

Spring 4-1-1992

# The Arrest Experiments: A Feminist Critique

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## Recommended Citation

Bowman, Cynthia Grant, "The Arrest Experiments: A Feminist Critique" (1992). *Cornell Law Faculty Publications*. Paper 143.  
<http://scholarship.law.cornell.edu/facpub/143>

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## COMMENTARIES

### THE ARREST EXPERIMENTS: A FEMINIST CRITIQUE

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Quantitative research has elicited a good deal of criticism from feminists. Quantitative methods are considered suspect because they place a greater value on "objective" and quantifiable information than on other sources of knowledge; because they assume a separation—indeed, a distance—between the researcher and the object of study; and because they isolate the factors under study from their socio-economic and historical context.<sup>1</sup> In the domestic violence field, moreover, survey research is greeted with particular mistrust because of early studies which were perceived as both insensitive in their design and biased in their results.<sup>2</sup>

The series of quantitative studies described in this symposium may, I fear, be rightfully subjected to the same criticism. In this brief comment, I will discuss how these studies may in some ways distort rather than clarify our understanding of the effect of different police responses to domestic violence (1) by isolating one factor — arrest — from the larger context of domestic violence and the

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<sup>1</sup> See, e.g., EVELYN FOX KELLER, *GENDER AND SCIENCE* (1978); Kersti Yllo, *Political and Methodological Debates in Wife Abuse Research*, in *FEMINIST PERSPECTIVES ON WIFE ABUSE* (Kersti Yllo & Michele Bograd, eds. 1988); CATHERINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 96-101 (1989).

<sup>2</sup> The most dramatic example was the Conflict Tactics Scale (CTS) developed by Straus, Gelles and Steinmetz, which counted individual acts of violence without regard for either the severity of the injury or whether they were in self-defense, resulting in a conclusion—known to be false by feminist researchers, shelter workers, and battered women—that husband abuse was as large a problem as wife abuse. See MURRAY A. STRAUS ET AL., *BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY* (1980). See also Kersti Yllo, *Political and Methodological Debates in Wife Abuse Research*, in *FEMINIST PERSPECTIVES ON WIFE ABUSE* 40-41 (Kersti Yllo & Michele Bograd eds. 1988); Lee Ann Hoff, *Collaborative Feminist Research and the Myth of Objectivity*, in *id.*, at 271-75.

response of the criminal justice system to it; (2) by reducing the subjects of the study to statistics and thus losing the important information which could be provided by the voices of the victims themselves; and (3) by analysing both the problem under study and the potential policy implications solely in individualistic, non-relational terms.

My position is not that quantitative research is without its uses. Rather, my intent is to illustrate the contribution of studies of this sort, to discuss their limitations, and to call for a more complete investigation into the appropriate police response to domestic violence based upon a genuine dialogue between the literatures of social science and feminism. The *ideal* experiment, I think, would be one which examined the impact of forceful responses by the criminal justice system within a context that also provided a broad range of supportive services—shelter, child care, therapy, employment and income support, if necessary—to the victims of domestic violence.

The arrest experiments in Milwaukee, Charlotte, Omaha and Colorado Springs attempt to correlate arrest, as contrasted with other possible responses by police to domestic violence incidents, with a number of measures of recidivism over a six- or twelve-month period of time. Contrary to the results of the previous study in Minneapolis, which showed that arrest correlated with a reduction in subsequent violence, the authors of the newer studies conclude that arrest is no more effective a deterrent than other responses. The new studies further conclude that arrest may in some cases lead to retaliation and thus bear an inverse relationship to specific deterrence.

In order to be appropriately “scientific,” the designers of these studies seek to isolate arrest as a factor in their experimental design, in order to evaluate the mandatory arrest policies which were initiated in many locales in the wake of the Minneapolis experiment. By isolating one factor, however, and by slicing into reality at one point in time, they distort it. Arrest is only one stage of response to any crime. It is preceded by the act of calling the police; it is followed, at least in theory, by charging and prosecution. In the domestic relations context, there is evidence that the mere fact of calling the police, without more, has some deterrent impact.<sup>3</sup> In addition, as Joan

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<sup>3</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PREVENTING DOMESTIC VIOLENCE AGAINST WOMEN I (1986) (fifteen percent of wives who called the police in response to domestic violence were abused again within six months, while forty-one percent of those who did not call police were abused again within that period).

Zorza points out,<sup>4</sup> abusers and their victims cannot fail to notice that ninety-five percent of domestic violence cases are not subsequently prosecuted. Finally, even if convicted, very few abusers ever serve any time in prison.<sup>5</sup> These other factors may well be more important than arrest. By simply correlating arrest with subsequent reports of abuse, there is no way of knowing which of the factors actually caused or deterred recidivism.

