This argument is tenuous, however, since, as Elliott (1989: 468-469) argues, "there are no systematic evaluations of the effectiveness of various sentencing outcomes....on subsequent violence". Nor have several subsequent research efforts since Elliott's review (Ford and Regoli, 1992; Tolman and Weisz, 1995) been successful in demonstrating a link between court outcomes and recidivism.

Increased victim satisfaction Many of the above outcomes (quicker dispositions, more convictions, tougher sentencing, and less violence during and after the pretrial period) were thought to be key to increasing victim satisfaction. That was one of the goals behind Milwaukee's earlier special violent crime courts, and our data indicated that the creation of those courts did enhance victim satisfaction with the criminal justice system (Davis, Smith, and Nickles, 1995).

The Change in the District Attorney's Screening Policy

Cahn (1992) argues that the widespread adoption of pro-arrest policies by law enforcement agencies has resulted in a significant increase in domestic violence arrests. Consequently, she believes, prosecution and court organizations have been asked to process more domestic cases than they are equipped to handle. The result has been that prosecutors have exercised greater discretion in deciding which domestic cases to prosecute.

In Wisconsin, a 1987 statute made arrest mandatory for misdemeanor domestic violence incidents. We believe that the introduction of the mandatory arrest statute produced a major shift toward more stringent prosecutor screening of domestic cases for two reasons. First, the volume of arrests was much higher. Second, (if one assumes that the police are rational decision-makers) it is likely that the additional cases were more difficult to prosecute because they had weaker evidence or less willing victims.

No data on case rejection by the Milwaukee District Attorney's Office are available prior to the 1987 change in police policy. But office statistics indicate that, immediately after the statute was enacted, as many as 90% of domestic violence misdemeanor arrests were not charged by the district attorney's office. The district attorney's office evolved an informal policy of requiring complainants to attend a charging conference the day after arrest. Cases where complainants failed to attend the charging conference frequently were not filed.

By mid-1994 (about the time that the domestic violence court opened) the rate of charging of domestic violence arrests had climbed close to 30%. Nonetheless, the district attorney's office came to realize that a smaller proportion of domestic violence arrests were being prosecuted in Milwaukee than in other Wisconsin cities. In response to that realization, the district attorney's

office decided to substantially increase the proportion of arrests prosecuted by jettisoning its requirement that victims come to the complaint room. The district attorney unilaterally announced a change in policy which became effective January 1, 1995. Literally overnight, the proportion of domestic cases accepted for prosecution doubled, causing severe problems for the fledgling domestic violence court. It also resulted in a tremendous opportunity to study a natural experiment. Was it in the interests of victims and in the interest of justice to open the intake gates widely and prosecute cases previously thought not winnable? We collected a range of outcome data to address this question:

Victim attendance in court Would the victims come to court after failing to come to the complaint room? It seemed likely that victims who failed of their own volition to come to the charging conference would be less likely than other victims to attend court dates. However, it was not known whether victim failure to attend the charging conference was due to victim decisions or to weak or confusing messages given by police officers.

Proportion of defendants convicted If fewer victims came to court after the charging policy was relaxed, it might be expected that the conviction rate would suffer. However, the district attorney's office was aware of this possibility and maintained that it was ready to try cases, if necessary, without cooperative victims. They argued that cases could be won with physical evidence, police officer testimony, excited utterances captured on 911 tapes, and so forth. On the other hand, lower convictions could also result if the sheer increase in caseload brought about by the liberalized policy overwhelmed the capacity of the new domestic violence court (since no new staff were being added by either judicial or prosecutorial organizations).

Recidivism Some victim advocates would argue that, even if convictions do not result, just the threat of prosecution held over the heads of batterers for a time is an important deterrent to continued battering.

Victim satisfaction If victims were pleased to have their cases prosecuted and if recidivism did, indeed, decline then victim satisfaction ought to increase under the district attorney's new charging policy.

METHOD

The research data presented in this report are from each of three periods: (a) *prior* to September, 1994 (the start of the special domestic violence court), (b) between September, 1994 and January 1995 (the period *after* the special court began and before the change in district attorney's charging policy), and (c) post-January 1995 (*after* the change in the district attorney's charging policy). Data from the two earlier periods were collected to ascertain the impact of the special court upon domestic violence case processing relative to the earlier processing of domestic violence cases in the general misdemeanor courts. Data from the latter period were collected when it became apparent that a change in district attorney's charging policies that took effect on January 1, 1995 would place serious strains upon the new court.

