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# Assessing the Impact of the Court Response to Domestic Violence in Two Neighboring Counties

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ASSESSING THE IMPACT OF THE COURT RESPONSE TO DOMESTIC VIOLENCE IN  
TWO NEIGHBORING COUNTIES

by

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Bachelor of Arts  
University of Florida, 2007

Master of Arts  
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Submitted in Partial Fulfillment of the Requirements

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2013

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## ABSTRACT

Since the 1970s, there has been a proliferation of research on domestic violence (DV). The majority of research, however, has focused on the correlates of DV and far fewer studies have examined the criminal justice system's approach to addressing DV. This is particularly concerning given that historically, the criminal justice system was rooted in English Common Law and tolerant of marital discipline to maintain household stability. Through the efforts of women's rights advocates, policy makers began devising innovative strategies for responding to DV, including provisions for mandatory arrests, no-drop policies, and the establishment of specialized DV courts. Although there has been an increase in the number of studies examining the criminal justice system's response to DV, a limited number of these are devoted to the court's response, and even fewer studies have examined specialized courts' response to DV. Further, a limited number of investigations have focused on the effects of decision-making in DV cases on future DV offending.

This study attempts to overcome these shortcomings by examining the response to DV by two specialized DV courts in South Carolina. The predictors of prosecutorial and judicial decision-making are assessed within the two courts and the magnitude of these effects is compared across counties. Further, the extent to which general courtroom theoretical frameworks extend to our understanding decision-making in specialized DV courts is discussed. The impact of court decisions on recidivism is also explored.



The results indicate that both courts proactively responded to DV and operated under a treatment-oriented sentencing approach; there were, however, differences in conviction rates and sentencing between the two courts. Legal, case processing, and extralegal variables were relevant to the explanation of courtroom decision-making in the two courts and few differences existed in the magnitude of the effects across courts. General theoretical frameworks extend only partial utility for explaining decision-making in specialized DV courts. Finally, overall, court decisions were limited in their effect on future DV re-arrests. In all, this study adds to the growing literature surrounding specialized DV courts, courtroom decision-making in DV cases, and the effects of courtroom decisions on future offending.

## TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	iii
ABSTRACT .....	vii
LIST OF TABLES .....	xii
CHAPTER 1: INTRODUCTION.....	1
1.1 DOMESTIC VIOLENCE IN AMERICA.....	2
1.2 LIMITATIONS OF THE CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE.....	4
1.3 OVERVIEW OF THE STUDY .....	7
CHAPTER 2: OVERVIEW OF DOMESTIC VIOLENCE AND THE CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE.....	9
2.1 ESTIMATES OF DOMESTIC VIOLENCE IN AMERICAN SOCIETY.....	9
2.2 ESTIMATES OF REPEAT DOMESTIC VIOLENCE IN AMERICAN SOCIETY .....	10
2.3 TYPOLOGIES OF DOMESTIC VIOLENCE .....	11
2.4 PREDICTORS OF DOMESTIC VIOLENCE AND DOMESTIC VIOLENCE RECIDIVISM.....	12
2.5 HISTORY OF THE CRIMINAL JUSTICE SYSTEM’S RESPONSE TO DOMESTIC VIOLENCE .....	22
2.6 SUMMARY .....	27
CHAPTER 3: THE COURT RESPONSE TO DOMESTIC VIOLENCE .....	29
3.1 PROSECUTORIAL DECISION-MAKING.....	30
3.2 JUDICIAL DECISION-MAKING .....	43
3.3 COURT DECISIONS AND RECIDIVISM .....	56

3.4 LIMITATIONS OF THE COURT RESPONSE TO DOMESTIC VIOLENCE .....	68
3.5 SUMMARY .....	69
CHAPTER 4: SPECIALIZED DOMESTIC VIOLENCE COURTS.....	71
4.1 OVERVIEW OF SPECIALIZED DOMESTIC VIOLENCE COURTS.....	72
4.2 EVALUATION OF SPECIALIZED DOMESTIC VIOLENCE COURTS .....	82
4.3 LIMITATIONS OF SPECIALIZED DOMESTIC VIOLENCE COURTS .....	91
4.4 SUMMARY .....	93
CHAPTER 5: METHODOLOGY .....	94
5.1 SITE SELECTION .....	94
5.2 SAMPLE AND DATA .....	100
5.3 STATISTICAL ANALYSES.....	114
CHAPTER 6: QUANTITATIVE RESULTS.....	117
6.1 BETWEEN-COUNTY DIFFERENCES IN OUTCOMES .....	117
6.2 PROSECUTION DECISION.....	119
6.5 CONVICTION DECISION.....	120
6.6 SENTENCING DECISION.....	122
6.7 RECIDIVISM .....	126
CHAPTER 7: QUALITATIVE RESULTS .....	133
7.1 STRUCTURAL DIFFERENCES BETWEEN THE COURTS.....	134
7.2 THEMES REGARDING COURT PROCESSING .....	141
CHAPTER 8: DISCUSSION AND CONCLUSION .....	170
8.1 DOMESTIC VIOLENCE CASES ARE PRIORITIZED .....	172
8.2 THERAPEUTIC JUSTICE IS PERVASIVE .....	177

8.3 GENERAL THEORETICAL FRAMEWORKS ONLY PARTIALLY EXPLAIN  
DECISION-MAKING IN DOMESTIC VIOLENCE COURTS .....178

8.4 RECIDIVISM RATES ARE SIMILAR AMONG DEFENDANTS IN BOTH COURTS .....199

8.5 COURTROOM DECISIONS HAVE A LIMITED EFFECT ON FUTURE OFFENDING .....199

8.6 STUDY LIMITATIONS .....202

8.7 FUTURE DIRECTIONS .....206

8.8 SUMMARY .....211

REFERENCES .....212

## LIST OF TABLES

Table 5.1 Sample Descriptions .....	103
Table 6.1 Independent Sample T-Tests Assessing Between-County Differences in Outcomes .....	118
Table 6.2 Logistic Regression Models Predicting the Prosecution Decision in Lexington County .....	119
Table 6.3 Logistic Regression Models Predicting the Likelihood of Conviction for Prosecuted Defendants.....	121
Table 6.4 Multinomial Models Predicting Sentence Outcome for Convicted Defendants .....	123
Table 6.5 Logistic Regression Models Predicting the Prevalence of Re-Arrest.....	127
Table 6.6 Negative Binomial Regression Models Predicting the Incidence of Re-Arrest.....	130
Table 6.7 Cox Regression Models Predicting Time-to-Re-Arrest.....	131
Table 8.1 Summary of Decision-Making Findings Among Defendants Processed in Richland County .....	179
Table 8.2 Summary of Decision-Making Findings Among Defendants Processed in Lexington County .....	180
Table 8.3 Summary of the Significant Between-County Differences in Predictors of Decision-Making .....	195

## CHAPTER 1

### INTRODUCTION

Domestic violence (DV) is single-handedly the most common form of violence brought to the attention of the criminal justice system (Sherman, 1992). Each year, police officers respond to more than eight million incidents of DV.<sup>1</sup> Criminal courts are flooded with defendants who have allegedly threatened or assaulted their current or former spouses or significant others, and are inundated with victims who acknowledge their victimization status, but may also refuse to define the alleged acts of violence as criminal. The unique dynamics and potentially fatal consequences surrounding incidents of DV have led law enforcement and criminal court officials to enact formal policies to combat it. Although some scholarly research has been devoted to the assessment of the police response to DV (e.g., effects of arrest on future violence), far less research has been conducted on the response of criminal courts. In particular, limited research exists regarding courtroom decision-making in DV cases and its impact on defendants' recidivism. Additionally, research has primarily been conducted in single, urban jurisdictions (e.g., Hamilton County, Ohio, see Wooldredge & Thistlethwaite, 2004, 2005), with few comparison studies across jurisdictions (Davis et al., 2008; Peterson & Dixon, 2005). Finally, few scholars have attempted to evaluate the effectiveness of specialized criminal justice units created in an attempt to better combat DV. This limitation is particularly important to address given the significant amount of federal,

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<sup>1</sup> For the purposes of this study, DV refers to violence by current or former intimate partners.

state, and local resources devoted to responding to DV (Sherman, 1992; Wooldredge & Thistlethwaite, 2004).

This study was designed to help bridge the gap in the extant knowledge. Specifically, this study will examine prosecutorial and judicial decision-making in two specialized DV courts in South Carolina, and assess and compare the factors that predict decisions across counties. In addition, rates of recidivism will be compared across counties. Finally, this study will provide an examination and comparison of the impact of prosecutorial and judicial decision-making on future DV in these two counties.

### **Domestic Violence in America**

For the majority of early American history, family violence, corporal punishment, and discipline against women was considered culturally acceptable in order to maintain household stability so long as permanent injury was not imposed (Siegel, 1996). Well into the 19<sup>th</sup> century, this type of behavior was viewed as necessary and normative. In fact, it was not until the 1970s that DV was considered a social and criminal justice issue (Fagan, 1996).

Since the 1970s, considerable research has been aimed at determining the extent of DV in American society, and scholars have suggested that between 25 and 36 percent of females and 8 to 29 percent of males have experienced some form of violence at the hands of their intimate partner during their lifetime (M. C. Black et al., 2011; Tjaden & Thoennes, 2000). Such violence may include simple and aggravated physical violence, sexual violence, or stalking. Each year, between two and six percent of women and one and five percent of men are abused by their partners, resulting in an annual victimization range between two and thirteen million persons (M. C. Black et al., 2011; Tjaden &

Thoennes, 2000).

Significant physical and mental health consequences, beyond injuries stemming directly from the victimization, have been associated with experiences of DV. Individuals assaulted by intimate partners may develop depressive symptomology, post-traumatic stress disorder, and suicidal thoughts and/or tendencies as a result of their victimization (A. DeMaris & Kaukinen, 2005; Golding, 1999; Straus & Gelles, 1987). The prevalence of mental health problems among victims of DV is considerably high when compared to mental health problems among women in the general population (Golding, 1999). Victims may also turn to alcohol or drug use to cope with the pains of victimization (Golding, 1999; Kilpatrick et al., 1997). In many cases, primary (i.e., direct) or secondary (i.e., indirectly) exposure to DV may result in an increased likelihood of future victimization and abuse perpetration (Holt et al., 2008; Lussier et al., 2009; Straus et al., 2006). In the most extreme cases, DV can be fatal (Plass, 1993; Websdale, 1999). In a study examining domestic homicide between 1976 and 2005, Catalano (2007) reported that approximately 30 percent of female homicide victims were killed by their intimate partners.

### **Domestic Violence and the Criminal Justice System**

Only one-quarter of all DV incidents are actually brought to the attention of the criminal justice system (Tjaden & Thoennes, 2000). This may be in part due to the long-standing perception of DV as a “private” issue and strong opposition to formal interventions in the response to DV (Buzawa & Buzawa, 1993). Although the criminal justice system eventually recognized DV as a criminalized offense, system reforms were not uniformly implemented nationwide until 1994 with the enactment of the Violence



Against Women Act (VAWA). This act was intended to improve the response of law enforcement departments, prosecutors, and private nonprofit victim assistance organization to issues of violence against women, including DV (Chaiken et al., 2001).

### **Limitations of the Criminal Justice Response to Domestic Violence**

Since the criminalization of DV, a surge of empirical studies assessing various facets of DV have emerged. These studies have primarily been devoted to understanding the causes and correlates of DV, and far fewer studies have explored the criminal justice response to DV. Of the research that does attempt to explore the criminal justice response to DV, the majority has been devoted to examining the effect of police actions (e.g., arrest) on DV recidivism, and less research has been conducted on the court response to DV. To date, the amount of research dedicated to examining prosecutorial and judicial decision-making on these types of cases is lacking, especially in comparison to the literature that assesses decision-making for broader categories of defendants (i.e., not limited by offense type). Furthermore, although theoretical frameworks have been used to understand decision-making in general court research, these frameworks are rarely discussed within the context of court processing of DV cases. This study attempts to examine prosecutorial and judicial decision-making in DV cases and whenever possible, discuss how theoretical frameworks used in general court research may be applicable to case processing of DV cases.

Moreover, while there is some literature that attempts to understand the basic predictors of decision-making in DV cases, these studies often fail to examine multiple decision points made throughout case processing (for exceptions, see, Henning & Feder, 2005; Kingsnorth et al., 2001; Kingsnorth et al., 2002; Wooldredge & Thistlethwaite,

2004). Instead, studies either focus solely on prosecutorial decisions or solely on judicial decisions. This limitation may overgeneralize decisions made during court processing and camouflage the effects of different predictors on different stages of court processing (Henning & Feder, 2005). This study attempts to address this limitation by examining different decision points of prosecutors (e.g., decision to fully prosecute versus dismiss charges) and judges (e.g., decision to convict, sanction) that occur during DV case processing.

Current research has also largely neglected to examine how and why case processing varies by jurisdiction. Traditionally, scholars asserted that prosecution and conviction rates of DV cases were low, however, these assertions were largely based on studies of single jurisdictions. More recently, scholars have noted that prosecution and conviction rates appear to vary by jurisdiction (Garner & Maxwell, 2009, 2011; Klein, 2004), but fail to investigate specifically what leads to such a variation across jurisdictions. The current study attempts to overcome this limitation by assessing courtroom decision-making in two specialized DV courts located within two separate jurisdictions. Quantitative analyses will explore whether factors impact court processing differently across the two counties. Unfortunately, given that only two courts are examined in this study, a multi-level quantitative analysis assessing the impact of the macro-level context on variation in case processing across counties cannot be conducted. Qualitative interviews with court actors will attempt to understand some of the differences in processing across the two counties, but is limited to a discussion of specific policy differences between the counties.

In addition, current research provides only a restricted understanding of the utility of

specialized DV courts. Despite the existence of approximately 200 or 300 specialized DV courts in operation around the country (Labriola et al., 2009; Winick, 2000), evaluations of these courts are limited (Gover et al., 2003; Harrell et al., 2007; Newmark et al., 2004) and much of the research is descriptive and derived from law reviews (e.g., Salzman, 1994; Tsai, 2000; Winick, 2000). Although this study will not compare specialized courts to traditional courts, it will help shed light on the diversity of specialized DV court models (Labriola et al., 2009).

Finally, this study will add to the growing, albeit limited, research devoted to assessing the impact of court decisions on DV recidivism. Extant research has found that criminal sanctions may have no effect on recidivism, but these findings may be confounded by characteristics of the defendants, as well as the quality of research methods and measures utilized (see Garner & Maxwell, 2011; but see, Thistlethwaite et al., 1998; Wooldredge, 2007a; Wooldredge & Thistlethwaite, 2002, 2005). For instance, these studies differ on the decision points examined (e.g., dismissals versus convictions), and it is plausible that prosecutorial and judicial decisions exert differential effects on defendants' re-offending. The failure to include a range of decisions and dispositions made during the court process could mask any influence prosecutorial and judicial decision-making have on DV re-offending. In addition, studies differ on the point at which the time-at-risk to re-offend begins (e.g., at arrest, at disposition), as well the length of time defendants are tracked for re-arrest. Differences in when time-at-risk to re-offend begins and shorter follow-up times may impact the odds of observing an effect on recidivism (Dunford, 1992; Garner & Maxwell, 2011). This study attempts to respond to these limitations by assessing prevalence and incidence of recidivism and time-to-re-

arrest for defendants processed in two specialized courts. Analyses will predict, and control for, multiple decision points (both prosecutorial and judicial), begin assessments of time-at-risk to re-offend after case disposition, and follow defendants for three years post-disposition.

### **Overview of the Study**

This study takes form in the remaining seven chapters. Chapter Two provides a brief overview of the various forms of DV and illustrates the extent of DV in American society. A discussion of the correlates of DV perpetration and recidivism is also provided. The chapter closes with an overview of the history of the criminal justice response to DV.

Chapter Three discusses the court response to DV, detailing the theoretical frameworks for prosecutorial and judicial decision-making used in broader court research and how these frameworks may apply to court processing of DV cases. A discussion of the extant literature on the correlates of prosecutorial and judicial decision-making in DV cases is also provided. The chapter ends with a detailed overview of the impact of court decisions and sanctions on future DV.

Chapter Four provides a comprehensive overview of the inception and development of specialized DV courts. A discussion of how theoretical frameworks used in the broader court research may be applied in specialized DV courts is provided. Finally, an overview of the effects of specialized DV courts in terms of efficiency, victim satisfaction and safety, offender accountability, and recidivism is included.

Chapter Five details the methodological procedures utilized in this study. This chapter illustrates the extent of DV in South Carolina, and provides a discussion of the two

specialized DV courts and their communities. A description of the data sources and measurement of all independent and dependent variables is provided, as is the research design and analytical strategy of this study.

Chapter Six provides the quantitative results of this study. County-specific analyses examining prosecutorial and judicial decision-making are presented. In addition, county-specific recidivism analyses assessing the impact of court decisions and sanctions on future offending are provided.

Chapter Seven provides the qualitative component of this study, which is comprised of observations of court sessions and semi-structured interviews with court actors. This chapter helps provide context to the quantitative findings in Chapter 6 and is discussed in light of existing theory and the extant literature

Chapter Eight summarizes the findings from the quantitative and qualitative components of this study and the extent to which the findings of this study support general theoretical frameworks and prior research. The limitations of this study are also noted. The chapter closes with ideas for future research and concluding marks.

## CHAPTER 2

### OVERVIEW OF DOMESTIC VIOLENCE AND THE CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE

#### **Estimates of Domestic Violence in American Society**

Violence between intimate partners is pervasive in American society. Police respond to over eight million incidents of DV annually (Sherman, 1992), but researchers suggest that a substantial “dark figure” of DV exists: approximately one-quarter of all physical assaults committed by intimate partners are actually reported to police (Tjaden & Thoennes, 2000). The majority of what we know about estimates of DV in American society is provided by self-report surveys, including the National Violence Against Women Survey (NVAW), National Crime Victimization Survey (NCVS), National Family Violence Survey (NFVS), and National Intimate Partner and Sexual Violence Survey (NISVS). Still, estimates of DV vary widely and are dependent on the source of the data and the different methodologies (e.g., interviews of individuals ages 12 and older; ages 18 and older) and definitions of violence (e.g., Conflict Tactics Scale) utilized.

According to the NVAW, approximately one-quarter of all women and eight percent of men have been raped, stalked, and/or physically assaulted by an intimate partner during their lifetime and approximately two percent of women and one percent of men have experienced intimate partner violence in the past 12 months (Tjaden & Thoennes, 2000). The NISVS provides more striking estimates of the prevalence of DV: more than

one in three women (approximately 36 percent) and more than one in four men (approximately 29 percent) have experienced violence committed by an intimate partner during his/her lifetime. Approximately six percent and five percent of women and men, respectively, have been victimized by an intimate partner in the past year (M. C. Black et al., 2011). The NCVS also reports that females are more likely to be victimized by intimate partners than males; in 2010, the percentage of female victims of DV was four times higher than male victims (Truman, 2011). Conversely, the NFVS estimates that both males and females are equally likely to perpetrate and be victims of DV (see, e.g., Straus et al., 2006). Perceptual and methodological differences across these studies likely result in the different estimates of DV. Though a discussion of these differences is beyond the scope of this dissertation, it is important to note that regardless of their differences, each of the surveys clearly illustrate that DV is prevalent in American society.

### **Estimates of Repeat Domestic Violence in American Society**

The incidence and chronicity of DV is also high for both females and males. According to the NVAW, approximately two-thirds of women and men who were physically assaulted by an intimate partner were victimized multiple times by the same partner (Tjaden & Thoennes, 2000). On average, females experienced approximately seven assaults by the same intimate partner, and males experienced close to five repeat assaults. Research also suggests that individuals arrested for DV and processed in criminal courts often recidivate. Although the estimates vary, studies have reported that between 16 (Wooldredge & Thistlethwaite, 2002, 2005) and 30 (Tolman & Weisz, 1995) percent of DV offenders re-offended in less than two years.