Second, by objectifying the subjects of the arrest experiments, reducing them to statistics classified by race, employment and socioeconomic status, one is by definition deprived of the valuable information that could be provided by these victims' voices.<sup>6</sup> Given that the experiments carried out in each city included follow-up interviews, a critical source of information was bypassed.<sup>7</sup> Consider, for a moment, the questions these women could have addressed: whether they had any independent source of income or place to go; whether they might have left and sought safety before subsequent attacks if supportive services had been available; whether they were reluctant to report incidents for fear of jeopardizing their spouses' jobs and family income; whether the treatment of their cases by the police and court system encouraged or deterred them from seeking assistance from the criminal justice system in the future, etc.<sup>8</sup> Each of these inquiries leads potentially to quite different policy implications, implications which are unclear from a simple correlation between a particular police response and future incidents of violence.

An additional question which might be answered by in-depth interviews with the abuse victims is whether, despite the recidivism rate, they would prefer arrest to other possible police responses to domestic violence calls. The authors of the Milwaukee report implicitly assume that certain groups of women, primarily those who

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<sup>4</sup> Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence*, 83 J. CRIM. L. & CRIMINOLOGY 46, 71 (1992).

<sup>5</sup> See, e.g., THE 1990 REPORT OF THE ILLINOIS TASK FORCE ON GENDER BIAS IN THE COURTS 152 (1990) (of 1,331 persons convicted of domestic violence offenses in Cook County, Illinois in 1989, only eight-seven were sentenced to any time in prison).

<sup>6</sup> These voices can be heard in many studies which have already been published, such as the gender bias studies carried out by the court systems in many states. See, e.g., MARYLAND SPECIAL JOINT COMMITTEE, GENDER BIAS IN THE COURTS 1-19 (1989); THE 1990 REPORT OF THE ILLINOIS TASK FORCE ON GENDER BIAS IN THE COURTS 129-58 (1990). See also LENORE E. WALKER, TERRIFYING LOVE (1989); ANGELA BROWNE, WHEN BATTERED WOMEN KILL (1987); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991).

<sup>7</sup> The follow-up interviews were apparently confined to the question of whether there had been any further incidents of abuse.

<sup>8</sup> Other areas of inquiry might include the woman's religious beliefs about marriage and what other measures she had taken since the abuser's arrest, for example, whether she had bought a gun.

are Black and poor, will oppose arrest for fear of retaliation.<sup>9</sup> This may not be the case, however. Those women, if given a choice, might nonetheless want the validation of an arrest or the time and space it gives them. Their answers might be very different, moreover, if the choice were not posed in a vacuum. What might they say if they were offered both arrest and a variety of supportive services?

The quantitative approach not only misses the voice of the victim; it loses her perspective as well. Even amidst the seeming neutrality of statistics, the authors of these reports appear automatically to assume the male perspective from which to explain data. The unquestioned assumption is that arrest produces certain results either by deterring or failing to deter the abuser. This assumption becomes even more explicit in the conclusion that the variable effects of arrest are explained by the socio-economic class of the *man*. If the abuser is middle class, employed, and white, arrest results in reduced recidivism.<sup>10</sup>

If statistics are truly neutral, however, why is it to be assumed that the effects of arrest result from its impact on the abuser rather than on his victim? Arrest may empower the victim, both because it affirms her rights and because it allows her time to make arrangements to ensure her own safety, assuming she is psychologically ready to do so. Similarly, although the authors assume that the class and employment status of the *man* are significant deterring factors (*i.e.*, whether he has much to lose from arrest), these factors can be viewed from the perspective of the woman as well. The middle-class wife may also be reluctant to sacrifice her lifestyle and status. This is a probable result either of arrest, with its attached stigma and the potentially adverse consequences upon the husband's employment, or of divorce proceedings.<sup>11</sup> After an automatic arrest, a battered woman may therefore be less likely to report subsequent abuse. Thus, lower recidivism for this group could reflect *her* fear of the consequences of arrest rather than, or in addition to, any deterrent effect upon the abuser.

On the other hand, the authors assume that arrest fails to deter abusers who are poor and unemployed because arrest is a common phenomenon in the ghetto.<sup>12</sup> This correlation also looks different if

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<sup>9</sup> Lawrence R. Sherman et al., *The Variable Effects of Arrest on Criminal Careers: The Milwaukee Domestic Violence Experiment*, 83 J. CRIM. L. & CRIMINOLOGY 137, 160-61 (1992).