We conceptualized our study as involving process and impact components. We began the process component by interviewing officials involved in the creation and running of the special court. These interviews were supplemented by culling available statistical data from court administrators, judges, prosecution staff and others.

We collected several samples from court and district attorney's records in our assessment of the impact of the special domestic violence court (see Figure 1). First, we compared three samples of domestic violence cases filed by the prosecutor. These samples allowed us to examine how the handling of domestic cases changed with the introduction of the special court in September 1994, and how case processing changed again after the district attorney liberalized his charging policy in January 1995. Interviews with victims in these cases six months after case disposition allowed us to compare levels of victim satisfaction and reports of new offenses across the three periods. Second, we

FIGURE 1
SUMMARY OF RESEARCH SAMPLES

Pre-Domestic Violence Court (Summer 1994)	**Post-Domestic Violence Court (Fall 1994)**	**Post-Liberalized Charging Policy (Spring 1995)**
Court Sample	*Court Sample*	*Court Sample*
237 case records 67 victim interviews	190 case records 80 victim interviews	242 case records 45 victim interviews
Complaint room sample	*Complaint room sample*	*Complaint room sample*
157 case records 32 victim interviews	155 case records 14 victim interviews	152 case records

collected three samples of domestic cases declined by the prosecutor drawn from the same three time periods as the samples of prosecuted cases. We used the samples of cases that were filed versus the sample of cases that were not filed in the complaint room together to determine how victim attendance at the charging conference and other factors affected the decision to prosecute during the three time periods. We also interviewed victims in the samples of nolled cases six months after arrest to compare levels of victim satisfaction and reports of new offenses with cases that were prosecuted from the three time periods.