## **Typologies of Domestic Violence**

Although researchers agree that DV and repeat DV is prevalent in American society, there is a great deal of controversy over whether DV is a gendered phenomenon. Family violence researchers argue that conflict is natural between partners, typically use measurement instruments that focus on acts and behaviors of intimate partners, emphasize causal influences of violence (e.g., stress) that are common to both sexes (Archer, 2000; Straus et al., 1996), and often find that men and women engage in similar rates of DV (Stets & Straus, 1989; Straus et al., 2006). Conversely, feminist scholars contend that DV must be understood within the context of the interpretations, motivations, and intentions of violence (e.g., R. P. Dobash et al., 1992), and that partner violence is a direct consequence of patriarchal values and attempts by men to maintain control over women (R. E. Dobash & Dobash, 1979).

Recently, Johnson (1995, 2006b, 2008) suggested that there may be validity to both the feminist and family conflict frameworks, and posited that at least four distinct typologies of DV exist: (a) intimate terrorism; (b) violent resistant; (c) mutual violent control; (d) and situational couple violence (i.e., common couple violence). These typologies are distinguished by the degree of coercive control within the relationship, the motivations for violence, and the patterns of behavior in the relationship as a whole (M. P. Johnson, 2006b, 2008).

Intimate terrorism refers to male-perpetrated acts in which violence and/or threats of violence are used as coercive tactics to control an intimate partner (M. P. Johnson, 1995, 2006b, 2008), and often result in high rates of severe injury that require female victims to seek medical treatment or shelter away from their abusers. Intimate terrorism is most



often captured in samples garnered from shelter populations, crisis agencies, and the criminal justice system. General surveys are less likely to uncover intimate terrorism because the controlling partner is less likely to allow such an interview to take place (M. P. Johnson, 2008). Violent resistant DV refers to women who fight back against their intimate terrorist partners and is characterized by defensive violence that occurs as an immediate reaction to violence inflicted or threatened. Couples in these relationships often come to the attention of shelter agencies, law enforcement and the criminal justice system. The third type of DV, mutual violent control, reflects both partners' attempts to use violence to gain control over the other partner (M. P. Johnson, 2008). This type of violence is less common. Finally, situational couple violence refers to DV that both males and females equally perpetrate (see, e.g., Straus et al., 2006). This type of violence is situationally-provoked and characterized as conflict that "gets out of hand" (M. P. Johnson, 1995); it is not defined by partners' use of violence to exert control over their intimate partner (M. P. Johnson, 2008). Although victims tend to be less likely to sustain injuries as serious as those who experience intimate terrorism, single incidents of situational couple violence may look similar to intimate terrorism. As a result, situational couple violence can be evident both in general surveys and in samples derived from formal agencies (e.g., the criminal justice system).

### **Predictors of Domestic Violence and Domestic Violence Recidivism**

Despite evidence that there may be different forms of partner violence (Graham-Kevan & Archer, 2003; M. P. Johnson, 1995, 2006b, 2008), the majority of what is known about DV is based on studies from the past four decades that did not differentiate between the different types of DV. The section below provides a brief summary of this

literature.

### **Individual- Level Correlates of Domestic Violence**

Although DV transcends across all racial/ethnic, socioeconomic, and gendered boundaries (Bachman & Saltzman, 1995), scholars have identified certain characteristics of victims and offenders that tend to be overrepresented within populations affected by DV.

**Gender.** The impact of gender is highly debated in the literature by feminist scholars and family violence researchers. Researchers have traditionally identified DV as a crime committed by males onto their female partners (excluding female perpetrators of DV from studies). However, of those studies that examine the impact of gender on re-offending, the results are mixed. Some studies have found no significant effect of gender on re-offending (Gover et al., 2003; Kingsnorth, 2006; Thistlethwaite et al., 1998), while others have found that males are more likely than females to recidivate (Renauer & Henning, 2006; Ventura & Davis, 2005; Wooldredge & Thistlethwaite, 2002, 2005).

**Age.** Researchers have typically found that younger individuals experience increased aggression and marital violence compared to their older counterparts (e.g., Bachman & Saltzman, 1995; Caetano et al., 2008; Holtzworth-Munroe et al., 1997; Stets, 1991; Straus et al., 2006; Yllo & Straus, 1981), and are more likely to re-offend (Renauer & Henning, 2006; Thistlethwaite et al., 1998; Wooldredge & Thistlethwaite, 2002, 2005). This inverse relationship may be due to younger couples' lack of experience to pro-socially resolve arguments without physical violence and instability in their romantic relationships (A. A. DeMaris et al., 2003; Wright, 2011). The findings are also consistent with the notion that antisocial and violent behavior generally decrease with age (Hirschi

& Gottfredson, 1983; Holtzworth-Munroe et al., 1997).

**Race.** Scholars have reported that minorities are more likely to perpetrate (Holtzworth-Munroe et al., 1997; Straus et al., 2006) and be victims of DV (Caetano et al., 2008; Tjaden & Thoennes, 2000). However, race appears to be a relatively weak predictor of DV re-abuse (Cattaneo & Goodman, 2005; Kingsnorth, 2006; Thistlethwaite et al., 1998; Wooldredge & Thistlethwaite, 2002, 2005). Researchers have begun to examine *why* some race differences in the likelihood of DV exist. Benson et al. (2004) argued the race-DV relationship may be due to the type of neighborhoods (e.g., disadvantaged) in which African Americans and Caucasians typically reside. Racial differences in economic class, family networks, and the degree of being embedded into a community may also explain the race-DV relationship (Holtzworth-Munroe et al., 1997).

**Stakes in conformity.** Socioeconomic status (SES), employment status, and educational attainment are often referred to as individuals' "stakes in conformity," which reflects the degree to which an individual is committed to conventional values, and feels he/she has a "stake" in society (Toby, 1957). Generally, the more an individual is committed to adhering to societal standards of conformity, the more he/she feels there is to lose by engaging in deviant behavior (see also, Briar & Piliavin, 1965).

Researchers have found that social status indicators may be predictive of DV, and to a lesser degree, DV recidivism (Cattaneo & Goodman, 2005). Lower SES individuals (Bachman & Saltzman, 1995; Holtzworth-Munroe et al., 1997; Kantor & Straus, 1987; Straus et al., 2006; Yllo & Straus, 1981) and those who experience economic strain (Conger et al., 1990) may be more likely to be victims and perpetrators of DV and more likely to re-offend (Aldarondo & Sugarman, 1996; Cattaneo & Goodman, 2005). Persons

of lower SES may be particularly susceptible to DV due to pent-up frustrations because of fewer economic opportunities, which may in turn increase the likelihood of using criminal coping mechanisms to cope with such strains, particularly if the costs of criminal coping are low (Agnew, 2001, 2006). Given that DV is highly underreported to the police and often occurs within the private confines of the home, the formal costs of criminal coping with the negative emotions induced from stressors such as low socioeconomic status and economic strain are likely to be low, thus potentially increasing the likelihood of this type of behavior.

Scholars have also suggested that employment status may impact the likelihood of DV perpetration, victimization, and recidivism. Compared to white collar workers, blue collar workers are more likely to report tolerant attitudes toward wife abuse and may be more likely to abuse their partners (Kantor & Straus, 1987; Stets & Straus, 1989). These findings may reflect more acceptance of patriarchal views toward women and household responsibilities in blue collar working families (Komarovsky, 1967), or greater economic hardships faced by blue collar workers compared to higher socioeconomic status families. Male employment status and educational attainment also appear to be associated with DV, whereby unemployed (Benson et al., 2003; Benson et al., 2004; Straus et al., 2006) and less educated (M. P. Johnson, 2008; Straus et al., 2006; Wright & Benson, 2010) males are more likely to engage in DV. Still, others have found no relationship between education and DV (Benson et al., 2003; Benson et al., 2004; Stets & Straus, 1989), so more research on the relationship is needed. Employment status appears to be negatively related to repeat offending (Cattaneo & Goodman, 2005), but studies do sometimes find no effect of employment status on recidivism (e.g., Gover et al., 2003; Kingsnorth, 2006).

**Alcohol and substance use.** The relationship between alcohol and/or substance use and violence is rather robust (Lipsey et al., 1997), and research has suggested that this association extends to DV perpetration and repeat offending (Benson et al., 2004; Cattaneo & Goodman, 2005; Cunradi, 2007; A. A. DeMaris et al., 2003; Hotaling & Sugarman, 1986; Jones & Gondolf, 2001; Kantor & Straus, 1987; Macmillan & Gartner, 1999; Stets, 1991; Stith et al., 2004; Wright & Benson, 2010, 2011). Less understood, however, is the specific role that substance use plays in predicting violence (Leonard, 2005; Lipsey et al., 1997). The relationship could be due to substances' inhibition effect (Kantor & Straus, 1987) or may simply serve as a point of disagreement that ultimately results in physical violence, even if the substance use did not immediately precede the violence (Cunradi, 2007; M. P. Johnson, 2008; Kantor & Straus, 1987).

**Attitudes and ideologies about women.** DV may also be related to patriarchal personal attitudes and ideologies about the roles of women. A patriarchal social structure describes a "system of social organization that creates and maintains male domination over women" (Sugarman & Frankel, 1996, p. 14). Violence against women, then, is justified based on the notion that men have power and authority over women (see R. P. Dobash et al., 1992). Research has supported the relationship between patriarchal attitudes and ideologies and DV (Sugarman & Frankel, 1996). Views of traditional gender schemes and roles have also been associated with DV (Coleman & Straus, 1986; A. A. DeMaris et al., 2003; Li et al., 2010; Wright & Benson, 2010, 2011).

While many batterer treatment programs address abusers' attitudes and values about women (Babcock et al., 2004) and perceptions about using violence toward women, I could find no studies that examined how traditional attitudes toward women impacted re-

abuse. One study, however, reported that neither batterer beliefs nor abusive behavior significantly changed over time, regardless of treatment (Feder & Dugan, 2002), which might suggest that attitudes about women do not appear to impact re-offending. Further, batterer beliefs about abuse do not appear to be significant predictors of re-abuse once at least one incident of DV has been perpetrated (see Cattaneo & Goodman, 2005). Thus, it appears that beliefs and ideologies may only distinguish abusers from non-abusers.

**Childhood exposure to DV.** One of the most consistently reported correlates of DV is prior exposure to DV and the criminogenic effect of exposure to violence (Widom, 1989). Learning theories (Akers, 1985; Sutherland & Cressey, 1960) suggest that crime is learned primarily through interactions with intimate personal groups, such as families and parental figures. In the DV literature, there is support for the notion that violence begets violence, such that individuals exposed to DV as children or who were victims of violence may be more likely to engage in abuse or enter into an abusive relationship later in life (Lussier et al., 2009; Straus et al., 2006; Tjaden & Thoennes, 2000; Widom, 1989). Exposure to DV appears to differentiate non-abusers from abusers, but it does not appear to be predictive in distinguishing between persistently violent DV offenders and those who do not re-offend (Aldarondo & Sugarman, 1996).

### **Couple- Level Correlates of Domestic Violence**

Researchers have also identified couple-level characteristics that may influence DV.

**Cohabitation.** Scholars have consistently found that partners who cohabit, but are not married, experience more violence in their relationships (e.g., Caetano et al., 2008; Holtzworth-Munroe et al., 1997; Stets, 1991; Stets & Straus, 1989; Tjaden & Thoennes, 2000; Wright & Benson, 2011; Yllo & Straus, 1981). This finding may be explained by

the level of social control in cohabiters' lives compared to married persons and the extent of commitment to their intimate partners. Specifically, restraints on innate human responses to violate the law (Hirschi, 1969) and engage in aggression, as well as the expectations of non-violent behavior, are lower for cohabiters because they are either more socially isolated (Stets & Straus, 1989) or less connected to their partners (Stets, 1991). The impact of cohabitation on recidivism is mixed (Cattaneo & Goodman, 2005).

**Employment and education asymmetry.** Research suggests that the conditional relationship of both partners' employment statuses and educational attainment levels may be even more salient than the employment and educational status of one partner.

According to Macmillan and Gartner (1999), when a female partner is employed and her male partner is unemployed, her risk of being a victim of DV increases (see also Kaukinen, 2004b for research illustrating the relationship between status reversals and emotional abuse; Straus et al., 2006). Male partners who are unemployed may experience strains as a result of a perceived loss of "masculinity" (Connell, 1995; Thoits, 1992) given the traditional male-role of providing financial security for the family. It could be argued then, that in an attempt to reassert their masculinity and power in marital relationships, some men resort to abusing their partners – either emotionally and/or physically (Kaukinen, 2004b). Kaukinen (2004b) reported that when a women earned more income than her male partner, she experienced an increased risk of emotional abuse. Likewise, when both partners are employed, the likelihood of DV decreases (A. A. DeMaris et al., 2003; Macmillan & Gartner, 1999). There is also evidence to suggest that the likelihood of DV is higher when a female victims' educational attainment is higher than her partners (Kaukinen, 2004b; Tjaden & Thoennes, 2000), which highlights how

asymmetry of social status markers between partners may be a catalyst for DV. It is unclear how employment and education asymmetry impacts recidivism.

**Family size.** The size of one's family may also be a source of violence between intimate partners. Recent studies have shown that larger families had greater odds of DV (Wright & Benson, 2010, 2011), and each additional child in a household raised the odds of DV substantially (A. A. DeMaris et al., 2003). A possible explanation is that families with many children may invoke conflicts over child rearing, including appropriate levels of discipline and supervision (A. A. DeMaris et al., 2003; M. P. Johnson, 2008). The number of children in a family does not appear to impact future DV (Aldarondo & Sugarman, 1996; Wooldredge, 2007a), although the number of studies that include this measure as predictor of re-offending is limited.

### **Macro-Level Correlates of DV**

In addition to examining individual- and couple-level correlates of DV, research has begun to assess the relationship between DV and the characteristics of the community where an individual lives. The majority of these studies have been grounded in social disorganization theory (Shaw & McKay, 1942), which suggests that crime must be understood within the community context that it occurs and emphasizes the importance of structural factors such as community socioeconomic status, immigrant concentration, and residential stability, and social factors such as collective efficacy, social ties, and culture/norms (Bellair, 1997; Browning et al., 2004; Pattillo, 1998; Sampson & Groves, 1989; Sampson et al., 1997; Sampson & Wilson, 1995; Warner & Rountree, 1997).

**Concentrated disadvantage.** Concentrated disadvantage is characteristic of high-crime, inner-city neighborhoods where poor, single-parent families and jobless minorities



are concentrated, and from where it is difficult to economically leave (Wilson, 1987). Scholars have found very strong support for the significance of concentrated disadvantage as a predictor of DV (see, e.g., Benson et al., 2003; Benson et al., 2004; Fox & Benson, 2006; Miles-Doan, 1998; Van Wyk et al., 2003; Wooldredge & Thistlethwaite, 2003; Wright & Benson, 2010, 2011) and DV recidivism (Thistlethwaite et al., 1998; Wooldredge & Thistlethwaite, 2002).

**Residential stability.** Residential stability refers to the degree to which individuals in the community live in the same residences over a consecutive period of time. The effects of residential stability on DV are mixed. Some scholars have reported that residential stability is associated with a decreased likelihood of DV (Diem & Pizarro, 2010), such that as stability exists within a neighborhood, residents are able to exert informal social control over behavior in the community (Shaw & McKay, 1942). Alternatively, scholars have found a positive relationship between residential stability and DV (Benson et al., 2003; Li et al., 2010; Wright & Benson, 2010), and have suggested that residential stability is characteristic of disadvantaged neighborhoods where residents lack the resources to leave and are thus socially isolated from mainstream society (Warner & Pierce, 1993; Wilson, 1987). Still others have found no relationship with DV (Browning, 2002; DeJong et al., 2011; Lauritsen & White, 2001; Miles-Doan, 1998; O'Campo et al., 1995). Only two studies have assessed the effect of a community's residential stability on DV recidivism, and both found that offenders living in more stable neighborhoods were less likely to re-offend and/or had longer time to re-arrest for another DV offense (Wooldredge & Thistlethwaite, 2002, 2005).

**Ethnic heterogeneity.** Ethnic heterogeneity typically refers to the concentration of

racial groups and immigrants in a neighborhood (Browning et al., 2004; Gibson et al., 2010; Maimon & Browning, 2010; Morenoff et al., 2001). Immigrant concentration and linguistic isolation appears to act as a buffer against DV (Diem & Pizarro, 2010; Pearlman et al., 2003; Wright & Benson, 2010). When immigrants settle into American communities, they bring with them unique social ties and norms, and these informal social controls appear to protect against violence between partners (see Wright & Benson, 2010). No study has examined the effect of living in an ethnically heterogeneous community on DV re-offending.

**Collective efficacy.** Collective efficacy refers to the degree of social cohesion and social control among neighborhood residents and their willingness to intervene on behalf of the common good of the community (Sampson et al., 1997). Researchers assessing the relationship between collective efficacy and DV have found that neighborhoods with higher degrees of collective efficacy have lower rates of DV compared to neighborhoods with lower social cohesion and social control (Browning, 2002; Caetano et al., 2010; Wright & Benson, 2011; Wu, 2009). Thus, it appears the collective efficacy has a significant inhibitory effect on DV. Its effect on recidivism, however, is unknown.

**Social ties.** Social ties refer to residents' local friendship networks and attendance at recreational and community activities (Kasarda & Janowitz, 1974). Like collective efficacy, social ties between friends in the neighborhood also serve as buffers to DV (Wright & Benson, 2010). Only one study to-date has examined social ties at the macro-level; all other studies have assessed its relationship to DV at the individual-level. To-date, no studies have extended this line of inquiry to DV recidivism.

**Cultural norms.** Cultural norms refer to the common set of rules and values that

govern a community (Sampson & Wilson, 1995). Recall, at the individual-level, attitudes accepting of violence toward women and traditional, patriarchal gender ideologies are associated with DV (Coleman & Straus, 1986; A. A. DeMaris et al., 2003; Sugarman & Frankel, 1996; Wright & Benson, 2010, 2011). Similarly, at the macro-level, cultural norms and attitudes more accepting of violence within the family are associated with increased likelihoods of DV (Browning, 2002; Koenig et al., 2006; Wright & Benson, 2010). Like the above social community factors, no studies have explored the effect of cultural norms in regards to DV recidivism.

### **History of the Criminal Justice System's Response to Domestic Violence**

For most of this country's early existence, corporal punishment, marital chastisement, and discipline against women was acceptable in order to maintain household stability so long as permanent injury was not imposed (Siegel, 1996). For example, the old adage "the rule of thumb" originally referred to the husband's ability to use a rod or stick with a thickness up to that of his thumb to beat his wife in order to maintain household control (MacKenzie, 2006). These behaviors were recognized as culturally acceptable, and largely went unquestioned well into the 19<sup>th</sup> century. As a result, the criminal justice system was considered an ill-appropriate avenue for addressing issues of family violence. Over time, this belief was tempered; however, the view of DV as a petty offense was still widespread. There are few better examples of this sentiment than the 1874 North Carolina Supreme Court decision, *State v. Oliver* (70 N.C. 60), that noted "the husband has no right to chastise his wife, under any circumstance...but from motives of public policy – in order to preserve the sanctity of the domestic circle, the Courts will not listen to *trivial* complaints" [italics included for emphasis]. The opinion further states, "if no

permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive.”

Even in the 20<sup>th</sup> century, the criminal justice response to DV was limited due to organizational policy restrictions and criminal justice actors’ individual preconceptions about DV. Organizationally, police officers lacked information systems to track incidents of partner violence and were not properly trained to respond to these cases (Buzawa & Buzawa, 1993). DV was typically considered a “private issue” and formal and informal policies encouraged officers and court officials not to intervene. Further, statutory laws in many states prohibited police officers from exercising their arrest powers if they did not witness the violence first-hand. As late as 1984, 22 states prohibited police officers from making warrantless arrests in DV cases they did not witness (Sherman, 1992). In addition, many law enforcement officers and court officials believed that issues between partners were private (Buzawa & Buzawa, 1993). Further, police officers often held perceptions of the extreme dangerousness and unpredictability that accompanied DV incidents (J. D. Hirschel et al., 1994; Sherman, 1992). According to Sherman (1992), it is widely perceived, albeit incorrectly, that domestics are one of the most dangerous calls an officer will respond to and a leading cause of police deaths.