<sup>10</sup> Sherman, et al., *supra* note 9, at 158-61; Richard A. Berk et al., *A Bayesian Analysis of the Colorado Spring Spouse Abuse Experiment*, 83 J. CRIM. L. & CRIMINOLOGY 170, 196 (1992).

<sup>11</sup> See, e.g., Lenore J. Weitzman, *The Economic Consequences of Divorce*, 28 UCLA L. REV. 1181 (1981).

<sup>12</sup> Sherman et al., *supra* note 9, at 162.

interpreted from the point of view of the woman. Whereas a middle-class woman may be able to take advantage of her resources to obtain support—alternate living arrangements, therapy, etc.—which allows her to escape or to prevent repeated abuse, poor women usually have no such alternatives. If they have managed to find low-cost or public housing in the inner city and to patch together support systems or social services which allow them to care for their children, they have no alternative but to remain there as sitting ducks for the abuser when he returns. In short, the perspective from which neutral statistics are analysed clearly makes a difference both in the conclusions to be drawn and in the policy implications which emerge from those conclusions.<sup>13</sup>

Indeed, even the obvious ethical questions about conducting arrest experiments like these appear to have been analysed from the point of view of the abuser. In order to conduct these studies, women summoning the police because they feared for their own physical safety or that of their children were randomly assigned to a category determining the police's response to their calls: separation or mediation, or both; issuance of a warning; short arrest (two hours and a recognizance bond); or long arrest (eleven hours or more plus \$250 bond).<sup>14</sup> For members of groups for whom arrest is clearly a deterrent, random assignment to the non-arrested control group thus increased the risk of harm to the women and their children. Yet Sherman et al. reason that the ethical posture of their experiment was improved by the fact that the experiment had the effect of reducing the severity of the police response in the control group, since arrest was otherwise mandatory in Milwaukee.<sup>15</sup> I was puzzled by this explanation for quite some time, until it suddenly dawned upon me that the ethical question was being viewed solely from the point of view of the abusers, some of whom were given a "break," rather than from the perspective of their victims, who were deprived of the response to which they were legally entitled and were possibly endangered thereby.

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<sup>13</sup> Whether the woman was initially living with her abuser and, if so, had left by the time of the follow-up is potentially a very powerful independent variable as well, although the direction of its effect may not be clear in the aggregate. Obviously, if a woman is able completely to escape her abuser and to live in a place which is entirely safe, this fact will deter further attack. However, it is also true that the most serious attacks upon women, the ones which most frequently lead to death, occur when they have in fact separated from the men abusing them—a phenomenon which Martha Mahoney has aptly described as "separation assault." Mahoney, *supra* note 2, at 64-79.

<sup>14</sup> Sherman et al., *supra* note 9 at 146-47; J. David Hirschel et al., *Female Spouse Abuse and the Police Response*, 83 J. CRIM. L. & CRIMINOLOGY 73, 88-89 (1992).

<sup>15</sup> Sherman et al., *supra* note 9 at 144.

Third, quantitative studies like the arrest experiments are inherently atomistic and individualistic in their mode of analysis: they tote up the statistics and then attempt to determine what is the greatest good of the greatest number.<sup>16</sup> This "good" is measured in terms of the likelihood of recidivism or retaliation by this man against this woman, ignoring more relational or communitarian values which may be at stake. It is, for example, well established that the effects of a child's witnessing spousal abuse are a major factor in the inter-generational transmission of domestic violence, as well as in the development of aggressive criminal tendencies in that child as an adult; it is also known that a large number of men who batter their wives abuse their children as well.<sup>17</sup> Thus, the balance of benefits from an arrest must be assessed not only from the point of view of deterring continued abuse within one couple but also, and perhaps more importantly, from the point of view of the community's critical interest in addressing the problem of domestic violence on a societal and long-term basis. Arresting and removing the abuser may thus be important, quite apart from any specific deterrent effect, because arrest delivers an empowering message to the victim and communicates society's condemnation of the abusive behavior to children or other witnesses.

To be fair, the authors of the Charlotte experiment do acknowledge that considerations such as these may militate in favor of arrest even if it is not shown to constitute a deterrent.<sup>18</sup> Nonetheless, we must be realistic about the probable effects of these studies upon policy. As Joan Zorza describes, the police are not fond of mandatory arrest policies because they interfere with their usual discretion; the mandatory arrest policies now in effect resulted from litigation and from legislative changes brought about by pressure from advocates for domestic violence victims.<sup>19</sup> If "scientific" studies demonstrate that arrest is not a deterrent, mandatory and preferred arrest policies are likely to come under substantial attack; and many may be repealed. In fact, the type of quantitative analysis employed is predisposed to certain types of policy outcomes because it implies by its very structure that the goal is a unitary one. The issue is reduced to the following question: to prevent recidivism, should

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<sup>16</sup> *Id.* at 160-61.