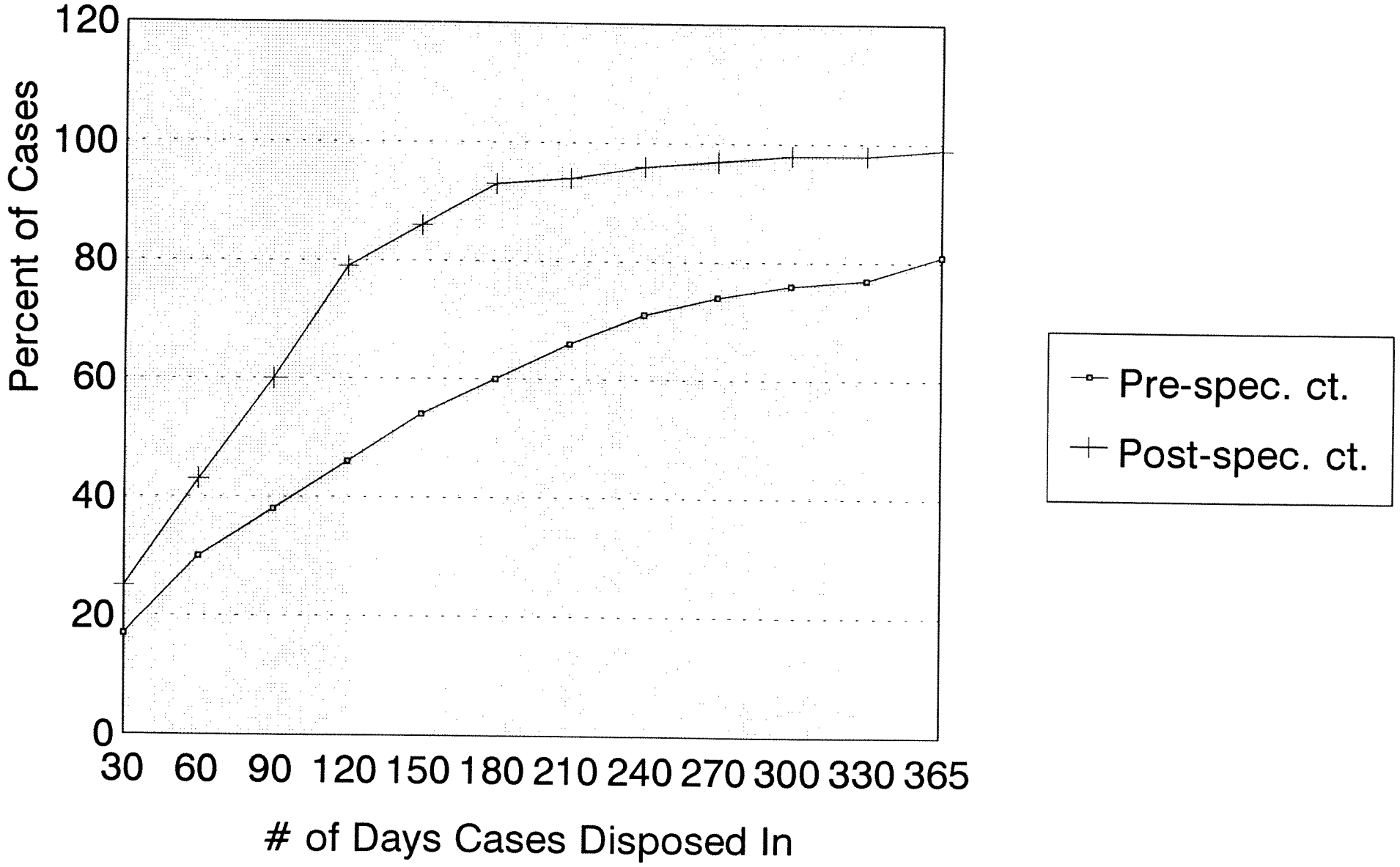
RESULTS AND DISCUSSION

Milwaukee's experiment with a special court for domestic violence cases was, for a brief period, successful in most respects. The theory was that convictions could be increased and pretrial crime decreased by reducing the time from initial appearance to case disposition. Our data indicate that processing time was, indeed, substantially reduced after the special court began (see Figure 2). The reduction was the result of applying to domestic violence cases the same speedy trial concepts Milwaukee officials had used successfully in drug cases, homicide cases, and sexual assault cases. These principles included specific guidelines for the timing of pretrial hearing and trial dates and strict enforcement of the guidelines. Initial reservations that these principles might not work with domestic violence cases were not borne out. Processing time was halved after they were adopted in the new specialized court ($p<.001$).

Coincident with the beginning of the new court, convictions increased by about 13%, from 56% to 69% ($p<.01$). Fewer convicted defendants were sentenced to jail terms after the new court began. The proportion of convicted defendants who received jail time declined from 75% before the special court began to 39% after ($p<.001$). But the increased convictions at least meant that more were getting into treatment programs. And the less frequent use of jail time (especially in conjunction with probation sentences) was consistent with victim desires. Only half as many victims in the post-specialized court sample wanted the defendant jailed as in the pre-specialized court sample. (We believe that this difference reflects a changing victim population as the district attorney began filing an increasing proportion of domestic violence arrests: see below.)

FIGURE 2

CASE PROCESSING TIME BEFORE AND AFTER START OF SPECIALIZED COURT



The prevalence of pretrial crime declined after the start of the domestic violence court as a result of the smaller window of opportunity to commit new harm. The proportion of defendants rearrested on misdemeanors dropped from 25% to 12% and those rearrested on felony charges dropped from 5% to 0%. However, we found no evidence that the creation of the specialized court led to a decline in recidivism after case disposition.

In spite of the lesser time to disposition, reduced pretrial crime, and increased convictions, we found no increase in rates of victims satisfaction with various aspects of the criminal justice process (see Table 1). In fact, two measures -- satisfaction with the prosecutor's handling of the case and victims' inclination to use the courts again, if needed -- were higher in the pre-specialized court sample than in the new specialized court. We believe that the failure of the new court to enhance satisfaction stems from changes in the victim population over time. The gradual loosening of restrictive district attorney charging policies was changing the composition of the victim population during the time that the specialized court was forming. Our sample of victims after the specialized court began were less interested in seeing the defendant prosecuted (and especially jailed) than the sample of victims prior to the start of the domestic violence court. Therefore, victims in the post-specialized court sample would tend to be <u>less</u> satisfied with the court process, since many never wanted the defendant prosecuted in the first place. Indeed, it is significant that the one aspect of the court process in which satisfaction declined significantly was the prosecutor's handling of the case. It seems reasonable that victims not interested in prosecuting would be most likely to hold the prosecutor responsible for their case going to court.