The early criminal justice response to DV can also be explained theoretically. Donald Black’s theory of law (1971, 1976) discusses how the application or initiation of laws has the potential to increase and decrease and varies in time and space, and has been used to explain the inaction typically afforded to DV cases. According to Black (1971, 1976), morphology – the horizontal aspect of social life and distribution of people in relation to

one another – evokes a curvilinear relationship with the law. Specifically, the degree of relational distance, or extent to which people participate in another’s lives, will impact how the law is utilized. Accordingly, “law is inactive among intimates, increasing as the distance between people increases but decreasing as this reaches the point at which people live in entirely separate worlds” (D. Black, 1976, p. 41). That is, the closer the relational distance between the victim and the offender, the lower the likelihood of criminal justice action. Since intimate partners have a closer relational distance than strangers, police officers and court officials would theoretically be less likely to take action in DV cases.

The response to DV did not change substantially until the 1970s when social policies toward DV improved and it became recognized as a criminalized offense (Fagan, 1996). This change was largely in response to the lobbying initiatives of women’s rights advocates and feminists groups arguing for greater protection of female victims of DV. By 1980, most, but not all, states had passed legislation addressing DV including changes in protection orders and the establishment of warrantless arrest policies for police (Fagan, 1996; MacKenzie, 2006). Overall, there were still degrees of variation in the vigor of the criminal justice response to DV. Law enforcement largely championed initial efforts to combat DV. A number of National Institute of Justice-funded studies spearheaded this movement by exploring the impact of the police response on future DV in six U.S. cities. The initial study found that arresting DV offenders reduced future acts of violence against intimate partners (Sherman & Berk, 1984), yet replications of this study were less supportive of these findings (Berk et al., 1992; Dunford et al., 1990; D. Hirschel et al., 1992; Pate & Hamilton, 1992; Sherman et al., 1991; Sherman et al., 1992). Still,

significant policy implications were drawn from these studies, and many police departments enacted mandatory and presumptive arrest laws. Despite such laws, officers often did not invoke mandatory and presumptive arrest policies in DV cases (Dugan, 2003; Ferraro, 1988; Mignon & Holmes, 1995), resulting in a significant degree of variability in the law enforcement response to DV.

Progressive DV arrest policies naturally resulted in greater caseloads entering criminal courts; however, as Epstein noted, “a law is only as good as the system that delivers on its promises, and the failure of the courts and related institutions to keep up with legislative progress has had a serious detrimental impact on efforts to combat DV” (1999, p. 4). Scholars have consistently reported that prosecution and conviction for DV cases were rare (see, e.g., D. Hirschel & Hutchinson, 2001; Tjaden & Thoennes, 2000; Tolman & Weisz, 1995).

### **The Violence Against Women Act of 1994**

It was not until the enactment of the Violence Against Women Act (VAWA) of 1994 that there was a systematic nationwide effort to criminalize and respond to DV. Passed under the Violent Crime Control and Law Enforcement Act of 1994, VAWA aimed to improve and strengthen the criminal justice system’s strategies for combating violence against women by promoting nationwide reforms in law enforcement and criminal processing of offenders of violence against women, including DV offenders. The establishment of VAWA intended to increase government service to female victims of violence, underscore victim safety, and ensure that offenders would be held accountable for their actions (Chaiken et al., 2001). Included in these initiatives were mandates to increase coordination among federal, state, and local tribal agencies to improve the

response to DV, provide federal funding for agencies to better police, prosecute, and provide services to victims, increase the role that prosecuting attorneys had in cases involving violence against women, and provide funds for developing training programs for judges and court personnel. In addition, a national hotline to aid female victims of violence was established, along with the Office on Violence Against Women, which serves as the federal leadership office in developing initiatives to reduce violence against women, ensure justice, and strengthen services to female victims of violence.<sup>2</sup> It was re-authorized in 2000, 2005, and 2013.

Major reforms to the federal and criminal justice response to DV served both symbolic and substantive purposes (Fagan, 1996). Symbolically, such reforms reflected a societal attitudinal change, in which the message that DV was a national crime problem was underscored and norms which historically condoned DV were no longer accepted or tolerated by the criminal justice system. According to Stolz (1999), the enactment of VAWA served four symbolic functions: (1) it educated the public and lawmakers that DV is a crime; (2) it reassured the public and victims of DV that lawmakers are concerned about DV, while sending a message to DV offenders that there will be punishment for their crimes; (3) it communicated the line between right and wrong behavior to promote law-abiding behavior and threaten law-breakers; and (4) it served as a model for individual states to better respond to DV by providing monetary resources to support training and education about DV.

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<sup>2</sup> The “Civil Rights Remedies for Gender-Motivated Violence Act” of VAWA sought to protect the civil rights of victims of gender-motivated violence (42 U.S.C. §13981). In *United States v. Morrison*, the Supreme Court deemed this section of VAWA to be unconstitutional and argued that the federal government lacked the authority to make DV against women a federal crime and lacked the authority to enact this section under Section 5 of the Fourteenth Amendment of the Constitution and under Section 8 of the Commerce Clause. The other provisions of VAWA were deemed constitutional.

VAWA also served a substantive role through its mandated changes to law enforcement, prosecutorial, and judicial roles. Such changes included enhanced focus on mandatory arrest programs, increased prosecution of DV defendants, reduced rates of case dismissals, and training to judges to understand the dynamics of DV relationships and dispel any preconceived myths about defendants and victims of DV. For example, VAWA included a measure that required states to honor protection orders issued by other jurisdictions so that victims were protected all throughout the United States if their abuser crossed state lines to commit DV or violate an order of protection. Thus, prosecutors and judges were given full authority to prosecute and handle cases similarly to how they would if the offense or violation occurred in the victim and defendant's state of origin (Jasper, 1998). Substantively, these reforms aimed to deter individuals from engaging in DV, given the increased likelihood that the criminal justice system would be responding to DV and was more educated about DV.

### **Summary**

DV is a major social issue that impacts millions of people in the United States annually (M. C. Black et al., 2011; Tjaden & Thoennes, 2000). Recently, scholars have uncovered multiple forms of DV – intimate terrorism, violent resistance, mutual violent control, and situational couple violence (M. P. Johnson, 1995, 2006b, 2008; M. P. Johnson & Ferraro, 2000). Researchers largely do not distinguish between these forms of DV, so the empirical evidence regarding the correlates of DV and repeat offending is underdeveloped. Nevertheless, scholars have identified individual-, couple-, and macro-level factors that may impact DV and its chronicity.

Although DV is highly prevalent in American households and the criminal justice



system dedicates significant amounts of resources towards responding to domestic disputes (Sherman, 1992; Wooldredge & Thistlethwaite, 2004), only a fraction of DV incidents actually comes to the attention of the criminal justice system (Tjaden & Thoennes, 2000). This may be due in part to historical acceptance of family violence (Siegel, 1996) and perceptions that the criminal justice system was not an appropriate avenue for addressing DV (Buzawa & Buzawa, 1993). Even with the modernization of the criminal justice system, its response was still limited by organizational policy restrictions and individual preconceptions about the dangerousness of responding to these offenses and the belief that DV is a “private issue” (J. D. Hirschel et al., 1994; International Association of Chiefs of Police, 1967; Sherman, 1992). A systematic nationwide response to DV did not exist until the 1994 passage of VAWA.

## CHAPTER 3

### THE COURT RESPONSE TO DOMESTIC VIOLENCE

For decades, scholars consistently highlighted criminal courts' inattention and inaction towards combating DV (e.g., Buzawa & Buzawa, 1996; Forst, 2002; D. Hirschel & Hutchinson, 2001; Tjaden & Thoennes, 2000). The American criminal justice system was rooted in English Common Law which considered violence between intimate partners an acceptable mechanism for maintaining household stability (Klein, 2004). When cases were brought to the attention of the courts, they were often dismissed due to efficiency and convictability concerns. The high rates of non-prosecution were justified by arguments that victims of DV often recant their stories and do not want to press charges against their abusers, making them "uncooperative" victims (e.g., Sanders, 1988). This point is discussed in greater detail below.

More recently, however, researchers have argued that these assumptions may be largely overstated (Garner & Maxwell, 2009, 2011). In a review of the literature, Garner and Maxwell (2011) found that approximately one-third of all reported DV offenses and three-fifths of all arrests for DV resulted in prosecution. They also reported that one-sixth of all reported offenses, one-third of all arrests, and one-half of all DV prosecutions resulted in convictions. Further, it appears that prosecution and conviction rates of DV vary across jurisdictions (Dutton, 1987; Garner & Maxwell, 2009, 2011; Klein, 2004). As an example, Klein (2004) examined charging and prosecuting patterns in several state and local jurisdictions between 1996 and 2002, and reported that across the states and

jurisdictions, prosecution rates ranged from 30 to 75 percent of all DV cases prosecuted; prosecution rates of DV varied even within the same state. These findings suggest that it is largely an overgeneralization to assume that prosecution and conviction rates nationwide are low. A discussion of prosecutorial and judicial decision-making is warranted.

### **Prosecutorial Decision-Making**

Prosecutors are one of the central participants in the criminal courtroom and hold significant discretionary power over case processing (Eisenstein & Jacob, 1977; Heumann, 1977; Sudnow, 1965). They have the freedom to determine (a) whether a criminal charge will be filed; (b) the level at which a charge will be filed; and (c) whether prosecution should continue until disposition or charges should be dismissed (Albonetti, 1986).

### **Theoretical Perspectives of Prosecutorial Decision-Making**

According to Albonetti (1986, 1987), prosecutorial success is measured by the ratio of obtaining convictions to acquittals. Prosecutors operate under an uncertainty avoidance framework, in which they are more likely to prosecute cases most certain to result in conviction. To assess the likelihood of conviction, prosecutors use the standard of a jury trial conviction, as jury trials are characterized by extreme uncertainty due to the inability to control and predict the behavior of other actors involved in a case (e.g., jury members, victim). According to Albonetti, “if prosecutorial merit is assessed in light of having to prove guilt at a trial, the less rigorous evaluation in terms of a guilty plea is also met” (1986, p. 626).

Because prosecutors have an incomplete knowledge base in which to predict

convictions and the inability to control all actors involved in case processing, a degree of uncertainty is evident when making decisions. In particular, information relevant to assessing uncertainty, and subsequently, the likelihood of a conviction, tends to lie in perceptions of victim/witness credibility and cooperation, as well as the strength of the evidence. As uncertainty surrounding victim/witness credibility, cooperation, and evidence increases, the likelihood of continued prosecution decreases. Albonetti (1987) also identified other legal and extralegal sources of uncertainty that impact prosecutorial decisions.<sup>3</sup> In addition to victim/witness management/cooperation, she identified the defendant-victim relationship as an extralegal source of uncertainty that impacts prosecutorial decisions, whereby cases involving victims and defendants who are strangers are more likely to result in more proactive prosecution than cases in which victims and defendants know each other or are intimates. She also identified three different forms of evidence (exculpatory, corroborating, and physical) as particularly salient factors that impact prosecutorial decisions. Exculpatory evidence challenges the police decision to link the defendant to the crime and as a result, increases uncertainty regarding the defendant's guilt. Corroborating evidence provides substantiating evidence that the police decision to arrest is correct, increases certainty surrounding a conviction in the case, and increases the likelihood of prosecution. Physical evidence should theoretically provide the strongest evidence about a case and reduce uncertainty about the changes for conviction.

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<sup>3</sup> Legal factors are those factors associated with the crime (e.g., offense severity, whether a weapon was involved, injury to the victim) or the defendant's criminal history (e.g., number of prior convictions, number of prior felony arrests). Extralegal factors, alternatively, refer to factors not associated with the criminal act or the legal characteristics of the case, yet still potentially influence case processing (e.g., age, sex, race, socioeconomic status of the defendant, victim-defendant relationship).

## **Uncertainty Avoidance and Domestic Violence**

There has been some support for uncertainty avoidance as it relates to prosecutorial decisions about crimes typically committed by men onto women. For example, Frohmann (1991, 1997) examined data on sexual assault cases and reported that prosecutors attempt to imply characteristics about the moral character of individuals involved in the crimes, use inconsistencies in victims' stories, and argue that victims may report assaults with ulterior motives as the primary justifications for rejecting cases for prosecution. Spohn and colleagues (2001) expanded upon Frohmann's (1991) line of inquiry and reported that although prosecutors do rationalize case rejection because of discrepant and inconsistent victim accounts and possible ulterior motives for reporting, most case rejection is due to the noncooperation by victims or victims' desires to suspend prosecution. These findings support Albonetti's (1986, 1987) theory of uncertainty avoidance and underscore the importance of victim cooperation and prosecutors' perceptions of convictability in making decisions.

These findings are also likely to extend to cases of DV. In cases in which the defendant and victim know each other, prosecutors may perceive that "once ill feelings have cooled," victims may not wish to go further with case processing or cooperate with prosecution (Albonetti, 1987, p. 300). According to the uncertainty avoidance theory, cases which involve intimates (or acquaintances) increase the uncertainty surrounding victim/witness management. Empirical studies have supported this hypothesis and have found that defendants with victims known to them are less likely to have charges brought against them (Dawson, 2004), more likely to have charges dismissed (Miethe, 1987), and less likely to be prosecuted (Albonetti, 1986, 1987; Miethe, 1987). Among studies that

solely examined DV cases, however, there does not appear to be much evidence that the victim-offender relationship (e.g., married versus cohabitating and not married) impacts prosecutorial decision-making substantially (D. Hirschel & Hutchinson, 2001; Kingsnorth et al., 2001; J. D. Schmidt & Steury, 1989; Worrall et al., 2006; but see, Dawson & Dinovitzer, 2001; Kingsnorth et al., 2002).

In addition, because many victims of DV were historically perceived to be uncooperative with court officials, the likelihood of convictions was reduced due to heavy reliance on victim testimony and physical evidence to make a case against a defendant. As a result, DV cases were less likely to be prosecuted. Supporting the uncertainty avoidance theory, recent research has found significant and positive relationships between victim cooperation, the likelihood of prosecution (Dawson & Dinovitzer, 2001; D. Hirschel & Hutchinson, 2001; Kingsnorth et al., 2001) and the odds of obtaining guilty convictions in DV cases (Bechtel et al., 2012; Belknap & Graham, 2000; Camacho & Alarid, 2008). In one study, when prosecutors perceived a victim to be cooperative, the odds of prosecution were seven times higher than if the victim appeared to be uncooperative (Dawson & Dinovitzer, 2001). Thus, victims who are effective witnesses serve as invaluable tools to prosecutors.<sup>4</sup>

There is also some evidence to suggest that prosecutorial decisions are impacted by victims' wishes regarding case processing. Kingsnorth and colleagues (2002) reported that if a victim wanted a defendant to be arrested, prosecutors were more likely to file a

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<sup>4</sup> Recent legislative changes have impacted the odds of victim contact with court authorities, including prosecutors, which could subsequently impact prosecutorial perceptions of victim cooperation. In an examination of the association between VAWA of 1994 and victim contact with criminal justice authorities, Cho and Wilke (2005) found victims had significantly more contact with criminal justice authorities since the enactment of VAWA. Thus, it may be intuitive to consider VAWA as a positive contributor to prosecutorial perceptions of victim cooperation.

criminal charge against a defendant than if the victim did not want the defendant to be arrested (see also D. Hirschel & Hutchinson, 2001). If, however, the victim changed his/her mind regarding the desire to prosecute once charges have been filed, prosecutors were less likely to continue prosecution (Kingsnorth et al., 2002). These findings suggest that prosecutorial decisions may be highly dependent upon victim desires, as victim wishes may directly affect their likelihood of cooperation.

Victim credibility may also impact prosecutorial perceptions of uncertainty, and subsequently, affect decision-making. Victim credibility may reflect the extent to which the victim is responsible, or partly responsible, for the incident (Albonetti, 1987). Some scholars examining DV court processing have explored the effect of victim credibility on prosecutorial decision-making using two proxy measures: victim substance use and dual arrests. Victims who used drugs or alcohol prior to or during the incident may be perceived as less credible because of the disinhibiting effects commonly associated with substances; there tends to be a robust relationship between alcohol and/or substance use and violence (Lipsey et al., 1997). Despite this rationale, studies of DV have found no impact of victim substance use on the odds of charges being filed (Kingsnorth et al., 2001; Worrall et al., 2006) or prosecution (D. Hirschel & Hutchinson, 2001; Kingsnorth et al., 2001). However, there has been evidence of the effect of mutual violence and dual arrests on prosecutorial decisions: cases in which both victim and defendant engaged in violence and/or were arrested resulted in lower likelihoods that prosecutors would file charges (Kingsnorth et al., 2001; Kingsnorth et al., 2002) or fully prosecute (Henning & Feder, 2005; Martin, 1994; Worrall et al., 2006, but see, Kingsnorth et al., 2001). In dual arrest or mutual assault cases, law enforcement is unable to determine the primary

aggressor, which likely results in increased prosecutorial uncertainty in obtaining guilty convictions should the cases go to trial. In-line with the uncertainty avoidance perspective, the uncertainty surrounding these cases is too high, resulting in suspended prosecutorial action.

The presence and credibility of witnesses to a DV offense may also impact prosecutorial decisions (Albonetti, 1987). Uncertainty surrounding witness credibility is most salient when the victim is the only witness; however, when more than one witness (in addition to the victim) is available, uncertainty decreases and the odds of prosecution increases. A witness's account of an incident can corroborate the victim's story, which should theoretically reduce the uncertainty associated with relying on only the victim's account of the incident. Empirical studies on prosecutorial decision-making in DV cases are mixed regarding the effect of witnesses on prosecutorial decision-making, though. For example, Kingsnorth and colleagues (2001; 2002) reported that in cases where a witness(es) was present at the incident, the odds of filing charges increased, but the likelihood of prosecution was not impacted (2001). Conversely, Worrall and his colleagues (2006) reported no impact of witnesses on the charging decision. It may be that having a witness present during a DV incident does not necessarily translate to a victim being present during case processing. Given the widely perceived "private" nature of DV cases, witnesses might fail to appear for court proceedings.

Legal factors also impact perceptions of uncertainty and prosecutorial decision-making. In particular, Albonetti's (1987) identification of legal factors such as exculpatory evidence, corroborative evidence, and physical evidence should theoretically impact prosecutorial decision-making. Interestingly, in studies of prosecutorial decision-



making in DV cases, relatively few studies have included measures of evidence. Those which have controlled for evidence (e.g., photographs, 911 tapes, medical reports) have found that overall, evidence is not related to the likelihood of filing charges against a defendant (Kingsnorth et al., 2001; Rauma, 1984) or prosecution (Dawson & Dinovitzer, 2001; Kingsnorth et al., 2001). For example, photographic evidence of injuries to the victim and/or of the scene, which could be considered strong corroborative evidence that a crime occurred, have not been found to exert a significant impact on prosecutorial decision-making (Dawson & Dinovitzer, 2001; Kingsnorth et al., 2001).

In addition, uncertainty avoidance theory would posit that individuals with more extensive prior criminal histories would have less uncertainty surrounding their guilt and involvement in the current offense, and as a result, prosecutors would be more likely to take action against such defendants. This rationale stems from the assumption that defendants with criminal histories are particularly dangerous to society and should be punished accordingly (Albonetti, 1987). The empirical evidence is generally supportive of the effect of criminal history on prosecutorial decision-making in DV cases (Henning & Feder, 2005; Kingsnorth et al., 2001; Kingsnorth et al., 2002; Wooldredge & Thistlethwaite, 2004). However, the effect largely depends on the operationalization of prior criminality. For example, Kingsnorth et al. (2001; 2002) found that prior DV arrests were not related to prosecutorial decision-making, but prior non-DV arrests increased the likelihood of prosecution. Thus, differences in the effect of criminal history on prosecutorial decision-making may reflect discrepancies across studies in the operationalization of prior criminality (e.g., prior DV arrests, prior non-DV arrests, prior conviction).

In sum, uncertainty avoidance theory appears to be a somewhat useful framework for understanding the processing of DV cases. In particular, studies have identified victim cooperation as a particularly important factor impacting prosecutorial decision-making in DV cases. Less support for the theory exists in the effect of evidence on decision-making, although more research is needed.