<sup>17</sup> See, e.g., SUPREME JUDICIAL COURT, GENDER BIAS STUDY OF THE COURT SYSTEM IN MASSACHUSETTS 88 (1989); ANSON SHUPE ET AL., VIOLENT MEN, VIOLENT COUPLES 35-39 (1987); LENORE WALKER, THE BATTERED WOMAN 146-49 (1979).

<sup>18</sup> Hirschel, *supra* note 14, at 118-19.

<sup>19</sup> Zorza, *supra* note 4, at 53-60.

we have a mandatory arrest policy or not? If arrest does not deter recidivism, the answer appears obvious.

I submit that this analysis is too simplistic. In fact, there are many possible policy alternatives. In the absence of mandatory arrest, police departments could revert to their prior discretionary arrest policies. Under these policies, the police tended to arrest persons whom the officers regarded as "riffraff" and to let those they regarded as more "respectable" go free, thus arresting only those individuals least likely to be deterred.<sup>20</sup> Alternatively, the police could, theoretically at least, be ordered to reverse the direction of their previous discrimination by arresting the middle class and employed suspect instead of the poor and Black one. As an additional alternative, mandatory arrest policies could be extended, even if there is evidence that they may lead to retaliation and thus actually increase recidivism in many cases.

Finally, the framework of analysis may also be broadened, so as to open up the range of possibilities far beyond the question of "to arrest or not to arrest." This, I believe, is the only sensible approach. A study of the long-term consequences of police policy in abuse cases in London, Ontario showed that when the police pressed charges against abusers *and* the community provided a broad range of services, including shelters and therapy, for victims of abuse, there was a 25-fold increase in domestic violence filings, no reduction in the willingness of victims to request the help of the police, a higher level of satisfaction with the police, and a reduction in victim-reported incidents of violence.<sup>21</sup> Before backing away from a forceful police response to abuse, it is certainly worth studying whether a more comprehensive approach to this problem would yield different results. Such an approach would include a commitment to arrest, prosecution, and more severe sentencing practices, coupled with the provision of supportive services for domestic violence victims.<sup>22</sup>

In conclusion, I would call for more, and more sensitive, studies of the appropriate societal response to domestic violence. The current studies are useful, in particular because they have disclosed the variable effects of mandatory arrest and the ways in which the ap-

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<sup>20</sup> Sherman, *supra* note 9, at 142; Zorza, *supra* note 4, at 72.

<sup>21</sup> Peter Jaffe et al., *The Impact of Police Charges in Incidents of Wife Abuse*, 1 J. FAM. VIOLENCE 37, 46-48 (1986).

<sup>22</sup> One such program exists in Duluth, Minnesota, and informal results indicate that it has reduced the rate of domestic homicide over the decade the program has been in effect. Jan Hoffman, *When Men Hit Women*, N.Y. TIMES MAGAZINE, Feb. 16, 1992, at 23, 25.



appropriate response to abuse may differ with the race and class of the victims or abusers. It is important, at the same time, to realize the limits of strictly quantitative research and not be quick to draw policy conclusions from its narrow findings. In short, I think a genuine dialogue is necessary—between social scientists and criminologists, on the one hand, and feminists, victim advocates, and victims, on the other—in order to achieve a fuller understanding of the most effective ways to confront this form of violence against women.<sup>23</sup>

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<sup>23</sup> This dialogue is at present unidirectional: feminist writers are aware of the quantitative work, but the authors of the criminology studies appear to ignore the insights of feminist scholars. The bibliographies provided by the criminology authors are largely devoid of any references to the by now extensive literature concerning domestic violence by feminist authors, although their tentative hypotheses could be improved by incorporating its insights. For example, while concerned about the appropriate time frame for measuring repeat attacks upon spouses, the experiment designers fail to consider Lenore Walker's description of the "cycle of violence," which would lead one to expect recidivism during some periods of time more than during others. See WALKER, *supra* note 17, at 55-70. Moreover, the feminist critique of research methodology is now quite extensive. See, e.g., SANDRA HARDING, *FEMINISM AND METHODOLOGY* (1987); MARY MARGARET FONOW & JUDITH A. COOK, *BEYOND METHODOLOGY* (1991).