Overall, then, we have evidence that the theory on which the domestic violence court was based was sound. Reducing processing time produced concomitant changes in convictions and

TABLE 1

VICTIM SATISFACTION WITH THE COURT PROCESS
(Summer 1994 versus Fall 1994)

Proportion of victims who:	Pre-Specialized Court (n=237)	Post-Specialized Court (n=190)
Were satisfied with prosecution	83%	66%**
Were satisfied with victim advocate	95%	86%
Were satisfied with judge	76%	69%
Were satisfied with outcome and sentence	68%	66%
Felt safer because of outcome	47%	61%*
Thought case was treated with respect	78%	69%
Would call police if hurt again	92%	88%
Would go to court if hurt again	98%	86%**

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

opportunities for pretrial crime. Our test of this hypothesis turned out to be exceptionally strong since we had more than a pretest-post-test design. We observed the conviction rate and pretrial crime to decline as processing time declined at the start of the specialized court. And, as discussed below, we observed the conviction rate and pretrial crime to rise when processing time increased after the January 1995 change in charging policies.

What was accomplished in the Milwaukee experiment is highly significant. It is one of the only documented successful attempts to address the problem of low convictions in domestic violence cases. It was done largely without coercion of victims (as is the case in jurisdictions which institute no-drop rules) and without additional resources.

The second experiment that we examined in Milwaukee did not have the kind of success that the specialized court experiment achieved. The district attorney's liberalized charging policy in domestic violence cases made a major difference in the proportion of domestic violence arrests prosecuted after January 1995. However, prosecuting a larger proportion of domestic violence arrests did not bring about any observable benefits, and resulted in some undesirable consequences. We first examined whether there were any indications that a larger proportion of arrests ought to be prosecuted. That is, (a) Were there many victims whose cases were never filed with the court who wanted prosecution? (b) Was a large proportion of these victims dissatisfied with the outcome of their case? and (c) Were these victims at greater risk of new violence than victims whose cases were prosecuted?

There was a case to be made for prosecuting a larger proportion of domestic violence cases. Before the liberalized charging policy took effect, defendants arrested but not prosecuted had a somewhat higher recidivism rate than defendants whose cases were prosecuted after

controlling for criminal histories and the nature of the current charge (22% vs. 17%, p=.02). A smaller proportion of victims whose cases were not prosecuted wanted their cases to go to court than among court-involved victims (53% vs. 77%, p<.01) and a high percentage (71%) were satisfied with the prosecutor's handling of the case. Still, it is important to note that more than half of victims in arrests not filed with the court said that they wanted their case to go forward.

Next, we examined the way in which the charging decision process changed as a result of the new prosecutor policy. The most important respect in which it changed was that twice as many domestic violence arrests were filed with the court (see Figure 3). We found that prosecutors did not rely less upon victim presence in the complaint room in deciding whether or not to charge a case. Rather, what seems to have happened is that arresting officers less often requested victims to attend the charging conference. Moreover, rather than relying more on defendants' criminal histories in the decision to prosecute, screening prosecutors appeared to become less discriminating after the new policy took effect. The proportion of cases filed with the court in which the defendant had no previous criminal history rose significantly. Defendants' gender remained one of the best predictors of prosecution after the new charging policy, with male defendants more likely to be prosecuted than female defendants (see Table 2).

The liberalized charging policy had several effects, none of them positive. One effect of the new policy was to bring into the court system a larger proportion of cases with victims who were not interested in seeing the defendant prosecuted. A much larger percentage of victims in our post-January 1995 sample reported telling officials that they wanted the case dropped than in the previous two samples (26% after the new charging policy took effect versus 13% for the fall 1994 sample and 5% for the summer 1994 sample).