### **Additional Correlates of Prosecutorial Decision-Making**

Scholars have identified other correlates associated with prosecutorial decision-making that the uncertainty avoidance hypothesis does not directly consider as salient predictors of perceptions of uncertainty and convictability. Both legal and extralegal criteria will be discussed.

Cases with weapons appear to be related to charging decisions (Kingsnorth & Macintosh, 2007; J. D. Schmidt & Steury, 1989; but see Davis et al., 2003), but not associated with the decision to fully prosecute a defendant (Dawson & Dinovitzer, 2001; Henning & Feder, 2005; Kingsnorth & Macintosh, 2007; Worrall et al., 2006). Similarly, the impact of victim injury on prosecutorial decision-making is mixed. Some scholars have found a positive relationship between victim injury and prosecutorial decisions to file charges (Kingsnorth et al., 2002; Worrall et al., 2006) and fully prosecute (Henning & Feder, 2005; D. Hirschel & Hutchinson, 2001; Kingsnorth et al., 2001). Other studies, however, have found no relationship between victim injury and prosecutorial decisions (Davis et al., 2003; Dawson & Dinovitzer, 2001; Kingsnorth et al., 2001). Although additional research is needed to assess the impact of weapons and victim injury on prosecutorial decision-making, preliminary findings may suggest that prosecutors may be unwilling to conclude that a crime did not occur simply because a weapon was not used

or a victim was not injured (Kingsnorth et al., 2001). Prosecutors may be knowledgeable that DV cases often involve not only blunt objects as weapons (e.g., guns, knives, objects) but also verbal threats or the use of personal weapons (i.e., hands, feet) to threaten or harm a victim. Moreover, DV offenders' actions do not always need to cause injury to instill fear in victims.

Extralegal factors have also been included in studies of prosecutorial decision-making in DV cases. Although most studies on DV are limited to male-only samples, the studies that have included females have found that they are less likely to be charged (Davis et al., 2003; Worrall et al., 2006) and prosecuted (Dawson & Dinovitzer, 2001; Henning & Feder, 2005) for DV. Albonetti (1986) did not explicitly postulate about the effect of gender in DV cases, but it is plausible to assume that greater uncertainty would emerge in cases involving female perpetrators of DV because it has historically been considered a male-on-female offense. Assuming prosecutors measure degrees of certainty using a benchmark of conviction at jury trials, there is likely more uncertainty and unpredictability associated with how jurors would view a female DV defendant compared to a male DV defendant.

Race and/or ethnicity have also been included in studies of prosecutorial decision-making in DV cases and the results are mixed. Some scholars have found that minorities are more likely than Caucasians to be prosecuted in DV cases (Henning & Feder, 2005), others have found that they are less likely than Caucasians to be charged and prosecuted (Wooldredge & Thistlethwaite, 2004), and still others have found no effect of race on decisions to charge (Kingsnorth et al., 2001; Kingsnorth et al., 2002; Worrall et al., 2006) or prosecute (D. Hirschel & Hutchinson, 2001; Kingsnorth et al., 2001). Various

explanations can be provided for the above findings. It is possible that prosecutors, like judges, might view minorities as more culpable for their offenses and more likely to re-offend in the future (Steffensmeier et al., 1998), and as a result, may be more likely to take more punitive action against them. Conversely, because prosecutors might view DV as a large-volume crime<sup>5</sup> (Sudnow, 1965) and minorities as “typical” DV defendants (M. C. Black et al., 2011; Holtzworth-Munroe et al., 1997; Tjaden & Thoennes, 2000), they may be less likely to treat minority DV defendants as harshly as non-minorities (e.g., “non-typical” DV defendants). Finally, the studies which find no race-differences in prosecutorial decision-making in DV cases suggest that prosecutors treat defendants similarly in DV regardless of their race.

Studies have also controlled for defendants’ age when examining prosecutorial decision-making. Similar to the effect of race/ethnicity, the effect of age is mixed. Some studies have found that older defendants are treated more leniently by prosecutors (Dawson & Dinovitzer, 2001; Henning & Feder, 2005), while others have found no impact of age on prosecutorial charging (Wooldredge & Thistlethwaite, 2004; Worrall et al., 2006) or prosecution decisions (Wooldredge & Thistlethwaite, 2004). Many studies of prosecutorial decision-making do not control for defendants’ age (Kingsnorth et al.,

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<sup>5</sup> DV is the most common form of violence encountered by law enforcement officials (Sherman, 1992), and consequently, are commonplace in criminal courtrooms nationwide. Further, although DV permeates all sociodemographics, it is especially overrepresented among males, younger adults, minorities, the lower class, and the unemployed (e.g., R. P. Dobash et al., 1992; Holtzworth-Munroe et al., 1997; Macmillan & Gartner, 1999; Tjaden & Thoennes, 2000). Wooldredge and Thistlethwaite (2004) offered a convincing portrayal of DV as a large-volume crime consistent with the concept of “normal crimes”. According to Sudnow (1965), courtroom decision-making is often impacted by perceptions of normal crimes – those offenses with typical features known to attorneys, including the way the offense occurred and the characteristics of the persons who typically commit those offenses. When prosecutors are faced with defendants who fit these stereotypes, they may be more likely to reduce charges or recommend more lenient sentences because of the desire to obtain a guilty conviction without having to go to trial. If the offense or offender-related characteristics are not compatible with stereotypes of “normal” crimes and “normal” defendants, prosecutors might not be as willing to reduce charges or recommend more lenient sentences.

2001; Kingsnorth et al., 2002; Rauma, 1984; J. D. Schmidt & Steury, 1989), so more research is needed to fully understand its effect on prosecutorial decision-making.

Even fewer studies have controlled for measures of socioeconomic status in studies of prosecutorial decision-making. The two studies that have included such measures have found significant relationships with prosecutorial decision-making, albeit in contradictory directions. According to Henning and Feder (2005), defendants with higher incomes and who were employed were less likely to have their cases taken (i.e., not rejected) by the prosecutor. Wooldredge and Thistlethwaite (2004), however, found that individuals with higher socioeconomic status were more likely to be charged (but not prosecuted) and defendants from neighborhoods of higher socioeconomic status were more likely to be both charged and prosecuted. Since only two studies have included such measures in their analyses, it may be premature to speculate on the rationale for these contradictory results. The differences may reflect, however, different operationalizations of socioeconomic status, with Henning and Feder (2005) using single-item measures of income and employment status and Wooldredge and Thistlethwaite (2004) operationalizing socioeconomic status as a composite factor of education, employment, reliance on public assistance, residential stability, and household composition. Future studies should include measures of income and socioeconomic status so a better understanding of their effect on prosecutorial decision-making can be attained.

### **No-Drop Policies**

Prosecutorial decision-making may also be impacted by state or jurisdictional policies which require prosecutors to disregard victims' desires to go forward with the prosecution of DV cases, and base prosecution decisions on other factors. Historically,

the decision to file charges and prosecute a DV defendant rested in the hands of the victim (Cardenas, 1986). However, because victims were historically reluctant to cooperate with prosecutors, charges were often never filed or were dropped soon after charging, resulting in a high rate of attrition. To combat this issue, many jurisdictions began to introduce no-drop policies that imposed restrictions on victims preventing them from freely dropping charges or resisting prosecution of their abusers (Buzawa & Buzawa, 2003). Hard no-drop policies never follow victims' desires to drop charges against their abusers and may require victims to be subpoenaed and possibly jailed if they refuse to testify against their abusers. Soft no-drop policies permit victims to drop charges under certain circumstances (e.g., if the victim has left the relationship) or after certain stages of the court process (e.g., after the defendant had made his/her first court appearance) (Buzawa & Buzawa, 2003). Despite the existence of these policies, a national study of prosecutorial policies conducted by Rebovich (1996) provides evidence that no-drop policies may simply be philosophies, rather than strict policies (also see Buzawa & Buzawa, 2003). He reported that 66 percent of prosecutors' offices indicated they had no-drop policies, however, approximately 90 percent also noted that there was flexibility built into these policies.

No-drop policies have been a significant source of controversy (Ford, 2003).

Advocates of no-drop policies argue that these policies should: (a) increase the number of defendants brought to justice because fewer cases will be dismissed; (b) protect victims from threats and retaliation because prosecution would be seen as a state action and not due to victims' choice; (c) aid in the restoration of physical and emotional well-being of victims because their abusers will be held accountable for their actions; and (d)

encourage a higher level of specific and general deterrence as perceptions of legal action after arrest are increased (see Buzawa & Buzawa, 2003; Davis et al., 2008).

Critics, however, contend that such policies simply protect prosecutors' interests at the expense of victims. In some jurisdictions with hard no-drop policies, victims are coerced to participate in the prosecution of their abusers, forced to meet their batterers face-to-face, confront their batterers publicly, and interact with them to some degree through the course of prosecution – ultimately compromising their safety and feelings of security (Ford, 2003). Victims are threatened with being arrested and jailed if they do not testify against their defendant, leading some scholars to consider this treatment a form of “secondary victimization” of DV victims by the courts (Cardenas, 1986; Erez & Tontodonato, 1990; Sanborn, 2001). Critics of no-drop policies also argue that they reduce victim empowerment by removing the decision to prosecute away from the victim, and allowing the criminal justice system to perpetuate the power and control dynamics that are experienced in some battering relationships (Epstein, 1999). In essence, “coercive prosecution policies advise a woman to reject the control a batterer has over her life by transferring control to the prosecutor, while being denied the control she needs for securing her own safety” (Ford, 2003, p. 672). Finally, scholars have suggested that when mandatory policies and penalties for the prosecution of DV defendants are in place, victims may be even less willing to cooperate with prosecutors because they fear retaliation from their abusers and/or are dependent on them for financial support (Carlson & Nidey, 1995; Davis et al., 2003). Since victim cooperation is highly important for securing convictions (e.g., Bechtel et al., 2012; Camacho & Alarid, 2008), the likelihood of successful convictions may decrease substantially without cooperation. Critics of

mandatory policies advocate for policy-makers to rethink overlooking victim preference (Davis et al., 2003; Ford, 2003).

### **Judicial Decision-Making**

Like prosecutors, judges hold a great deal of power in the courtroom. Considerable research has been directed at understanding judicial decision-making (for examples of seminal research, see Albonetti, 1991; Demuth, 2003; Goldkamp, 1979; Gottfredson & Gottfredson, 1988; B. D. Johnson, 2006a; Lizotte, 1978; C. Spohn, 2000; C. Spohn & Holleran, 2000; Steffensmeier et al., 1998; Walker, 1993). In general court research, scholars have reported that legal criteria (e.g., prior offenses, offense severity) account for the most variation in judicial decisions; however, there is evidence that decision-making is still a substantive process in which factors other than legally-relevant criteria may impact decisions (B. D. Johnson, 2006a; Savelsberg, 1992).

### **Theoretical Perspectives of Judicial Decision-Making**

Similar to the uncertainty avoidance perspective set forth by Albonetti (1986, 1987), theoretical frameworks have been developed for understanding judicial decision-making in light of the degree of uncertainty surrounding court processing. According to attribution theory, judges have an interest in controlling crime and predicting future criminal behavior; however, they often do not have all of the information needed to make appropriate decisions on cases (Albonetti, 1991). Inadequacy in the availability of information results in a degree of uncertainty during judicial decision-making. To manage uncertainty, judges develop “patterned responses” to cases based on perceived defendant attributions, case characteristics and similarities to other cases (see also Dixon, 1995). These attributions impact judicial preconceptions of higher risk defendants and



influence predictions regarding the likelihood of defendants' future offending (Bridges & Steen, 1998). Using defendants' social status indicators makes information-processing more efficient because it allows judges to easily differentiate between routine cases with typical defendants and atypical cases (Farrell & Holmes, 1991; Steen et al., 2005; Sudnow, 1965). Defendants whose offenses are perceived to be influenced more by personal factors as opposed to environmental factors may be considered more culpable and a greater risk to re-offend.

When a criminal act involves potential or real harm to a person compared to an inanimate object, judges may consider there to be more of an immediate social harm and consequently, may be more likely to sanction severely (Albonetti, 1991). Furthermore, judges may attribute "stable enduring causes" to defendants who utilize weapons during the commission of a crime because judges may perceive that these defendants are particularly likely to re-offend.

Steffensmeier et al.'s (1998) focal concerns theory directly expanded upon Albonetti's (1991) attribution theory and highlighted three focal concerns that guide judicial decision-making: (a) perceptions of defendants' blameworthiness; (b) goals of protecting the community; and (c) the practical concerns and constraints associated with judicial decisions. Blameworthiness refers to defendants' culpability and the degree of harm caused to the victim. Defendants who commit more serious offenses and have more extensive criminal records are considered to be more culpable and may be treated more harshly by judges. Scholars have found strong support for the salience of these legal factors in judicial decision-making throughout the court process (see, e.g., Albonetti, 1991; B. D. Johnson, 2006a; Ulmer & Bradley, 2006; Ulmer & Johnson, 2004;

Wooldredge, 2007b).

The second focal concern – the protection of the community – is addressed by judicial predictions of defendants’ likelihood of re-offending. Judges operate under a bounded rationality in which they attempt to make decisions about defendants’ likelihood of re-offending in the context of a high level of uncertainty concerning defendants’ behavior. Both legal and extralegal factors may impact these predictions. Defendants with more extensive criminal records and defendants with characteristics overrepresented within offender populations (e.g., males, African Americans, younger defendants) may be perceived as more likely to re-offend (Steffensmeier et al., 1998).

Finally, judicial decisions are constrained by the organizational concerns of working in an interdependent criminal justice system which requires judges to take into consideration factors such as the maintenance of working relationships among courtroom actors (in particular, see, Dixon, 1995), correctional facility capacities, and courtroom resources when making decisions (for empirical evidence, see, e.g., B. D. Johnson, 2006a; Ulmer & Bradley, 2006; Ulmer & Johnson, 2004) . In addition, judges consider the practical and social costs of incarcerating certain defendants by weighing defendants’ ability to “do time,” health conditions and special needs, and the consequences of disrupting defendants’ ties to children and/or other family members (Steffensmeier et al., 1998). Older, female, or Caucasian defendants may receive leniency because they are underrepresented within offender populations and may be perceived by judges to be less able to cope with incarceration.

### **Attribution Theory, Focal Concerns Theory, and Domestic Violence**

Attribution theory (Albonetti, 1991) and focal concerns theory (Steffensmeier et al.,

1998) clearly apply to general pools of criminal defendants; however, research is highly limited regarding the applicability of these findings to DV cases (see Wooldredge & Thistlethwaite, 2004 for an exception). In fact, in its totality, research on judicial decision-making in DV cases is relatively limited. Nevertheless, the empirical research that does exist provides some evidence that some of the factors which influence judicial decisions in DV cases also influence decision-making in general cases. Thus, it is plausible that judges use attributions and focal concerns to make decisions in cases involving partner violence. It should be noted that attribution theory and focal concerns theory primarily focus on judicial *sentencing* decisions; however, arguments can be made as to how certain defendant and case attributes may also impact conviction decisions. The extent to which the theoretical frameworks can be applied to DV cases is discussed below.

**Legal and case factors.** Scholars have found that legal variables, including prior criminal histories, are highly associated with conviction and sentencing decisions in DV cases. Specifically, defendants who have been arrested previously for partner violence and those who have been convicted and/or previously incarcerated for a violent offense are more likely to be found guilty (Henning & Feder, 2005; Wooldredge & Thistlethwaite, 2004), incarcerated (Dinovitzer & Dawson, 2007; Henning & Feder, 2005; Wooldredge & Thistlethwaite, 2004), and receive longer jail sentences (Belknap & Graham, 2000; Dinovitzer & Dawson, 2007; Kingsnorth et al., 2001; Kingsnorth et al., 2002; Wooldredge & Thistlethwaite, 2004). The harsher treatment of defendants with more extensive criminal histories supports the attribution and focal concerns perspectives and indicates that judges perceive such DV defendants to be more blameworthy and

culpable for their offenses (Steffensmeier et al., 1998). More punitive sentencing may also reflect perceptions that extensive criminal histories suggest stable dispositions toward future criminality (Albonetti, 1991).

The importance of other legal variables on DV cases, however, is less certain. According to focal concerns theory, legal variables such as the severity of an attack (e.g., determined by weapon use or victim injury) should impact judicial perceptions of defendants' blameworthiness and illicit more severe sanctioning behavior due to judicial concerns about protecting the community. However, in DV cases, legal factors such as weapon use and victim injury are not as salient as they might be in cases involving stranger assaults or other forms of criminality. The majority of research on judicial decision-making in DV cases does not control for weapon use, but those studies that do tend to find that weapon use has no impact on the likelihood of conviction (Henning & Feder, 2005) incarceration (Dinovitzer & Dawson, 2007; Henning & Feder, 2005), or length of incarceration (Dinovitzer & Dawson, 2007; but see, Kingsnorth et al., 2002). Further, the few studies that have included measures of victim injury have found no impact on the likelihood of conviction (Henning & Feder, 2005) or incarceration (Dinovitzer & Dawson, 2007; Henning & Feder, 2005); studies are mixed on the effect of victim injury on sentence length (Dinovitzer & Dawson, 2007; Kingsnorth et al., 2001; Kingsnorth et al., 2002). These findings might reflect judicial knowledge that weapon use (i.e., gun, knife) and injury do not define DV incidents: such incidents can occur without the presence of a weapon or injury. Thus, judges may still find defendants guilty beyond a reasonable doubt with or without knowledge that a weapon was utilized during the commission of the crime and with or without victim injury. Further, other factors beyond

weapon use and injury may indicate greater culpability and greater likelihood of re-offending, and may subsequently impact sentencing in DV cases more saliently.

Attribution and focal concerns theories also postulate that certain legal factors should serve as aggravating (e.g., defendant substance use) and mitigating factors (e.g., victim substance use, victim arrest) in judicial decision-making. Defendants who were under the influence of substances at the time of the offense may be considered more blameworthy because judges might perceive that the incident could have been avoided if the defendant were not engaging in other risky and potentially dis-inhibitory behavior (e.g., substance use). Defendants who were under the influence of substance use at the incident might also be considered more likely to re-offend if the judge deems there to be a substance dependency problem (Steffensmeier et al., 1998).

Victim substance use, conversely, may mitigate the defendant's blameworthiness, increase doubt about the defendant's guilt, and increase the likelihood that the judge will treat the defendant more leniently (Albonetti, 1991). Most DV studies examining judicial decision-making do not include measures of defendant and/or victim substance use, however, those which have included such measures have consistently noted that neither defendant substance use (Henning & Feder, 2005; Kingsnorth et al., 2001) nor victim substance use (Kingsnorth et al., 2001) impact judicial decision-making. These findings are inconsistent with attribution theory and focal concerns theory, and additional research which includes victim and offender substance use is needed to better understand their relationships with judicial decision-making.

In addition, judges may perceive that individuals arrested in dual arrest cases may be less culpable and blameworthy because the responding police officer(s) found both

parties to be at fault. Thus, the degree of blameworthiness attributed to the defendant might be reduced. Only two studies of judicial decision-making in DV cases have explored the effect of a dual arrest on judicial decision-making. According to Kingsnorth et al. (2001), dual arrest cases had no significant impact on the likelihood of a felony DV conviction versus a misdemeanor DV conviction. Henning and Feder (2005) reported that although dual arrest cases were more likely to be convicted, defendants were less likely to be incarcerated. This finding suggests that judges may be willing to find both parties at fault, but may be less willing to sanction these defendants as punitively as other defendants because both parties may have some culpability for the offense. Because very few studies have included these variables in analyses of judicial decisions in DV cases, these findings should be read with caution.

Corroborating and physical evidence of a crime should also theoretically impact judicial perceptions of defendants' blameworthiness because evidence supports allegations that a crime occurred, and reduces doubt about a defendant's blameworthiness. Similar to the effects of other legal factors, however, the impact of corroborating and physical evidence (e.g., photographs, witnesses) in DV cases is mixed (Bechtel et al., 2012; Cramer, 1999; Dinovitzer & Dawson, 2007; Kingsnorth et al., 2001). Instead, in DV cases, strength of evidence might lie with the victim. According to Belknap and Graham (2000), cases were more likely to result in guilty convictions when the victim's statement regarding the incident was obtained. This finding may reflect a measure of victim cooperation, and while not explicitly discussed in focal concerns theory, victim cooperation in legal proceedings may also impact perceptions of defendants' blameworthiness. Throughout the court process, victims are given the

opportunity to aid in the prosecution of their offenders, and are often encouraged to submit victim-impact statements, make statements in court pertaining to the impact of the crime on their lives, and express their opinions regarding the eventual disposition of the case (Erez & Tontodonato, 1990, 1992). There is some preliminary evidence to suggest that judicial decisions appear to be harsher when victims are more active throughout the court process: when victims submitted victim-impact statements, the likelihood of defendants being incarcerated increased, and when victims had a greater presence in court, judges sanctioned defendants to longer sentences (Erez & Tontodonato, 1990). These findings suggest that judges perceive active victim involvement as a testament to the pain and suffering experienced by the victim, and thus may be more likely to view the defendant as more culpable for his/her actions. Even though the aforementioned findings did not stem directly from studies of DV case processing, they do have implications for DV cases. In fact, scholars have reported a significant a positive relationship between victim cooperation and the odds of conviction (Bechtel et al., 2012; Belknap & Graham, 2000; Camacho & Alarid, 2008).

**Extralegal factors.** According to attribution theory and focal concerns theory, extralegal variables including race (e.g., minority), age (e.g., younger), and gender (e.g., male) should also impact judicial decision-making because these social groups are overrepresented in offender populations and are attributed a higher risk of recidivism (Albonetti, 1991; Steffensmeier et al., 1998; see also Spohn & Holleran, 2000). It is plausible to assume that such indicators would also pertain to DV offenders, as young, minority, males tend to be overrepresented in DV offender populations (e.g., Caetano et al., 2008; Holtzworth-Munroe et al., 1997).

Despite these postulations, the impact of race on DV decision-making is, at best, mixed. Race appears to have no impact on the likelihood of conviction (Bechtel et al., 2012; Belknap & Graham, 2000; Henning & Feder, 2005; Kingsnorth et al., 2001; Peterson, 2004; Peterson & Dixon, 2005; Wooldredge & Thistlethwaite, 2004) or receiving a jail sentence for DV (Henning & Feder, 2005; Wooldredge & Thistlethwaite, 2004), but one study found that African-American defendants received shorter jail sentences compared to Caucasians (Wooldredge & Thistlethwaite, 2004). This finding is contrary to what would be postulated by attribution theory (Albonetti, 1991) and the focal concerns perspective (Steffensmeier et al., 1998), but may reflect the notion that being African American is considered a typical attribute of defendants committing large-volume crimes (Sudnow, 1965), and as a result, judges may be more apt to accept excuses for their behaviors (e.g., prior victimization) (Steffensmeier et al., 1998).

The influence of defendants' age as a predictor of judicial decisions regarding DV cases is also mixed. In support of the focal concerns perspective (Steffensmeier et al., 1998), Wooldredge and Thistlethwaite (2004) reported that older defendants were less likely to be convicted of DV than their younger counterparts and less likely to receive a jail sentence if they were convicted (see also Henning & Feder, 2005 for evidence of this latter finding). In addition, in support of previous research suggesting a curvilinear relationship between age and sentencing (Steffensmeier et al., 1995), Wooldredge and Thistlethwaite (2004) found that the youngest and oldest DV defendants received the shortest jail sentences. Still, other scholars have found no significant effect of age on conviction (e.g., Bechtel et al., 2012; Belknap & Graham, 2000; Henning & Feder, 2005; Peterson & Dixon, 2005) and sentencing decisions (Dinovitzer & Dawson, 2007;



Peterson, 2004). Thus, while there is some support for the postulations set forth in focal concerns theory, the literature is mixed and additional research is needed.

Many studies limit samples of DV defendants to males given the predominance of male perpetrators in these cases (see Dinovitzer & Dawson, 2007; Wooldredge & Thistlethwaite, 2004). However, studies that include female defendants typically find that female defendants are less likely to be convicted (Peterson, 2004; Peterson & Dixon, 2005), incarcerated (Henning & Feder, 2005; Peterson, 2004), and receive shorter sentence lengths than males (Belknap & Graham, 2000; Henning & Feder, 2005; Peterson, 2004). These results are consistent with the broader court literature which finds that females are treated with more leniency throughout the court process (e.g., Daly & Bordt, 1995; Griffin & Wooldredge, 2006; Koons-Witt, 2002). Judges may perceive female DV defendants as less culpable because they may be responding to abuse from their intimate partner, and are thus more likely to attribute their blame to environmental influences. Research has consistently found that many women who come to the attention of the justice system have been victimized, and a large portion have been victimized by intimate partners (Browne et al., 1999; Harlow, 1999). Prior victimization may mitigate female defendants' blameworthiness for DV (Steffensmeier et al., 1998). As a result, it could be postulated that judges would be less willing to convict female DV defendants because of more doubt surrounding their guilty. In addition, compared to men, women generally commit less serious crimes, have shorter criminal histories (Steffensmeier et al., 1993) and are highly underrepresented not only as DV offenders, but in the general offender population (Steffensmeier & Allan, 1996). As such, judges may view them as having a lower likelihood of future criminality (Albonetti, 1991; Steffensmeier et al.,

1998), and as a result, may be more lenient in sentencing. The stock of the literature regarding the effect of gender on judicial decisions is consistent with attribution theory and focal concerns theory (Belknap & Graham, 2000; Henning & Feder, 2005; Peterson, 2004; Peterson & Dixon, 2005).

In addition, judges may treat females in DV cases with more leniency because they may believe that sanctioning female defendants will interfere with their ability to fulfill care-giving and familial responsibilities (Daly, 1987, 1989; Koons-Witt, 2002).

Dinovitzer and Dawson (2007) explored the impact of having care-giving and financial support responsibilities on the likelihood of a DV defendant being sanctioned, and found that having children did not impact the likelihood of a defendant being sent to jail, but did increase the length of time meted out to defendants. Although these findings are contrary to the expectations of leniency for defendants with children, they might reflect perceptions that such defendants are more dangerous because they were convicted of crimes against family members and because they exposed their children to DV. However, because this study was conducted on a male-only sample – who judges may perceive as having less of a caregiving and nurturing responsibility– these results should be read with caution. In a study that did include female defendants, Camacho and Alarid (2008) reported that children's' presence at a DV incident did not impact likelihood of conviction or sentencing. Dinovitzer and Dawson's (2007) study did not control for whether or not the children were present at the scene, so direct comparisons between these studies cannot be made. However, at best, research examining the impact of children on DV cases is limited, and thus far, mixed.

Some studies have included measures of social status indicators (e.g., income,

employment, education) that could theoretically be related to judicial perceptions of individuals' likelihood of re-offending and risk to the community. Individuals with lower incomes, who are unemployed, or less educated might be seen as having fewer opportunities for reform, linked to perceptions of dangerousness, and more likely to re-offend (C. Spohn & Holleran, 2000). Few scholars have controlled for social status indicators in studies of judicial decision-making in DV cases, and those studies that have assessed the impact of these predictors are mixed in their conclusions. For example, Henning and Feder (2005) found that unemployed defendants were more likely to be found guilty, while Bechtel and colleagues (2012) reported that employment status had no significant effect on conviction. Further, Henning and Feder (2005) found no impact of income on the odds of convictions or incarceration, yet other studies have found that defendants with higher socioeconomic statuses were less likely to be sentenced to jail (Dinovitzer & Dawson, 2007; Wooldredge & Thistlethwaite, 2004), and when incarcerated, received shorter sentences (Dinovitzer & Dawson, 2007). One study included a macro-level measure of neighborhood socioeconomic status and found that defendants living in higher socioeconomic status neighborhoods were less likely to be convicted and less likely to be sentenced to jail (Wooldredge & Thistlethwaite, 2004). Wooldredge and Thistlethwaite (2004) published the only neighborhood-level study to examine court processing of DV cases, and while these findings must be accepted as preliminary, they might reflect judicial perceptions that defendants with these characteristics are less represented within offender populations and are therefore a lesser risk to re-offend. Judges might perceive defendants from areas with more structural disadvantage to be dangerous (Britt, 2000; Sampson & Laub, 1993); individuals not from

structurally disadvantaged areas benefit from this perception. The findings may also reflect beliefs that defendants who are employed and/or from higher socioeconomic areas have higher stakes in conformity and have more to lose (Toby, 1957), thereby making them less likely to recidivate and less of a danger to the community. Similarly, judges may consider the costs of sanctioning individuals with higher stakes in conformity more severely, as these individuals might lose their jobs or status in the community.

Finally, the victim-defendant relationship may impact judicial decisions, but attribution and focal concerns theory may differ on how they view the salience of intimate partnerships on judicial behavior. According to attribution theory, judges may be more likely to attribute situational, rather than enduring causes, to defendants charged with crimes against intimate partners (Albonetti, 1991). Under this rationale, judges should treat individuals in the most intimate relationships most leniently. Focal concerns theory, however, specifically postulates that judges are concerned with the protection of the “community.” It is plausible, then, that judges would be just as likely to have interests in protecting the *victim* in DV cases and thus treat defendants in more intimate relationships more harshly. Only four studies have attempted to examine the effect of victim-defendant intimacy on judicial decisions in DV cases and the findings are mixed. Two studies found that defendants in active intimate relationships with their victims, such as living together or married to their victims, were more likely to be found guilty (Belknap & Graham, 2000; Cramer, 1999). Two other studies found no impact of intimacy level in DV cases on judicial decisions (Henning & Feder, 2005; Kingsnorth et al., 2001).

## **Court Decisions and Recidivism**

Some scholars have begun to assess the relationship between prosecutorial and judicial decision-making and future DV offending. Deterrence theory can provide some theoretical rationale as to why a relationship between criminal justice actions and re-offending may exist (e.g., Sherman & Berk, 1984). Deterrence theory originated with the philosophical writings of Cesare Beccaria and Jeremy Bentham who argued that individuals are self-interested and will engage in law-violating behaviors unless they are deterred by actual or perceived swift, certain, and severe punishment. Individuals refrain from committing a law-violating act if they perceive there is certain risk involved and fear the threatened punishment for their behavior (Gibbs, 1975; Zimring & Hawkins, 1973). Scholars have distinguished between two forms of deterrence: general deterrence and specific deterrence. General deterrence refers to members of the general public refraining from committing crime because of the fear of punishment. Specific deterrence reflects the idea that punishment is effective in reducing future crime for those individuals who are actually punished.

Using this line of thought, DV offenders who are arrested should be less likely to engage in future offending because they fear the punishment (i.e., arrest) associated with criminality. Several studies have explored this relationship and although the initial research found a deterrent effect of arrest on future DV offending (Sherman & Berk, 1984), subsequent studies have reported mixed results (Berk et al., 1992; Dunford et al., 1990; D. Hirschel et al., 1992; Pate & Hamilton, 1992; Sherman et al., 1991; Sherman et al., 1992). The findings may be a result of differences in post-arrest actions taken by the courts. Thus, an exploration into the effect of court decisions and sanctions on future

offending becomes vital. Since prosecution, conviction, and sentencing are three distinct stages of the court process, they will each be discussed in terms of their effect on future offending.

### **Prosecution and Re-Offending**

According to specific deterrence theory, repeat offending should be lower for offenders whose cases are prosecuted. Theoretically, if the odds of prosecution are more certain, then future offending should be reduced. The literature is mixed regarding the effect of prosecution on future DV offending.

Some studies have found no significant differences in re-offending for defendants whose cases were declined for prosecution compared to those who had charges filed, but later dropped (e.g., Davis et al., 1998; Peterson, 2003) or who were simply charged by the attorney (Steinman, 1988). Moreover, both Friday et al. (2006) and Kingsnorth (2006) reported no statistically significant differences in the likelihood of re-offending for defendants whose cases were dismissed compared to defendants whose cases were prosecuted.

Other studies, however, have found significant differences between the odds of recidivism for those defendants who did not have charges formally filed against them compared to those defendants whose case were prosecuted, even if the charges were later dismissed (e.g., Wooldredge & Thistlethwaite, 2002, 2005). According to Wooldredge and Thistlethwaite (2005), compared to defendants with charges filed against them but later dropped, defendants without charges filed against them had a higher prevalence and incidence of DV and a shorter time-to-recidivate. These findings suggest that doing *something* to begin the prosecution of DV defendants, even if charges are later dropped,

is more effective than doing nothing.

Still, there is some, albeit less, evidence that prosecution is associated with increased recidivism. In a number of analyses exploring the effects of case processing (e.g., case was prosecuted, restraining order was filed), Jolin and colleagues (1999) uncovered that in some cases, having a DV case prosecuted was actually associated with increased future police calls for DV problems and increased reports of DV re-offending.

### **Conviction and Re-Offending**

Using the same rationale set forth by specific deterrence theory, it would be expected that repeat offending would be reduced for those offenders convicted of DV, regardless of the mode of conviction. Similar to the evidence for the effect of prosecution, the effect of conviction on future DV offending is mixed.

A number of scholars have found that, compared to cases that had charges filed against them but then dismissed, defendants who received a sanction of a treatment program (Gross et al., 2000; Kingsnorth, 2006; Wooldredge & Thistlethwaite, 2002), adjournment in contemplation of dismissal (i.e., pretrial intervention, Peterson, 2003), convicted without a jail sentence (Peterson, 2003, 2004), or with a jail sentence (Gross et al., 2000; Peterson, 2003; Wooldredge & Thistlethwaite, 2005), were not significantly more likely to re-offend. Additionally, empirical assessments of the effectiveness of court sanctions on re-offending have suggested that defendants who were convicted of DV were no more likely to re-offend than those prosecuted and acquitted (Friday et al., 2006; Murphy et al., 1998; Thistlethwaite et al., 1998; Tolman & Weisz, 1995; Wooldredge & Thistlethwaite, 2005). Ford and Regoli's (1993) Indianapolis Domestic Violence Experiment found no significant differences in the prevalence and incidence of victim-

reported repeat offending between DV arrestees randomly assigned to different outcomes (pretrial diversion to include counseling, guilty conviction with probation and counseling, guilty conviction with sanctions such as fines, probation, and jail). These findings all suggest that being convicted of DV has no effect on repeat offending.

Conversely, Ventura and Davis (2005) reported that defendants convicted of DV were less likely to re-offend than defendants whose cases were not convicted. Furthermore, Wooldredge and Thistlethwaite (2005) found that compared to defendants whose cases were dropped by prosecutors, those who were convicted and received probation had a lower prevalence and incidence of DV, and took a longer time to re-offend. In addition, they found that the incidence of re-arrest for DV was lower for persons who were convicted and sent to a batterer treatment program compared to those whose cases were dropped. These findings support the notion that formal punishment by legal sanctioning agents serves as a deterrent for future DV offending.

Finally, some studies have found evidence directly contradicting the postulations set forth by specific deterrence theory. According to Wooldredge and Thistlethwaite (2005), individuals who were convicted and received probation and jail were actually *more* likely to re-offend and re-offended *more* times than those individuals whose cases were dropped by prosecutors. Similarly, Peterson (2004) reported the impact of case disposition on re-offending for two time periods in a New York Court and found that for one of the years, being convicted and sanctioned with a jail sentence was associated with reductions in recidivism. In a separate year, however, when the court operated as a specialized court, defendants who were convicted and received a jail sentence had increases in re-offending.



## **Sanction Severity and Re-Offending**

Finally, in accordance with specific deterrence theory, a strong, negative relationship between sentence severity and likelihood of re-offending should occur, whereby the more severe the sentence received, the less likely an individual should be to re-offend. The effects of sanction severity of future DV are inconsistent across studies.

Some scholars have found no effect of sentence severity on DV recidivism. Steinman (1988), for example, reported that defendants who were fined more than \$100 or jailed on their DV charges were no more or less likely to re-offend than defendants who received more lenient sanctions (i.e., pretrial, probation). Similarly, using a hierarchical scale to indicate the effect of sanction severity on future offending, Finn (2004) reported that severity of punishment had no significant impact on victim-reports of defendants' re-offending six-months after case disposal. Other scholars have explored whether the amount of time defendants are under criminal justice jurisdiction impacted defendants' likelihood of re-offending, and have found that neither the length of confinement in jail (Friday et al., 2006; Kingsnorth, 2006; Thistlethwaite et al., 1998) nor the length of probation period (Thistlethwaite et al., 1998) impacted re-offending.

Other studies have found that sanction severity appears to substantially influence repeat offending. For instance, Thistlethwaite et al. (1998) found that those defendants who were convicted and received more severe sanctions were less likely to re-offend than those who received less severe sanctions (see also Peterson, 2004; Ventura & Davis, 2005). Thus, they concluded that it is not necessarily the length of the sanction that impacts recidivism, rather, it is the *type* of sanction. Therefore, simply prosecuting, convicting, and imposing just any sentence on a DV defendant may not be sufficient:

judges must impose more severe sentences. Murphy and colleagues' (1998) findings provide some support for Thistlethwaite et al.'s (1998) results: the combined effects of prosecution, probation, *and* counseling were associated with reductions in recidivism.

Finally, some scholars have found evidence contrary to what might be posited by specific deterrence theory. According to Wooldredge and Thistlethwaite, (2005), compared to defendants whose charges were dropped, defendants who were sentenced to probation and jail (with or without a fine) had a higher prevalence and incidence of repeat DV offending. Recall, other results from this study suggest less severe sanctions (i.e., probation with or without a fine, jail with or without a fine, intervention program) had either no effect on repeat offending or reduced future offending. Similarly, Orchowsky (1999) and Peterson (2004) found some evidence to suggest that defendants who received an incarceration sentence for DV may have an increased odds of being a repeat DV offender.

### **Does the Court Response Have Implications for Re-Offending?**

The results are mixed regarding the effectiveness of court sanctions on reducing DV re-offending, leading some scholars to conclude that overall, court sanctions have no substantial effect on repeat DV offending (Garner & Maxwell, 2011). However, there may be theoretical and methodological explanations for the mixed findings.

**Theoretical explanations.** Historically, it has been conventional practice to distinguish between general and specific deterrence as two separate and distinct constructs. Recently, however, scholars have argued that this distinction rests on faulty logic and is a misspecification of the deterrence process (Stafford & Warr, 1993). They argue that in the traditional research on general deterrence, individuals who have never

committed any crime are considered alongside individuals who have committed crimes but successfully avoided punishment. Thus, for those individuals who have avoided punishment, their experiences may actually *increase* the chances that they commit crime because they perceive that the odds of punishment are low. In its original form, specific deterrence fails to acknowledge that individuals can experience punishment, punishment avoidance, and have knowledge about other peoples' experiences with punishment and punishment avoidance (see also Paternoster & Piquero, 1995). Thus, deterrence theory should be re-conceptualized to account for individuals' direct experiences with suffering punishment for a specific crime, direct experiences with punishment avoidance for other crimes, indirect experiences with punishment for certain crimes, and indirect experiences with punishment and punishment avoidance for other crimes.

The re-conceptualization of deterrence theory provides some understanding for findings that court sanctions have little to no impact on future DV offending. It may simply be that scholars are not fully capturing individuals' experiences with the criminal justice system and court sanctions. To my knowledge, no researcher has included multiple measures of punishment avoidance and knowledge of others' punishment avoidance in studies examining the relationship between court sanctions and DV re-offending.

In addition, the mixed findings might be a result of different typologies of DV relationships entering the court system and their propensity to be affected by court sanctions. Recall, Johnson (1995, 2008) identified at least four distinct types of DV, each distinguished by the degree of coercive control within a relationship, motivations for violence, and patterns of behavior in the relationship as a whole. He also identified the

data sources most likely to uncover each type of DV. According to his view, intimate terrorism and violent resistant DV would most often be uncovered in samples garnered from shelter populations, crisis agencies, and the criminal justice system. Situational couple violence would be uncovered by samples taken from the general population and formal agencies, including the criminal justice system.<sup>6</sup> Using this framework, it is highly likely that samples included in the extant literature include DV cases characteristic of each of these typologies; however, research has failed to examine how each typology might be affected by court decisions and sanctions.