Figure 3

Proportion of Domestic Violence Arrests Accepted for Prosecution

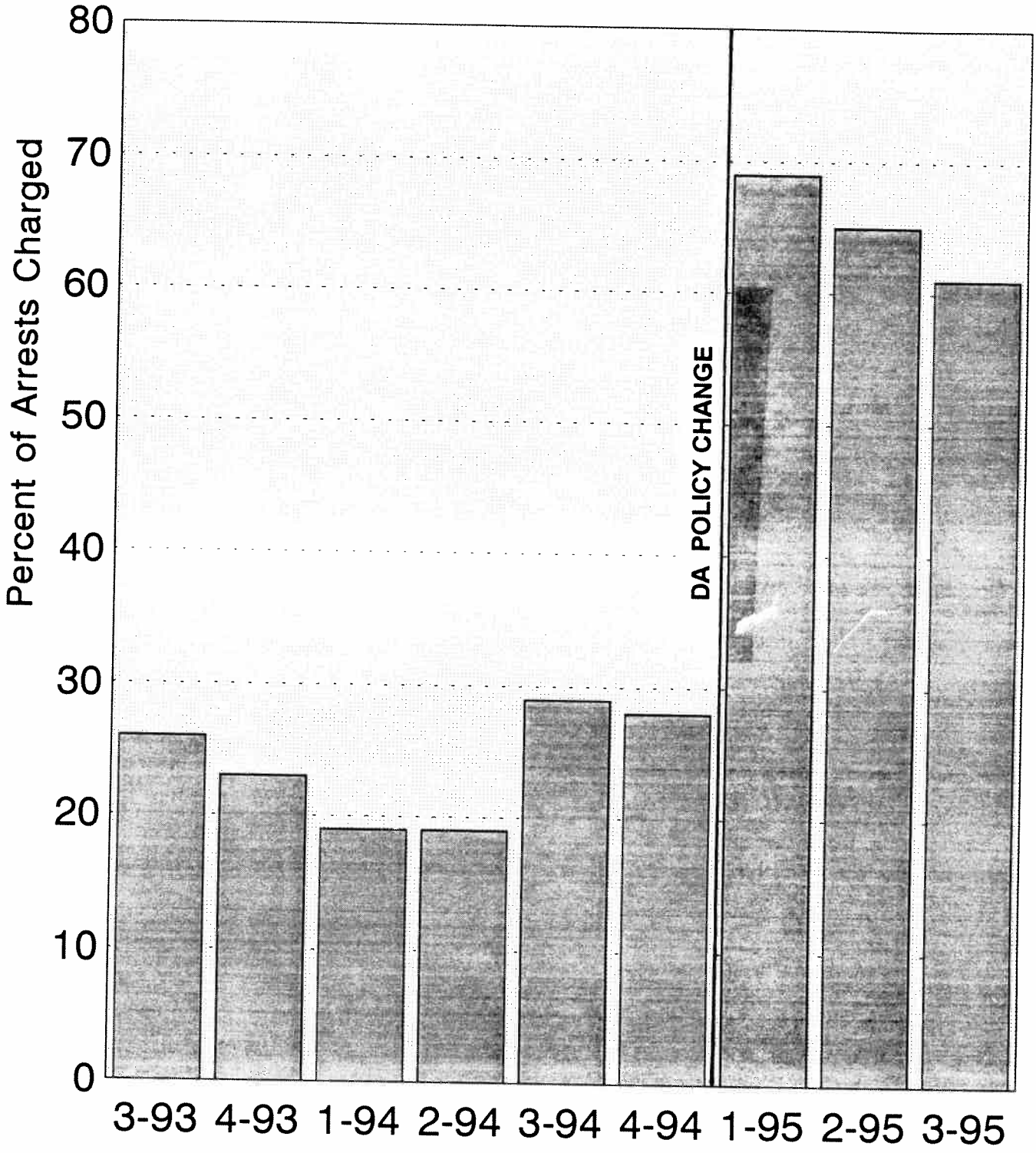


TABLE 2

MULTIVARIATE ANALYSIS OF DETERMINANTS OF
PROSECUTOR'S CHARGING DECISION AT THREE TIME POINTS
(LOGISTIC REGRESSION)

Table entries are Wald statistics		
	Fall 1994	Spring 1995
Crime Factors	3.37*	3.83**
Charge	0.57	2.20
Weapon used	2.29	0.00
Victim injured	1.03	0.52
Victim/Offender Married	0.09	0.13
Existing restraining order	0.09	0.13
Defendant Characteristics		
Gender	3.61**	10.25***
Felony convictions	3.46*	1.20
Misdemeanor convictions	3.13*	0.46
Battery arrests/no conviction	11.97***	0.02
Victim Cooperation		
PO says victim cooperative	0.00	1.76
PO says victim intoxicated	12.08***	0.76
Victim attended charging	17.13***	14.94***