Based on Johnson's typologies (1995, 2006b, 2008), it can be argued that certain typologies would be less influenced by court sanctions than others. Although this is pure speculation, it does make intuitive sense that intimate terrorists may be less affected by court sanctions because their actions are primarily a result of beliefs that men need to coercively exert power over "their women" (M. P. Johnson, 2008; M. P. Johnson & Ferraro, 2000). Thus, unless such patriarchal and traditional attitudes are tempered by some counseling or educational intervention, they are likely not going to be affected by court sanctions. Situational couple violence, on the other hand, is characterized by conflict that "gets out of hand" rather than attempts by either partner to coercively control the other because of underlying motivations and belief systems. Thus, individuals involved in incidents characterized by this form of violence may be affected more by court sanctions (i.e., specific deterrence) because they can change their situational behaviors and behaviors leading up to the incident; they should not need to change their belief systems.

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<sup>6</sup> Mutual violent DV is not discussed here because so little is known about this typology (M. P. Johnson, 2008).

These postulations are speculative and have not been subject to any empirical testing. No researcher has attempted to code court cases into DV typologies. At first glance, single incidents of situational couple violence may look similar to incidents of intimate terrorism (M. P. Johnson, 2008), and it would be very time consuming, and potentially costly, for court officials to attain detailed histories regarding the coercive tactics and control dynamics in each relationship to differentiate between the distinct DV typologies. Still, it could be very informative for researchers to explore the relationship between DV typologies, court sanctions, and likelihood of recidivism, as this research endeavor might shed light on the mixed findings regarding court sanctions and re-offending.

**Methodological explanations.** The mixed and null findings regarding the relationship between court decision-making and re-offending may also be a result of methodological differences across studies. First, studies differ in their measurements of repeat offending. The majority of past studies used official reports of re-offending, typically reflecting whether the defendant was re-arrested for DV (e.g., Jolin et al., 1999; Kingsnorth, 2006; Murphy et al., 1998; Peterson, 2003; Thistlethwaite et al., 1998; Tolman & Weisz, 1995; Ventura & Davis, 2005; Wooldredge & Thistlethwaite, 2002, 2005) or any offense (Davis et al., 1998; Peterson, 2003). Others operationalized recidivism as defendants who had police contact for another DV incident but were not necessarily re-arrested (Tolman & Weisz, 1995). Still, others operationalized re-offending based on victim reports of abuse (e.g., Ford & Regoli, 1993; Gondolf, 1999; Jolin et al., 1999). Although there may be very few differences in empirical findings when using official records compared to victim-reports (e.g., Sherman & Berk, 1984), a debate still exists between which data source is more superior for capturing DV-related

incidents. Many cases of DV are unreported to law enforcement, so reliance on official reports likely underestimates the prevalence of DV. On the other hand, official data may have an advantage over self-report data as it does not require victim participation (Davis et al., 1998). Thus, differences in the operationalization of recidivism may account for some of the mixed and null findings.

Similarly, studies vary on whether they examine recidivism as a prevalence, incidence, or time-to-re-arrest. Most studies predict only one measure of recidivism, the majority of which assess prevalence of future DV – whether the defendant was re-arrested for DV (or non-DV) offense or committed another assault in a given time period (e.g., Davis et al., 1998; Gondolf, 1999; Thistlethwaite et al., 1998; Ventura & Davis, 2005; Wooldredge & Thistlethwaite, 2002). At least one study examined time-to-re-arrest instead (Frantzen et al., 2011), and Wooldredge and Thistlethwaite (2005) predicted prevalence, incidence, and time-to-re-arrest. Although predicting prevalence of future DV allows the researcher to garner the most basic understanding of recidivism, it precludes an exploration into the possibility that different court decisions and sanctions have different effects depending on the measurement of recidivism. For example, Wooldredge and Thistlethwaite (2005) found that being sentenced to a batterer intervention program had no effect on the prevalence or time-to-re-arrest for another DV, but did reduce the overall incidence of DV. They also reported that receiving a sentence of probation and jail (with or without a fine) was unrelated to the amount of time until re-arrest, but was significantly related to an increased prevalence and incidence of DV. Thus, multiple recidivism outcomes provides the most comprehensive understanding of recidivism (Blumstein et al., 1978; Blumstein & Graddy, 1981-1982) and failing to include multiple

outcomes may mask important effects of court sanctions.

In addition, empirical assessments of the effectiveness of court sanctions vary by the length of time defendants are tracked after court disposition. Some studies only follow defendants for a six-month period (e.g., Davis et al., 1998), others extend the follow-up period to one year (see, for e.g., Thistlethwaite et al., 1998; Ventura & Davis, 2005), and still others follow defendants between 18 and 24 months (e.g., Friday et al., 2006; Kingsnorth, 2006; Murphy et al., 1998; Peterson, 2003; Wooldredge & Thistlethwaite, 2002, 2005). Identifying an appropriate follow-up period is important to gather the most comprehensive understanding of DV recidivism. Following defendants for too short a period of time may fail to reveal important criminal justice sanction effects on recidivism (see Dunford, 1992).

Studies also vary by sample size which may impact findings. Although some studies had large sample sizes (over 1,000 cases; e.g., Peterson, 2003; Wooldredge & Thistlethwaite, 2002, 2005), other studies had substantially fewer cases (e.g., Gross et al., 2000,  $n = 177$ ; Murphy et al., 1998,  $n = 235$ ). Too few cases in a sample might reduce the statistical power necessary to find true effects of court outcomes on recidivism.

Further, the analytical techniques used across studies are not uniform. There exists a wide range of methodological rigor in studies examining the relationship between court outcomes and recidivism. Despite multivariate models being a fairly common analytic technique, some studies have provided only bivariate analyses and correlations regarding this relationship (e.g., Eckberg & Podkopacz, 2002; C. C. Hartley & Frohmann, 2003; Murphy et al., 1998). Although bivariate analyses do have merit, they do not provide strong evidence of the relationship between court sanctions and recidivism after taking

into consideration other factors that could possibly impact re-offending. Further, of those studies that do conduct multivariate analyses to predict recidivism, some are limited by the number of control variables included in models. As an example, studies that only control for court decision-making, and basic offender characteristics (e.g., age, race, prior record), fail to acknowledge that victim characteristics, and possibly offense characteristics, may have an impact on defendants' dispositions and the likelihood of re-offending (e.g., Gross et al., 2000; Tolman & Weisz, 1995) As a result, scholars run the risk of misspecifying their models, and perhaps over- or under- estimating the true effect of court sanctions on repeat offending.

As a similar point, it is possible that the discrepancies across findings in regards to the effect of court sanctions on re-offending are due to the differential effect of court dispositions on different types of defendants. This postulation stems from replications of the Minneapolis Domestic Violence Experiment which found that the effects of arrest on recidivism were influenced by informal social controls (i.e., employment and marital status of the defendant) (Berk et al., 1992; Pate & Hamilton, 1992; Sherman et al., 1992). Few studies have included controls for stakes in conformity to examine the possibility of an interaction between stakes in conformity, court decision-making, and recidivism (Thistlethwaite et al., 1998; Wooldredge & Thistlethwaite, 2002, 2005). Although findings from this line of inquiry are highly preliminary, it appears that treating "higher-status" individuals with greater stakes in conformity (e.g., employed) more leniently may actually backfire and result in higher odds of re-offending (Thistlethwaite et al., 1998; Wooldredge & Thistlethwaite, 2005). These findings support the notion that the effect of formal sanctions may be influenced by defendants' stake in conformity. However,



different stakes in conformity and defendant characteristics may have differential effects on the likelihood of recidivism when examined within the context of sanction type (Wooldredge & Thistlethwaite, 2002). For example, lower likelihoods of recidivism were reported for higher stake defendants (higher levels of residential stability and education) in the DV counseling program compared to those not in the counseling program. Interestingly, however, defendants with greater stakes in their economic situations and who received more severe dispositions had higher re-arrest likelihoods. Wooldredge and Thistlethwaite (2005) also found that indicators of social class at both the individual- and neighborhood-level may have different interaction effects with court dispositions. These findings complicate the overall picture of the relationship between the impact of stakes in conformity and recidivism; however, they still suggest that these characteristics should be accounted for in future studies.

### **Limitations of the Court Response to Domestic Violence**

Overall, research on the court response to DV is highly limited. To date, the amount of research dedicated to examining prosecutorial and judicial decision-making in DV is severely lacking, especially when compared to research on courtroom decisions made for more general groups of defendants. Additional research is needed to establish the basic predictors of decision-making for both prosecutors and judges in DV cases and attempts should be made to either frame court room decision-making in DV cases under theoretical frameworks used in the broader court literature (e.g., focal concerns theory), or develop specialized theories for DV case processing. This study attempts to overcome this limitation by drawing from extant general theoretical frameworks to better understand prosecutorial and judicial decision-making in DV cases.

In addition, existing research often does not control for many possible decision points throughout case processing (for some exceptions, see, Henning & Feder, 2005; Wooldredge & Thistlethwaite, 2004). This overgeneralization may camouflage the effects of different predictors on different stages of court processing. Future research should consider including the different decision points of prosecutors (e.g., to dismiss charges) with the different decision points of judges (e.g., to convict, to incarcerate) to illustrate a clear picture of the predictors of decisions at each stage. This study will attempt to address this limitation.

Finally, although a growing number of studies have assessed the extent to which prosecutorial and judicial decision-making and sanctions impact future offending, many of these studies have methodological limitations. Some studies are limited by shorter follow-up times to assess defendant recidivism (e.g., Davis et al., 1998; Thistlethwaite et al., 1998; Ventura & Davis, 2005), and most studies only examine one form of recidivism (e.g., prevalence), as opposed to examining other facets of re-offending including number of re-offenses and time-to-re-arrest (see Wooldredge & Thistlethwaite, 2005 for an exception). This study will follow defendants for three years post-disposition and examine the prevalence of re-arrest, incidence of re-arrest, and time-to-re-arrest.

### **Summary**

Research on the court response to DV is limited, and has largely been neglected behind research about the police response to DV. Scholars have argued that even in practice, the courts have taken longer to proactively respond to DV and that the inaction of the courts has had a detrimental impact on efforts to stop or reduce DV (Epstein, 1999). Recently, however, some researchers have repudiated earlier claims that the courts

are inactive in their response to DV (Dutton, 1987; Garner & Maxwell, 2009, 2011; Klein, 2004), and have argued instead that prosecution and convictions rates of DV vary by jurisdiction. More research is needed to explore case processing across different jurisdictions. Fortunately, efforts to examine the court response to DV have increased, and scholars have begun to empirically assess the predictors of prosecutorial and judicial decision-making in DV cases and how these decisions may impact future DV.

In terms of predicting prosecutorial and judicial decision-making in DV cases, scholars have found that both legal and extralegal factors are important (e.g., Davis et al., 2003; Dinovitzer & Dawson, 2007; Henning & Feder, 2005; Kingsnorth et al., 2002; Rauma, 1984; J. D. Schmidt & Steury, 1989; Wooldredge & Thistlethwaite, 2004). Still, however, potentially relevant factors (e.g., weapon use, injury) are not uniformly included across studies of courtroom decision-making in DV cases. Although an increasing number of empirical studies have explored the factors that predict DV case processing, they vary in regards to the decisions under study, sample, control variables, and sophistication of analytic techniques. Additional research is needed in this area.

Scholars have also begun to explore whether DV court decisions and sanctions impact future DV offending. In particular, they have assessed whether a deterrent effect is evident with increased prosecutions, convictions, or severity of sanctions. The results are mixed, but overall, the general consensus is that court sanctions have a very limited, if any, effect on repeat DV offending (see Garner & Maxwell, 2011). Additional research is needed.

## CHAPTER 4

### SPECIALIZED DOMESTIC VIOLENCE COURTS

As stipulated in VAWA, federal funds have been provided to states, Indian and tribal governments, local governments, and nonprofit private organizations to help combat violence against women, including DV. Included in “The Safe Homes for Women Act of 1994” – a subsection of VAWA – were authorizations for monetary grants to go toward establishing community DV prevention and intervention projects, conducting research on DV and research evaluations of programs addressing DV, education, investigation, and prosecution. As a result, VAWA grants have funded a number of criminal justice programs intended to improve the response to DV (Keilitz et al., 2000). Seghitti and Bjelopera (2012) reported that since the passage of VAWA, more than 4.7 billion dollars in grants and cooperative agreements have been made to state, tribal, local governments, nonprofit organizations, and universities.

Services, Training, Officers, and Prosecutors (S.T.O.P.) Violence Against Women Formula Grants to States is an example of a VAWA grant program which promotes a coordinated approach to improving the criminal justice system’s response to violence against women. These grants are allocated to each state according to state population, and many recipients of S.T.O.P. grant programs have been developed to respond to DV (The United States Department of Justice, 2013; Violence Against Women Act, 2010). According to the last-made available report to Congress on the S.T.O.P. program, 24 percent of all S.T.O.P. subgrantees used their funds to support specialized units of law

enforcement or court personnel dedicated to violence against women (Office on Violence Against Women, 2012).

### **Overview of Specialized Domestic Violence Courts**

The establishment of specialized units of law enforcement and court personnel to respond to DV follows a national trend since the 1990s to create innovative avenues for delivering justice. Problem-solving courts are examples of such innovations that were devised to target and address concerns plaguing traditional courts (e.g., drug and mental health problems, DV), the social issues commonly evident in defendants, and improve the criminal justice response to such problems. They are responses to social problems which have not been adequately addressed by conventional criminal justice responses (Berman & Feinblatt, 2001).

Specialized DV courts are a form of problem-solving courts uniquely designed to respond to DV cases through separate court calendars for DV cases, dedicated judges, and other specialized components of the court process (Labriola et al., 2009). Like other problem-solving courts, DV courts were established because of (a) breakdowns among social and community institutions that have traditionally addressed family issues; (b) struggles of general courts to monitor defendant compliance with court mandates; (c) increases in incarcerated populations which have forced policy makers to rethink approaches to responding to crime; (d) rising caseloads that may limit general court responses to certain crimes; (e) a greater need for an emphasis on accountability; and (f) the emergence and availability of quality therapeutic interventions that can properly respond to DV defendants (Berman & Feinblatt, 2001).

DV courts are not as commonplace as other types of problem-solving courts (e.g.,

drug courts, mental health courts), however, scholars estimate that approximately 200 or 300 courts are in existence (Keilitz et al., 2000; Labriola et al., 2009; Winick, 2000). Unlike other specialized courts, there is a great deal of variation in the goals, processes and practices of DV courts (Fritzler & Simon, 2000; Keilitz et al., 2000; Moore, 2009). According to a recent study of 208 specialized DV courts, the most commonly cited goals were increasing victim safety and ensuring offender accountability (Labriola et al., 2009), followed by deterrence, penalizing noncompliant defendants, rehabilitation, and more efficient administration of justice (see also Keilitz et al., 2000). However, outcome measures and priority-setting of these goals were not uniformly reported across courts (Labriola et al., 2009). For example, Labriola and colleagues (2009) found that although 79 percent of DV courts listed offender accountability as extremely important, the courts differed on whether accountability would be defined by increasing offender supervision, imposing batterer treatment program mandates, or increasing offender compliance.

Many specialized courts, albeit not all, function under the philosophy of therapeutic jurisprudence, in which defendant accountability, defendant treatment, and victim safety are underscored. Therapeutic jurisprudence is characteristic of an interdisciplinary approach in the treatment of the law and the law's healing potential (Tsai, 2000; Winick, 2000). In this approach, legal changes re-shape the law and legal process in ways to improve the psychological and emotional well-being of the victims, offenders, and others affected by crime (Winick, 2000). Alternative legal arrangements that may positively impact behavior and support rehabilitative goals are heavily utilized, such as batterer intervention programs (Tsai, 2000). Batterer intervention programs attempt to help offenders change the underlying attitudes used as justifications for their violence and

provide them with tools to assist them in using pro-social coping mechanisms in the future. In a national study of specialized DV courts, Labriola and colleagues (2009) reported that courts vary widely in the frequency that batterer intervention programs are used, but most courts do utilize these programs to some extent. Approximately one-third of courts nationwide reported ordering 75 percent to 100 percent of their defendants to attend batterer treatment; others courts utilize batterer treatment programs less frequently. Despite evidence that the efficacy of batterer intervention programs is considered modest to little, at best (Babcock & Steiner, 1999; Dutton, 1986; Feder & Dugan, 2002; Feder & Wilson, 2005; Taylor et al., 2001), they remain a staple of the therapeutic jurisprudence movement.

In addition, many specialized DV courts have court personnel in dedicated positions. For example, certain judges or teams of judges are often assigned to handle cases and better monitor defendant behavior and compliance with court orders (Keilitz et al., 2000; Winick, 2000). In addition, vertical prosecution – an approach in which a single prosecutor has the case from point of filing to disposition – is very common in specialized courts (Labriola et al., 2009). In traditional courts, victims and defendants often meet with multiple prosecutors and judges, which limits the potential for defendant monitoring and lacks consistency in processing as a whole.

### **Criticisms of Specialized Domestic Violence Courts**

Despite the many advantages of specialized courts, there are also some downfalls and criticisms of the inherent nature of specialized DV courts. One major criticism stems directly from one characteristic of the courts that advocates pride themselves on: judicial training. Critics argue that judges presiding in specialized DV courts may lose neutrality

over cases because they are highly trained in recognizing and understanding the dynamics of DV and because in many cases, they collaborate with the advocacy community (Berman & Feinblatt, 2001; Epstein, 1999; Keilitz et al., 2000; Winick, 2000). In fact, according to Labriola et al. (2009), 91 percent of the specialized courts reported that their dedicated DV judges had received specialized training. Thus, there is a concern that judges' impartiality might be comprised and "anti-defendant" sentiments will permeate the court (Epstein, 1999).

In addition, in some specialized courts, cases are assigned to a single judge or a group of judges. In a study of 103 specialized courts, 22 percent of courts assigned judges exclusively to DV cases, while judges in the remainder of courts oversaw mixed caseloads (Keilitz et al., 2000). However, because DV cases are difficult and emotionally taxing (Epstein, 1999), judicial burnout is high (Keilitz et al., 2000; Labriola et al., 2009) and the constant cycle of new judges may be a detriment to specialized DV courts' goals. The aforementioned criticisms are certainly valid in theory, but the extent to which they are evident in DV cases is largely unknown. Research on specialized courts is in its infancy and does not yet provide adequate information to address these concerns.

### **Why Should Specialized Domestic Violence Courts be More Effective than Traditional Courts?**

Specialized DV courts were established with the intent that they would provide more effective responses to DV than traditional courts. There may be a theoretical basis for this assumption. Because specialized DV courts only process defendants arrested and charged with DV, a strong statement and symbolic message should be sent to the community that the criminal justice system is responding to DV and will not tolerate violence between



partners (Fritzler & Simon, 2000; Keilitz et al., 2000). Under the basic tenets of deterrence theory, the establishment of specialized DV courts should evoke both general and specific deterrent effects. Individuals who have not committed DV in the past, or who have committed DV and avoided punishment (Stafford & Warr, 1993), might be sent the message that DV in the community will be responded to with vigor and will no longer be ignored by the criminal justice system. Individuals who have faced criminal justice sanctions because of their involvement in a DV incident might experience a renewed “threat” regarding the certainty of punishment in the future should they engage in DV again. Because there is no consistency across specialized DV courts in priorities (Labriola et al., 2009), it cannot be stated with any certainty that individuals will perceive harsher, more punitive sentences in specialized courts. Further, because many specialized DV courts adopt therapeutic, treatment-oriented frameworks, individuals may not perceive these courts to have particularly tough sanctioning practices.<sup>7</sup> In the deterrence literature, however, certainty of punishment, rather than severity of punishment, appears to have a more deterrent effect (Cullen & Agnew, 2006). Thus, simply the establishment of DV courts which emphasize the importance of combating DV should be effective.

### **Do Broad Theoretical Frameworks Apply in Specialized Courts?**

As noted earlier, uncertainty avoidance theory (Albonetti, 1986, 1987), attribution theory (Albonetti, 1991), and focal concerns theory (Steffensmeier et al., 1998) have largely been neglected in application to DV court processing. Similarly, how these theories operate within specialized DV courts is up for speculation. The structural differences between specialized DV courts and traditional courts may impact the utility of

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<sup>7</sup> It is still possible, however, that individuals perceive a batterer treatment program as tougher than jail time because it might increase the time that an individual is under state oversight (Petersilia & Deschenes, 1994).

these theoretical frameworks for explaining DV court processing.

**Prosecutorial uncertainty.** According to Albonetti (1986, 1987), prosecutors are more likely to dismiss charges against defendants in cases involving intimate partners compared to strangers, as these cases increase the degree of prosecutorial uncertainty surrounding the likelihood of victim cooperation. Due to the nature of the victim-defendant relationship, prosecutors traditionally viewed victims of DV as less willing to cooperate with prosecution once ill-feelings toward their defendant subsided. As a result, DV cases were perceived to be less serious than other cases that came to the attention of the criminal justice system. Some empirical studies have supported this postulation and have found that prosecutors are less proactive with cases involving victims and offenders who know each other, including intimate partners (e.g., Dawson, 2004; Miethe, 1987; Simon, 1996; C. C. Spohn & Spears, 1997).

In specialized DV courts, however, DV cases are not seen as trivial offenses; rather, they are prioritized. Further, the degree of prosecutorial uncertainty based solely on the victim-defendant relationship should be lessened in specialized DV courts as all cases coming to the attention of these courts involve victims and defendants who are known to each other, and in many cases, either previously or currently intimately involved. It is plausible, however, that victims in more intimate relationships with their defendant (e.g., married to, cohabitating with) would be less likely to want to proceed with prosecution than victims in less intimate relationships with their defendants (e.g., former cohabitants). Perhaps these victims are more financially dependent or fear greater reprisal from defendants as a result of their cooperation with the criminal justice system (e.g., Felson et al., 2002; Wolf et al., 2003). Two unique structural characteristics of specialized DV

courts may make them better able to deal with such barriers to victim cooperation: specialized courts are more likely to adopt vertical prosecution strategies and specialized courts may have greater services for victims.

***Vertical prosecution.*** Vertical prosecution is common in DV courts, as over 75 percent of specialized courts report adopting a vertical prosecution strategy (Labriola et al., 2009). Such approaches may be particularly useful for prosecutors to build a rapport with victims, maintain contact with victims, and obtain victims' trust. With vertical prosecution strategies, victims do not have to relay their story – which could be extremely traumatic in DV cases – multiple times to multiple people. As a result, victims may feel more comfortable with court officials, and more satisfied that their needs and safety are prioritized by the criminal justice system. While one could argue that these strategies may lead to increased victim cooperation, there has been no attempt to directly assess victim's perceptions of this prosecution style compared to other styles (Gavin & Puffett, 2005) and its effect on cooperation.

***Coordinated responses.*** Specialized DV courts may also be more likely to adopt a coordinated community response approach to DV. In coordinated community responses, victim advocacy organization, prevention program, family agencies, and law enforcement departments work together to effectively respond to the needs of victims and hold defendants accountable for their behavior (Labriola et al., 2009). In more traditional courts, these agencies would each encounter victims and defendants independently.

Increased coordination between law enforcement officials and specialized DV courts may better provide prosecutors with the necessary information needed to obtain a conviction, with or without victim presence in court. Law enforcement agencies that

work closely with DV courts may be more pro-active in their duties and better trained in DV cases, thereby allowing them to more easily identify primary aggressors, avoid dual arrest cases, and adopt enhanced evidence collection techniques (Gover et al., 2007; Harrell et al., 2007).

Coordination of service providers to reach victims and provide them with information and avenues for help that otherwise might serve as barriers to victim participation in court proceedings is also a crucial component to the coordinated community approach, and may help distinguish specialized DV courts from more traditional court processing (Epstein, 1999). In specialized DV courts, victim's advocates may be more likely to be placed directly in court to allow greater access to victims (Labriola et al., 2009). For example, after the implementation of a DV court in Kings County, New York, the number of victims linked to victim's advocates increased dramatically as all victims were assigned to an advocate and received a protection order during case processing (Newmark et al., 2004). Similarly, in two sites selected for coordinated community responses to DV, victims contacted by non-governmental service providers received more services and more safety planning than victims in comparison sites without coordinated community responses to DV (Harrell et al., 2007). Victim's advocates and other advocacy services can help encourage victims to establish abuse-free lives (Keilitz et al., 2000) by providing emergency crisis counseling to victims, informing them of their rights, and helping them navigate through the court process (Gover et al., 2007). Overall, there may be some evidence that advocates and services for victims are more common in specialized DV courts compared to more traditional courts, which may increase the likelihood of victim cooperation. As a result, the extent of uncertainty surrounding

prosecutorial decisions may be reduced.

**Specialized judges and training.** Extant theories also assume that judges would be more likely to treat cases between intimate partners more leniently “due to a number of mitigating circumstances common to crimes between intimates” (Albonetti, 1991, p. 254).<sup>8</sup> Judges would also be more likely to attribute situational motivations – as opposed to enduring attributions – for crimes between partners. Some scholars have argued that judges often preside over DV cases with very little understanding of the social and psychological dynamics surrounding DV and this lack of knowledge impacts their perceptions of victims and decisions (Epstein, 1999; Keilitz et al., 2000).

In specialized DV courts, however, it may be more likely that a dedicated judge or a set of judges preside over DV cases, and these judges may receive more formal training about the legal and psychological issues surrounding DV than judges in traditional court settings (Karan et al., 1999; Keilitz et al., 2000). Approximately 93 percent of specialized courts have at least one dedicated judge, and of those courts with specialized judges, 91 percent indicated that their dedicated judge(s) received specialized DV training on the dynamics of DV and other related legal issues (Labriola et al., 2009). Judges presiding over DV cases in specialized courts may be less likely to assume mitigating circumstances surrounding cases of DV and more likely to understand the unique and complicated dynamics surrounding DV among intimate partners, as well as the evidentiary issues common to these offenses.

**Treatment versus incapacitation.** Theory would also suggest that when judges attribute more blame to a defendant and view him/her as a greater risk to the community, the likelihood of punitive decisions (e.g., incarceration) increases (Steffensmeier et al.,

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<sup>8</sup> Albonetti did not specifically describe the mitigating circumstances common to crimes between intimates.

1998). Incapacitation would lower the risk of a defendant immediately harming the community. In specialized DV courts where cases involve previously or currently intimate victims and defendants (and sometimes other familial relationships), judges must consider the ongoing risk of the defendant harming a specific victim as opposed to considering harm to an abstract community. In specialized DV courts with rehabilitative approaches, treatment – not punishment – is underscored and the healing power of the law is emphasized (Winick, 2000). By their very nature, problem-solving courts attempt to address the underlying issues that lead offenders to commit crimes, and most DV courts subscribe to this philosophy as well (Labriola et al., 2009). As a result, judges in specialized DV courts might hold sentencing philosophies more supportive of batterer treatment than incapacitation, even for defendants viewed as particularly culpable for their offense. Judges may perceive that batterer treatment programs are especially useful for defendants who plan to stay in relationships with their victims, as these programs may be more pragmatic for future conflict resolution than simply placing an individual in jail. The batterer treatment program is designed to address the underlying correlates of DV and provide the defendant with tools to avoid such incidents in the future. Courts also often mandate assessments and referrals for alcohol or substance abuse treatment, mental health treatment, and parenting classes (Labriola et al., 2009). This may reflect increased knowledge that judges in specialized DV courts recognize other correlates of DV (e.g., substance abuse) that may be contributing to their behavior. For example, substance dependency issues may be an aggravating factor impacting judicial sentencing decisions in more traditional courts; however, in specialized DV courts, substance dependency issues may be seen as a correlate of DV and one that is deserving of treatment. Still,

operating under a problem-solving model for DV cases is controversial (Labriola et al., 2009) because research on the effectiveness of batterer treatment has not been particularly promising (Feder & Dugan, 2002; Feder & Wilson, 2005).

### **Evaluation of Specialized Domestic Violence Courts**

Some studies have attempted to examine the effectiveness of specialized DV courts, and some inferences can be made regarding the extent to which decision-making in specialized DV courts follows that of traditional courts. In addition, some evaluations of specialized DV courts may provide evidence for the effectiveness of broader theoretical frameworks to explain court processing in specialized DV courts. Overall, however, these evaluations are extremely limited. The following discussion reviews the extant empirical literature regarding the effectiveness of specialized DV courts using the following four benchmarks: (a) efficiency of case processing; (b) victim satisfaction and safety; (c) offender accountability through case dispositions, sentencing, and monitoring; and (d) recidivism. When appropriate, a discussion of the applicability of general theoretical frameworks to explain decision-making in specialized DV courts is provided.

#### **Efficiency of Case Processing**

The number of DV cases entering the criminal justice system has increased dramatically over the past few decades (Ostrom & Kauder, 1999), underscoring the need for cases to be processed efficiently (Eckberg & Podkopacz, 2002) and for courts to exercise timely and effective management of DV caseloads (Davis et al., 2001). In fact, one specialized DV court in Milwaukee, Wisconsin was designed with speedy case disposition as its first priority (Davis et al., 2001). This court operated under the notion that quicker disposal of cases would limit the amount of time a victim had to change

his/her mind about desires to prosecute his/her offender. Evaluations of specialized DV courts have found that, overall, these courts have been successful in reducing the number of days cases typically take to be disposed. As an example, Eckberg and Podkopacz (2002) compared case processing of DV cases prior to and after the implementation of a specialized court in Minneapolis, Minnesota and found that the average length of time from case filing to case resolution was reduced by about a week. Similar findings of reduced case processing time were reported in specialized DV courts in Milwaukee, Wisconsin (Davis et al., 2001) and San Diego, California (Angene, 2000) .

Conversely, Newmark and colleagues (2004) compared cases adjudicated by the Kings County Felony Domestic Violence Court (FDVC) in New York with cases adjudicated prior to the establishment of the specialized court, and reported that the FDVC spent more time processing cases from felony arraignment to disposition. The authors speculated that this may be a result of a greater range in the severity of crimes (e.g., aggravated DV assaults, protection order violations) in FDVC indictments, as well as an increased number of defendants monitored and sanctioned for court violation infractions. Further, the findings may reflect differences in the type of cases processed (i.e., misdemeanor versus felony) (Labriola et al., 2009). Overall, however, the research points to the effectiveness of specialized DV courts in reducing case processing time.

### **Victim Satisfaction and Safety**

Increasing victim satisfaction, positive experiences, and safety are specific goals set by some specialized DV courts (Eckberg & Podkopacz, 2002; Labriola et al., 2009). In general, studies have found that victims are often satisfied with their experiences with the criminal justice system and specialized courts (Gover et al., 2007; Hotaling & Buzawa,



2003). For example, Gover and colleagues (2007) interviewed victims to determine the extent of their satisfaction with their experiences in a specialized DV court in Lexington, South Carolina. They found that victims reported positive overall impressions with the handling of their case to include the quality and professionalism of the court and the treatment of the victims with respect and dignity. Victims also noted that they felt the judge was concerned with hearing their side of the story.

Other scholars have compared the experiences and perceptions of victims whose cases go through a specialized court with opinions from victims whose cases are processed through a traditional court. The results of these studies are mixed. Harrell and colleagues (2007) found that although victims in a specialized DV court generally reported satisfaction with the response of the criminal justice system, the treatment they received, and the impact of the criminal justice system on their experiences with future violence, there were no substantial differences between their experiences and the experiences of victims in non-specialized courts. Hartley and Frohmann (2003), however, reported that victims in a specialized DV court felt that the prosecutors and victim-witness specialists took into consideration victims' wishes regarding case outcome more than victims whose cases were processed in traditional courts. However, victims also reported that in traditional courts, victim's advocates spent more time listening to victims' account of the incident, explaining court procedures, and referring them out to other services (but see Harrell et al., 2007; Newmark et al., 2004). Thus, the empirical evidence on victim satisfaction with specialized courts is mixed.

Some studies report findings that directly contradict the goal of specialized courts to enhance victim satisfaction and safety. In a study of victims in Milwaukee, Wisconsin,

Davis et al. (2001) reported that victims in the specialized court were less satisfied with the prosecution of their cases than victims who went through the general court. They also reported that victims were less likely to seek out the court system for assistance if they were hurt again. Although these findings appear counterintuitive to the mission of specialized courts, it may reflect shifting prosecutorial strategies in that specific court to engage in evidence-based prosecution as opposed to prosecution requiring victim cooperation. Because many victims often do *not* want their offenders prosecuted, these findings may highlight the separation between victim desires in case outcome and prosecutorial actions. Hotaling and Buzawa (2003) also found that women tended to be more dissatisfied with courts when the case went against their wishes (e.g., their offender was arrested and/or prosecuted when the victim did not want them to be arrested and/or prosecuted). Overall, the findings are mixed regarding victim satisfaction and safety in specialized DV courts.

### **Offender Accountability**

Offender accountability can be measured in a variety of ways, including prosecution of cases, conviction, punitive sentencing, and judicial monitoring post-disposition. A number of studies have examined the efforts of specialized courts in emphasizing offender accountability.

**Dismissals.** Recall that historically, DV cases have had a high level of attrition due to views of DV as a private issue or because of the lack of victim cooperation (Buzawa & Buzawa, 1996; Forst, 2002; D. Hirschel & Hutchinson, 2001; Tjaden & Thoennes, 2000). Some goals of DV courts are to reduce the rate of dismissals in these cases. Lower dismissal rates of cases in specialized DV cases have been reported (Eckberg &

Podkopacz, 2002; Newmark et al., 2004), providing evidence that prosecutors in specialized DV courts do not view greater uncertainty in processing cases with intimate partners (Albonetti, 1986, 1987). At least one study, however, found that dismissal rates remained virtually the same between cases in specialized DV courts and non-specialized courts (Peterson, 2004).

**Convictions.** Comparisons of conviction rates in specialized courts and non-specialized courts have yielded mixed results. Davis and colleagues (2001) reported that after the implementation of a specialized court in Milwaukee, Wisconsin, convictions increased by about 25 percent. This increase was in part due to a greater number of guilty pleas, as well as a reduction in case processing time. More efficient processing of DV cases may have reduced the odds of victims changing their minds about prosecution, which in turn increased victim compliance, and subsequently may have impacted the increase in convictions. Specialized DV courts in Chicago, Illinois (C. C. Hartley & Frohmann, 2003), Dorchester, Massachusetts (Harrell et al., 2007), and Minneapolis, Minnesota (Eckberg & Podkopacz, 2002) also reported increased rates of convictions. These findings do not support attribution theory's (Albonetti, 1991) argument that judges view cases involving intimates as having too many mitigating circumstances to be treated harshly by the courts.

Other studies, however, found that conviction rates were no different between specialized DV courts and non-specialized courts. For example, according to Newmark et al.'s (2004) study of the FDVC, there was no change in conviction rates between cases processed prior to the implementation of the court and cases processed just after the court was established. Similar to Davis et al. (2001), however, the method of reaching

convictions did change after the implementation of the court: plea bargaining, accompanied by guilty pleas, was more common than trials. Scholars examining specialized DV courts in San Diego, California (Angene, 2000), Manhattan, New York (Peterson, 2004), and Washtenaw County, Michigan (Harrell et al., 2007) also reported no differences in conviction rates compared to non-specialized courts. These findings suggest that attribution theory (Albonetti, 1991) would operate similarly in a specialized court as it would in a more traditional court setting.

**Sentencing.** Accountability may also be characterized by more severe punishments for DV defendants. Like the findings pertaining to conviction rates, results are mixed regarding the degree to which sentencing practices of defendants in specialized courts differ from sentencing practices in more traditional courts. The Judicial Oversight Demonstration (JOD), for example, was designed to provide a coordinated response to DV by attempting to increase victim safety, offender accountability, and reduce repeat offending through uniform and consistent initial responses to DV, coordinated victim advocacy services, and strong offender accountability and oversight. JOD was implemented in three sites (Dorchester, Massachusetts; Milwaukee, Wisconsin; and Washtenaw County, Michigan), although quasi-experimental evaluations of the program's impact were only evaluated in two sites. Compared to cases processed in similar, non-specialized courts, cases in Dorchester, Massachusetts were more likely to be convicted and sentenced to jail or probation (Harrell et al., 2007). Similar results were reported in a specialized court in Chicago, Illinois (C. C. Hartley & Frohmann, 2003). Thus, in contrast to what might be hypothesized by attribution theory and focal concerns theory, DV defendants were treated harsher in these specialized DV courts compared to

traditional courts.

Other studies, however, have found that specialized courts impose fewer incarceration sentences than traditional courts. According to Davis (2001), in Milwaukee, Wisconsin the percentage of defendants sentenced to jail decreased substantially after the implementation of the DV court; prior to the court, 75 percent of convicted cases were sentenced to jail, while only 39 percent of convictions were sentenced to jail after the establishment of the specialized DV court. The authors posited that the increase in prosecutorial plea bargaining tactics in these cases was likely driving this finding (recall, this particular jurisdiction also increased DV convictions by 25 percent after the implementation of the court). Both Angene's (2000) study of courts in San Diego, California and Peterson's (2004) evaluation of the Manhattan, New York specialized court reported decreases in the proportions of convicted DV defendants who were sentenced to jail. These findings could also reflect differences in the sentencing philosophies of the courts (Davis et al., 2001) to focus more on treatment than incarceration.

However, these same studies differed in their findings regarding sentence length for those defendants sentenced to jail. Specifically, Angene (2000) reported that sentence length increased from approximately 45 days to 60 days, while Peterson (2004) reported no statistically significant differences in jail sentences meted out to defendants prior to and after the establishment of the specialized court. Based on these findings, it is possible that judges in specialized courts may be more likely to adhere to less punitive, perhaps more treatment-oriented sentencing philosophies for the majority of defendants; however, for those defendants who are not deemed to benefit from treatment, increased

incarceration lengths may reflect greater perceptions of culpability.

Still, other researchers found no significant differences in sentencing practices between cases processed in specialized courts and those processed in non-specialized courts. Newmark and colleagues (2004) reported that the FDVC was neither more punitive-oriented nor more treatment-oriented than prior to its establishment (see also Harrell et al., 2007), and they hypothesized that plea bargaining may be a factor. In exchange for guilty pleas, prosecutors often reduce their recommendations for sanctions imposed on defendants.

All together, the results from the aforementioned research studies suggest that in some cases, specialized DV courts have the potential to reduce the number of dismissals, increase the number of convictions, and affect sentencing practices. Other research, however, found that rates of dismissals and convictions, as well as sentencing practices, were no different in specialized courts compared to traditional courts.

**Judicial monitoring.** Specialized DV courts may also define offender accountability as increased judicial monitoring over defendants to better ensure compliance with court orders. These courts may place more requirements on defendants post-conviction than defendants processed in more traditional courts. In the JOD sites, defendants were more likely to be mandated to attend batterer intervention programs, undergo substance abuse testing, and abide by court orders to have no contact with his/her victim without consent during probationary periods compared to defendants in the comparison courts (Harrell et al., 2007; and see Davis et al., 2001). These findings support the therapeutic philosophy of healing evident in many specialized courts (Labriola et al., 2009).

Research also suggests that specialized courts and programs provide greater

supervision to defendants (Barber & Wright, 2010; Klein & Crowe, 2008), and enhanced monitoring may have a positive impact on reducing repeat offending (Klein & Crowe, 2008; Rempel et al., 2008). Rempel and colleagues (2008) reported that while judicial monitoring did not reduce the overall re-arrest rate for general or DV-specific offending, those who were re-arrested but were initially subjected to judicial monitoring averaged fewer total re-arrests compared to those without judicial monitoring. These findings may be impacted by the degree to which compliance is emphasized and sanctions are imposed for noncompliance. According to a national study of specialized DV courts, 62 percent of courts reported “often” or “always” ordering offenders to probation supervision and just over half (56 percent) reported “often” or “always” mandating offenders to return to court for monitoring purposes. However, only half of the courts reported they often impose sanctions and 27 percent reported that they always impose sanctions for noncompliance. Thus, offender accountability and future behavior may not be affected unless the courts are practicing more punitive compliance monitoring. Although this type of research is in its infancy, it does appear that specialized DV courts engage in increased levels of judicial monitoring over defendants.