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

As the special court became overwhelmed with cases, case processing time increased back to the level that had existed prior to the start of the specialized court (see Figure 4). The conviction rate declined, again from 69% to 52%, a similar level as had existed prior to the creation of the domestic violence court ($p<.001$). The proportion of defendants who were arrested for misdemeanors during the pretrial process rose from 12 % to 25% ($p<.001$), while the proportion arrested for pretrial felonies rose from 0% to 3% ($p=.01$). Victim satisfaction with prosecutors and with court outcomes declined after the implementation of the new screening policy (see Table 3). There was some evidence that the decline resulted from victims' beliefs that defendants were being dealt with too harshly. There was no evidence of a drop in recidivism among the smaller pool of arrests not prosecuted after the charging policy liberalization, as should have been the case if the new policy had referred to the court more arrests at high risk of recidivism.

While the prosecution policy in expanding the proportion of domestic arrests filed with the court was a failure, that does not necessarily mean that the idea was a bad one. The policy change was bound to bring in large numbers of domestic violence cases, but without additional resources allocated for prosecutors, victim advocates, judges, or public defenders to reasonably manage increased case loads. Further, the manner in which the new policy was implemented -- all at once and unilaterally by the district attorney without consultation with other agencies affected by its consequences -- was a recipe for disaster. There were nowhere near enough resources allocated to domestic violence cases by prosecution or judiciary to do an adequate job of prosecuting the additional cases. Prosecution staff had acknowledged prior to January 1995 that they would have

FIGURE 4

CASE PROCESSING TIME BEFORE AND AFTER LIBERALIZED CHARGING POLICY

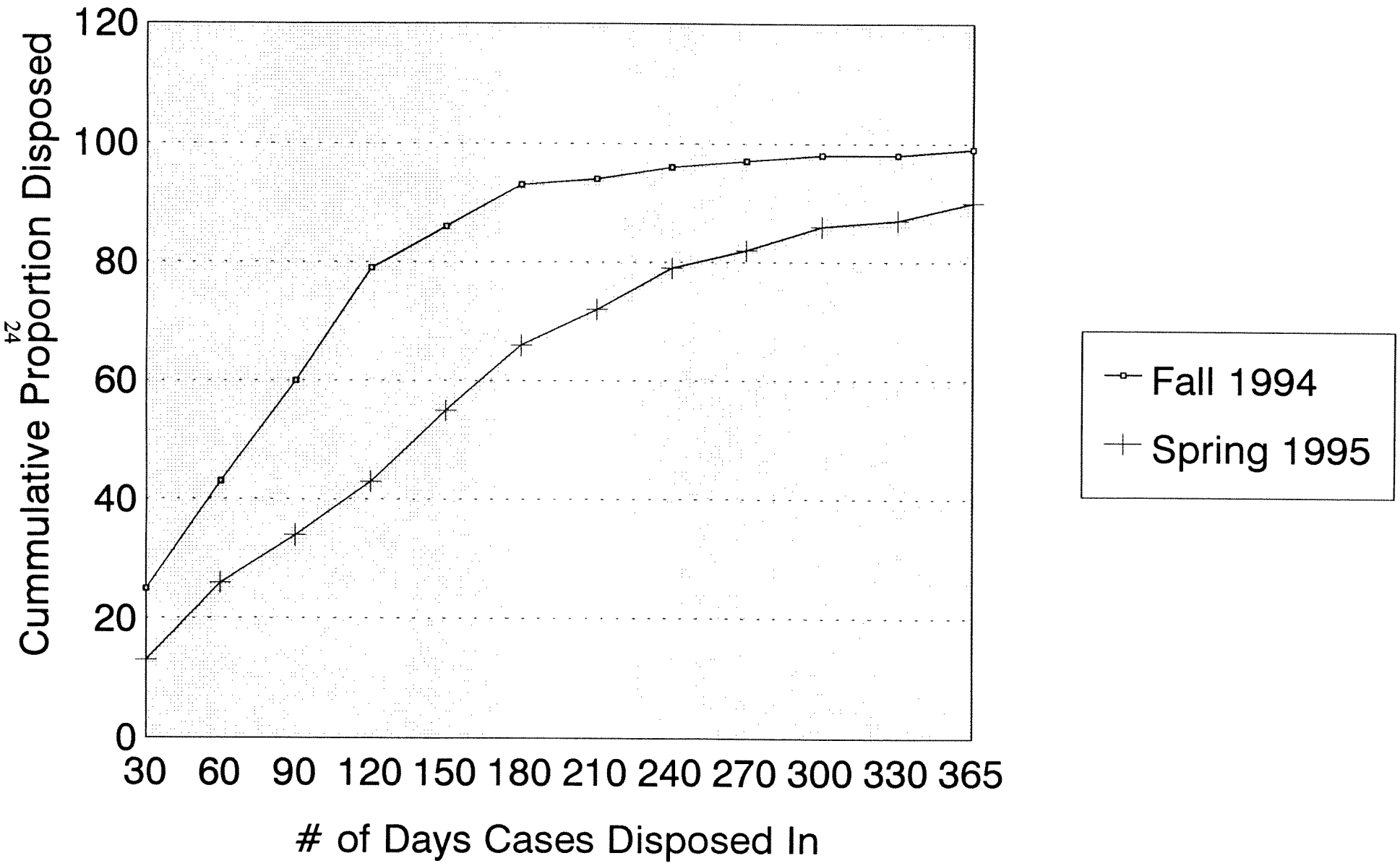


TABLE 3

VICTIM SATISFACTION WITH THE DISPOSITION PROCESS
(Fall 1994 versus Spring 1995)

Proportion of victims who:	Post-specialized court	Post liberalized charging policy
Were satisfied with prosecutor	66%	44%**
Were satisfied with victim advocate	86%	82%
Were satisfied with judge	69%	65%
Were satisfied with outcome and sentence	66%	44%**
Felt safer because of outcome	61%	40%
Though case was treated with respect	69%	71%
Would call police if hurt again	88%	76%*
Would go to court if hurt again	86%	85%

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

to be prepared to try more cases since they would be dealing with more uncooperative victims. In fact, however, they did not even attempt to try more cases because neither they nor the court had the resources to do so. Moreover, to be successful in trying more cases with unwilling victims would have required a major improvement in evidence gathering by the police at crime scenes. There was very minimal training of police officers or changing police protocols to enhance the collection of evidence in domestic violence cases.

Would it have been possible to prosecute a larger proportion of domestic violence arrests with a more careful approach than the one taken in Milwaukee? Possibly, if: other affected agencies were consulted during the planning process; more resources had been made available for the job; the police were prepared and trained to collect better evidence; a commitment had been made to bring more cases to trial; and a more rational criteria had been used to screen cases at charging.

But the additional resources needed would have been massive. Indeed, doubling the resources to match the increase in caseload would not be enough to do a quality job of prosecution. The additional cases with their more uncooperative victims would take disproportionately more time of victim caseworkers, more time of sheriffs delivering subpoenas, more court adjournments, and finally more trials using more comprehensive evidence. Clearly the budget for such an undertaking would be considerable.

Would it be worth the effort? In favor of that position, our data indicate that prosecution can reduce the likelihood of recidivism to some extent. Other researchers have come to this conclusion as well, but there is by no means yet overwhelming evidence on this point. Probably the original stringent screening of domestic arrests exercised by the Milwaukee prosecutor was

excessive, and there were additional arrests that might benefit from prosecution.

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

REFERENCES

Attorney General's Task Force on Family Violence (1984) Final Report. Washington, D.C.: U.S. Department of Justice.

Black, Donald and Albert J. Reiss, Jr. (1967) Patterns of behavior in police and citizen transactions. pp. 1-139 in U.S. President's Commission on Law Enforcement and Administration of Justice, Studies of Crime and Law Enforcement in Major Metropolitan Areas. Washington, D.C.: USGPO.

Buzawa, E. & Buzawa, C. (1996) Domestic violence: The criminal justice response (2nd edition). Newbury Park: Sage Publications.

Cahn, N, (1992). Prosecuting domestic violence crimes. In E. Buzawa & C. Buzawa (Eds.), Domestic violence: The changing criminal justice response (pp. 95-112). Westwood, CT: Auburn House.

Connick, E. & Davis, R.C. (1983) Examining the problem of witness intimidation. Judicature, 66, 438-447.

Davis, Robert C. (1983). Victim/witness noncooperation: A second look at a persistent problem. Journal of Criminal Justice 11, 287-289.

Davis, Robert C. and Barbara Smith (1995). Domestic violence reforms: Empty promises or fulfilled expectations? Crime and Delinquency, 41, 541-552.

Davis, Robert C. and Barbara Smith (1982). Crimes between acquaintances: The response of criminal courts. Victimology: An International Journal 8, 175-187.

Davis, Robert C., Barbara Smith, & Arthur Lurigio (1994). Court strategies to cope with rising drug caseloads. Justice System Journal, 17, 1-18.

Davis, Robert C., Barbara Smith, & Laura Nickles (1995). Specialized courtrooms: Does speeding up the process jeopardize the quality of justice? Report of the American Bar Association to the National Institute of Justice.

Davis, R.C., Russell, V.R., & Kunreuther, F. (1980) The role of the complaining witness in an urban criminal court. New York: Vera Institute of Justice.

Elliot, Delbert (1989). Criminal justice procedures in family violence crimes. In Family Violence, edited by Lloyd Ohlin and Michael Tonry. Chicago: University of Chicago Press.

Erez, Edna (1986). Intimacy, violence, and the police. Human Relations 39: 265-81.

Ford, David A. (1991a). Prosecution as a victim power resource: A note on empowering women in violent conjugal relationships. Law and Society Review, 1(2), 313-334.

Ford, David A. (1991b). Preventing and provoking wife battery through criminal sanctioning: A look at the risks. pp. 191-209 in Abused and Battered: Social and Legal Responses to Family Violence, edited by Dean Knudsen and Joann Miller. New York: Aldine de Gruyter.

Ford, David A. & Mary Jean Regoli (1992). The criminal prosecution of wife assaulters: Process, problems, and effects. In N. Zoe Hilton (Ed.), Legal responses to wife assault (pp. 127-164). Newbury Park, CA: Sage.

Friedman, Lucy N. & Minna Schulman. (1990). Domestic violence: The criminal justice response. pp. 87-103 in Victims of Crime: Problems, Policies, and Programs, edited by Arthur J. Lurigio, Wesley G. Skogan, and Robert C. Davis. Newbury Park, CA: Sage.

Goldkamp, John S. (1996). The role of drug and alcohol abuse in domestic violence and its treatment: Follow-up of the domestic violence court experiment. Philadelphia: Temple University Crime and Justice Research Institute.

Goolkasian, Gail A. (1986). Confronting Domestic Violence: A Guide for Criminal Justice Agencies. Cambridge, MA: Abt Associates

Hart, Barbara (1992). State codes on domestic violence: Analysis, commentary, and recommendations. Reno, NV: National Council of Juvenile and Family Court Judges.

Hirschel, J. David, Ira Hutchison, Charles Dean, and Anne-Marie Mills (1992). Review essay on the law enforcement response to spouse abuse: Past, present, and future. Justice Quarterly 9:247-283.

Jaffe, Peter G., Elaine Hastings, Deborah Reitzel, & Gary W. Austin (1993). The impact of police laying charges. In N. Zoe Hilton (Ed.), Legal responses to wife assault (pp. 62-95). Newbury Park, CA: Sage.

Klein, Andrew (1994). Spousal/partner assault: A protocol for the sentencing and supervision of offenders. Boston: Production Specialties.

Parnas, Raymond I (1973). Prosecutorial and judicial handling of family violence. Criminal Law Bulletin 9: 733-769.

Schneider, Thomas & Robert C. Davis (1995). Speedy trial homicide courts. Criminal Justice, 9, 24-29.

Sherman, Lawrence (1992). Policing domestic violence. New York: The Free Press.

Sherman, Lawrence & Richard A. Berk (1984). The Minneapolis domestic violence experiment. Washington, D.C.: The Police Foundation.

Tolman, Ricard & Arlene Weisz (1995). Coordinated community intervention for domestic violence: The effects of arrest and prosecution on recidivism of woman abuse perpetrators. Crime and Delinquency, 41, 481-495.

Vera Institute of Justice (1977). Felony arrests: Their prosecution and disposition in New York City's courts. New York: Author.

Witte, J.W. (1988) City of San Diego domestic violence prosecutions bulletin, Appendix 2. San Diego: Author.