### **Recidivism**

Reducing future offending is central to maintaining offender accountability and ensuring victim safety (Fritzler & Simon, 2000). Despite these goals, the literature is mixed regarding the effect of being processed in a specialized court on repeat offending. For example, Gover and colleagues (2003) reported that being processed through a DV court in Lexington, South Carolina, compared to a traditional court, reduced the odds of recidivism within a 18-month period by 50 percent. Angene (2000) uncovered that

recidivism declined from 21 percent to 14 percent for defendants in specialized courts in San Diego, California. Similar recidivism reductions were evidenced in Minneapolis, Minnesota (Eckberg & Podkopacz, 2002) and Dorchester, Massachusetts (Harrell et al., 2007).

However, other scholars have reported increases in recidivism in association with specialized DV courts. According to Peterson (2004), prior to the implementation of Manhattan's specialized misdemeanor DV court, approximately 12 percent of defendants were re-arrested 18-months after disposition; after the implementation of the court, 16 percent of defendants were re-arrested. Newmark (2004) also found increases in recidivism for defendants processed in the FDVC. Peterson (2004) argued, however, that the findings may not necessarily be due to increased offending behavior, rather, they may reflect improved classification of DV cases and increased monitoring of these cases.

Studies have also found no differences in recidivism rates between defendants processed in specialized courts and those processed in more traditional court settings (Davis et al., 2001; Harrell et al., 2007; C. C. Hartley & Frohmann, 2003). Each of these studies, however, used a relatively short follow-up period ranging from either six- to eleven-months post arrest or disposition. This limited follow-up period may help explain some of the null findings. The above findings suggest that the literature is largely mixed regarding the effect of specialized DV courts on future offending; some studies find reduced rates of recidivism, while others find increased re-offending, and others find no difference in terms of re-offending.

### **Limitations of Specialized Domestic Violence Courts**

Many jurisdictions nationwide are beginning to utilize specialized approaches to



address DV; the reviewed literature, however, suggests that there is still very little consensus regarding the goals, policies, practices, and impacts of these courts. At a minimum, additional research is needed on specialized DV courts, as evaluations of these courts are extremely limited. Similarly, comparisons of specialized courts are necessary to directly compare and contrast different practices between the courts and the effects such practices have on outcomes. Although this study attempts to directly overcome this limitation, it is still important for additional researchers to conduct comparisons of specialized DV courts in other jurisdictions.

Labriola and colleagues (2009) have made large-scale efforts to provide accurate descriptive portrayals of the current state of specialized DV courts and caution researchers on focusing on outcomes (e.g., evaluations for re-offending) because of the variability of courts across jurisdictions. However, despite these variations, it *is* important to continue to assess these courts and better understand not only their operations, but how these operations may achieve – or fail to achieve – desired goals (e.g., victim safety, reduced offending).

The extant research provides a solid foundation to expand upon. For example, some studies do suggest that specialized courts have the potential to reduce the likelihood of DV recidivism (Angene, 2000; Eckberg & Podkopacz, 2002; Gover et al., 2003; Harrell et al., 2007); however, these studies tracked defendants for only a limited period of time post-disposition. The longest follow-up period was 18-months (Gover et al., 2003), which is still possibly too early to detect recidivism, and far too early to make conclusions regarding long-term re-offending. According to Langan and Levin (2002), 60 percent of incarcerated individuals re-offend within three years. Although Langan and Levin's

(2002) study was not specific to DV defendants, it provides some evidence that the follow-up period to assess recidivism for DV defendants should be expanded. Studies on specialized DV courts provide a fertile ground for research and can have a significant impact on the way court systems nationwide respond to DV cases.

### **Summary**

Currently, 200 to 300 specialized DV courts exist nationwide (Keilitz et al., 2000; Labriola et al., 2009; Winick, 2000). Although specialized DV courts vary by site in their missions, policies, and practices, they have each been developed in hopes of more effectively addressing and responding to DV. Overall, the extant literature on specialized DV courts is promising, albeit limited. Studies have generally reported that these courts process cases more quickly and efficiently than in traditional courts. They have also reported generally positive experiences from victims ranging from access to victim services to the treatment of victims by court officials. Some studies have also found evidence of fewer dismissals and increased convictions. However, these findings, as well as the findings regarding types and rates of sentencing and the extent of judicial monitoring are mixed. The research concerning the effect of specialized courts on re-offending also varies by study. Overall, additional research is needed on this growing and changing set of court innovations.

## CHAPTER 5

### METHODOLOGY

This study provides an in-depth examination of the court response to DV in two misdemeanor specialized DV courts located in two bordering counties in South Carolina: Richland County and Lexington County. This study moves beyond existing research by: (a) providing two detailed case studies of prosecutorial and judicial decision-making in two specialized DV courts located in contiguous counties; and (b) studying the effects of prosecutorial and judicial decisions on future DV offending and how these effects vary across county. The following research questions (RQs) are examined:

1. What are the relative effects of defendant (e.g., race), victim (e.g., relationship to defendant), and case (e.g., weapon utilized) characteristics on prosecutors' decisions to prosecute DV cases (i.e., not dismiss charges), and does the influence of these factors differ across counties?
2. What are the relative effects of defendant (e.g., race), victim (e.g., relationship with defendant), and case (e.g., weapon utilized) characteristics on judicial conviction and sentencing decisions in DV cases, and does the influence of these factors differ across counties?
3. Controlling for other relevant defendant, victim, and case factors, do court outcomes (e.g., prosecution, sentencing decisions) impact DV defendants' prevalence, incidence, or time-to-re-arrest for another DV offense, and does the relative impact of court outcomes on recidivism differ across counties?

#### **Site Selection**

DV is a significant problem in South Carolina: in 2010, the state ranked second in the nation for the number of women murdered by men (homicide rate of 1.94 per 100,000

women), the majority of which were considered intimate partners (Violence Policy Center, 2012). In every year since 1996, South Carolina has ranked in the top ten for states with the highest homicide rates among female victims killed by males.<sup>9</sup>

According to South Carolina state law, DV is defined as an “attempt to cause physical harm or injury to a person’s own household member, or the offer or attempt to cause physical harm or injury to a person’s own household member with apparent present ability under circumstances reasonably creating fear of imminent peril” (Section 16-25-20). A household member is defined as a spouse, former spouse, persons who have a child in common, or a male and female who are cohabitating or formerly have cohabitated (Section 16-25-10).<sup>10</sup> In South Carolina, there are four designations of DV: Criminal Domestic Violence (CDV) 1<sup>st</sup>, CDV 2<sup>nd</sup>, CDV 3<sup>rd</sup> (or subsequent), or CDV High and Aggravated (CDVHAN). A CDV 1<sup>st</sup> qualifies as a misdemeanor offense and generally is charged against an individual who has not been convicted of DV in the past ten years. A CDV 2<sup>nd</sup> offense is also considered a misdemeanor offense and reflects charges against an individual who has been convicted of one DV offense in the past ten years. CDV 3<sup>rd</sup> (or subsequent) – which is charged against an individual with two or more DV convictions in the previous ten years – and CDVHAN – which includes an assault and battery on a household member involving the use of a deadly weapon or results in serious bodily injury or would cause fear or serious injury or death – are both considered felony offenses. South Carolina operates under a “no-drop” policy where victims cannot freely drop charges against their offender. In other words, the state of South Carolina, not

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<sup>9</sup> The Violence Policy Center, which collects data on female victims killed by male offenders in single victim/single offender incidents, did not provide estimates on homicides of this nature prior to 1996.

<sup>10</sup> Prior to 2005, the definition of a household member also included other familial relationships, such as siblings, parents, and children. For purposes of this study, a household member will reflect the post-2005 definition.

the victim, pursues charges against an offender.

Richland County and Lexington County were selected for inclusion in this study for three primary reasons. First, in the years under study (2004 through 2006), both counties had (and currently have) specialized DV courts that solely process misdemeanor DV cases separately from all other offenses. These cases are processed in magistrate courts which have criminal jurisdiction over all non-felony offenses that do not exceed a 30-day imprisonment or a maximum fine.<sup>11</sup> Despite the specialized nature of the courts, they differ from each other in procedures for addressing cases. Such differences provide the opportunity to examine DV case processing in two distinct court environments. Finally, DV is a significant problem in these counties (McManus, 2010, 2011) and in South Carolina more broadly (Violence Policy Center, 2012), and insights from the proposed study may help improve statewide responses to DV. The counties and courts are discussed below.

### **Richland County**

According to the 2000 U.S. Census, Richland County was the second largest county in the state of South Carolina, with a population of roughly 321,000 residents (U.S. Census Bureau, 2000).<sup>12</sup> During the years under study, Richland County's racial makeup was primarily heterogeneous: approximately 50 percent of residents identified as Caucasian, 45 percent were African American, 3 percent were Hispanic, and 3 percent reported being of another racial or ethnic group. The mean household income reached

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<sup>11</sup> Over the years, the maximum fine for CDV 1<sup>st</sup> offenses has changed. As of 2013, the maximum fine is \$2,500. In the years under study, the fine was a maximum of \$1087. Prior to 2006, CDV 1<sup>st</sup> and CDV 2<sup>nd</sup> offenses were both heard in magistrate courts. However, in 2006, the law changed whereby magistrate courts would hear all CDV 1<sup>st</sup> cases, but only CDV 2<sup>nd</sup> cases that occurred *prior* to January 1, 2006. Beginning in 2006, CDV 2<sup>nd</sup> cases that occurred after January 1, 2006, CDV 3<sup>rd</sup> and CDVHAN cases were all heard in general sessions courts.

<sup>12</sup> Statistics from the 2000 U.S. Census are provided because it is the closest decennial census to the years under study (2004-2006).

about \$40,000 and approximately 14 percent of residents lived below the poverty line. Politically, Richland County can be described as somewhat liberal, as evidenced by the 57 percent of residents who voted for the Democrat candidate in the 2004 presidential election (Leip, 2012).<sup>13</sup>

Until 2002, misdemeanor DV cases in Richland County were processed in the county's separate district magistrate courts. However, once the Richland County CDV Court was established in May 2002, all DV cases were centrally processed in one location. The specialized court was established under a federally funded S.T.O.P. VAWA grant and sought to aggressively investigate and prosecute DV in Richland County by coordinating agencies to better address DV, providing victims with increased access to support services, increasing prosecutorial knowledge and skills in handling DV cases, improving the effectiveness of DV trials, and reducing the recidivism rate of DV. Similar to many other specialized courts, the Richland County CDV Court set out, and continues, to follow a treatment-oriented approach of recommending 26 weeks of batterer treatment for individuals convicted in the court. The S.T.O.P. grant has been renewed every year since 2002 and still funds the majority of the court's costs. Since the early stages of the court, the VAWA grant has employed at least one dedicated part-time prosecutor and a DV investigator from the Solicitor's Office. Currently, as well as in the years under study, multiple rotating judges preside over these cases. As of 2004, public defenders began to handle cases in Richland County's magistrate courts, including the CDV court.

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<sup>13</sup> The demographics of Richland County did not change substantially between the 2000 and 2010 U.S. Census. According to the 2010 U.S. census, Richland County has a population of roughly 385,000 residents, with a racial composition of 47 percent Caucasian, 46 percent African American, 5 percent Hispanic, and 3 percent another race or ethnic group (U.S. Census Bureau, 2010). The median household income is approximately \$48,500, and roughly 15 percent of residents live below the poverty line. Politically, Richland County still remains relatively liberal: 65 percent of residents voted for the Democrat candidate in the 2012 presidential election (Leip, 2012).

## **Lexington County**

Lexington County borders Richland County directly to the west. Although Richland County and Lexington County are contiguous and separated only by the Congaree River, many differences exist between them. First, Lexington County is considerably smaller. According to the 2000 U.S. Census, for the years under study, Lexington County had a population of approximately 216,000 residents (U.S. Census Bureau, 2000). Its racial composition was primarily homogenous: over 84 percent of Lexington County residents identified as being Caucasian, while only 12 percent reported being African American, 2 percent were Hispanic, and 2 percent comprised another racial/ethnic group. The median household income in Lexington County was slightly higher than in Richland County at approximately \$45,000, and roughly 9 percent of residents lived below the poverty line. Unlike in Richland County, residents of Lexington County are considerably more conservative, as evidenced by the 72 percent who voted for the Republican candidate in the 2004 presidential election (Leip, 2012).<sup>14</sup>

The Lexington County CDV Court was established in November 1999 under a federally funded VAWA grant. Funding for the court expired in June 2002 and the county has since incurred the costs of maintaining the court. Since its inception, the Lexington County CDV Court has operated under a multi-collaborative agency initiative, comprised of law enforcement officers, victim's advocates, court actors, and treatment

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<sup>14</sup> According to the 2010 U.S. Census, Lexington County has a population of approximately 262,000 residents (U.S. Census Bureau, 2010). Over 75 percent of Lexington County residents are Caucasian, while only 14 percent are African American, 6 percent are Hispanic, and 3 percent comprise other racial/ethnic groups. The median household income in Lexington County still remains slightly higher than Richland County at approximately \$53,000, and roughly 12 percent of residents live below the poverty line. The residents of Lexington County have consistently voted more conservative than residents in Richland County: 68 percent of residents in Lexington County voted for the Republican candidate in the 2012 presidential election (Leip, 2012).

providers that work closely to ensure efficient processing of DV cases. One full-time prosecutor prosecutes DV cases and one full-time magistrate judge presides over cases. Unlike in Richland County, public defenders did not represent defendants in magistrate courts for the years under study. Defendants could request a court appointed attorney or retain their own legal representation. It was not until 2013 that public defenders began to handle cases in the Lexington County CDV Court.

### **Court Operations**

The basic operations of the Richland County and Lexington County CDV Courts are similar and have generally remained constant over the years. After individuals are arrested for DV in each county, they are booked into the county jail. Their first contact with the court system is at a bond hearing, at which time a county magistrate judge determines the type of bond that will be granted. The most common bond types given to DV defendants are personal recognizance (PR), surety bonds, or cash bonds. At the bond hearing, judges also generally determine whether to place restrictions on contact between the defendant and victim. These determinations are often based on whether a victim is present at the bond hearing and the victim's preferences regarding contact with the defendant.

Following the bond hearing, defendants charged with non-felony DV are automatically transferred to the specialized DV court in the respective county. The next stage of the process varies by county. At first appearance dates, defendants in Richland County can choose to enter a plea of guilty or nolo contendere,<sup>15</sup> or can plead not guilty and request a bench or jury trial. Bench trials are heard the same day as plea; jury trials

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<sup>15</sup> When a defendant enters a plea of nolo contendere, also known as a "no-contest" plea, he/she is neither admitting to nor denying the facts of the case. Entering of plea of no-contest can carry the same punishment as entering a guilty plea or being found guilty at trial.



are scheduled for a later date. In Lexington County, defendants can choose to enter a plea of guilty or no-contest, or plead not guilty and request a bench or a jury trial on their first appearance date. Only cases resulting in a guilty or no-contest plea are heard by a judge on first appearance dates. Bench trials are scheduled for a separate date. Jury trials are not held in the Lexington County CDV Court; rather, they are sent out to the magistrate court in one of the six districts that the DV incident occurred.

Also unique to Lexington County is the ability for eligible defendants to enter into a pretrial intervention program (PTI) or other diversionary program. During the years under study, these programs were not available for defendants in Richland County. First-time offenders or defendants with very limited criminal records, who did not use a weapon during the offense, and did not commit an offense against a disabled individual or a pregnant woman are generally eligible for PTI. The final decision, however, lies with the prosecutor and PTI representatives present at court. Defendants who are eligible for PTI are generally required to attend a 26-week batterer treatment intervention program, engage in community service, and pay fines instead of entering a plea or requesting a bench or jury trial. If a defendant successfully completes PTI, the case receives a “not guilty” disposition. In some cases, defendants who successfully complete prosecutorial diversion programs other than PTI have their cases nolle prosecuted.<sup>16</sup> These defendants have the opportunity for their criminal records to be expunged of the DV.

### **Sample and Data**

The sample was comprised of all defendants charged with misdemeanor DV and whose cases were disposed of in either of the specialized DV courts between January 1, 2004 and December 31, 2006. Excluded from this sample were cases that had been

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<sup>16</sup> Nolle prosequi refers to a prosecutorial dismissal.

expunged and removed from defendants' criminal records.<sup>17</sup> The years 2004 through 2006 were selected for inclusion in this study because neither court experienced a major structural change during these years that might confound the results of the study, and to allow for a three year follow-up period for the recidivism analyses. Due to the population differences as well as the types of proceedings that were held in each court, there were fewer cases processed in the Lexington County CDV Court compared to the Richland County CDV Court during this time frame.

In Richland County, the sample was comprised of 1,199 cases. In attempt to make the Richland County and Lexington County samples as comparable as possible, I removed cases that were disposed of via a jury trial<sup>18</sup> in Richland County (n = 29), resulting in a sample size of 1,170 defendants processed through the Richland County CDV Court. In Lexington County, the sample size was 862 cases.

Due to the focus on prosecutorial and judicial decision-making and recidivism, I also removed cases that were missing information on these outcomes (n= 8 in Richland County; n = 6 in Lexington County). The final target sample size in Richland County was 1,162 defendants. In Lexington County, the final target sample size was 856 defendants. Next, I conducted a listwise deletion of remaining cases that were missing information on relevant variables for the analyses which reduced the sample sizes to 1,068 defendants processed in the Richland County CDV Court and 716 defendants processed through the Lexington County CDV Court.<sup>19</sup> There were no significant differences ( $p \leq .05$ ) on any

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<sup>17</sup> In South Carolina, if convicted of DV, defendants can have their records expunged of the DV conviction five years after case disposition. Prior to 2009, however, it was the responsibility of the defendant – not the magistrate court – to initiate the expungement process. The threat of expunged cases to the generalizability of this study cannot be assessed because these cases have been removed from court files.

<sup>18</sup> Recall that Lexington County does not hold jury trials in CDV Court.

<sup>19</sup> Despite extensive data collection efforts, incident reports could not be located for 117 cases in Lexington County. This largely explains the amount of missing data in this county.

of the outcome measures or predictor variables between the final within-county samples and the target samples (without cases removed). Thus, despite the missing data, the final samples are generalizable to all defendants processed during the years 2004 through 2006 in the Richland County and Lexington County CDV Courts. Table 5.1 displays the descriptive statistics for the pooled sample (combining defendants in Richland County and Lexington County) and the county-specific samples.

### **Quantitative Data**

Quantitative data was retrieved from court files, prosecutor files, and local and state law enforcement records to assess the factors that influence decision-making (*research questions 1 and 2*) and study the effects of those decisions on re-offending (*research question 3*). Information regarding case processing, including prosecutorial and judicial decisions, came from court files and prosecutor files. Incident reports and arrest warrants filled out by first responding officers also provided the majority of case information (e.g., weapon use, victim injury), and victim and defendant information (e.g., sex, race, age, and victim-defendant relationship). Past criminal history data and DV re-arrest data was retrieved from state law enforcement records. The information regarding the variables provided by this data is displayed in Table 5.1 and will be described in greater detail below.

Table 5.1: Sample Descriptions

		Richland County		Lexington County	
	Range	Mean	SD	Mean	SD
<b>Outcome Variables</b>					
Nolle prosequi	0-1	--	--	.11	(.32)
Prosecution	0-1	--	--	.89	(.32)
Not guilty **	0-1	.34	(.47)	.07	(.27)
Conviction **	0-1	.66	(.47)	.92	(.27)
Counseling	0-1	.70	(.46)	.69	(.46)
Fine *	0-1	.12	(.32)	.17	(.37)
Jail	0-1	.18	(.38)	.15	(.35)
Prevalence of re-arrest	0-1	.15	(.36)	.17	(.38)
Incidence of re-arrest	0-4	.20	(.55)	.24	(.62)
Time-to-re-arrest	0-1089	413.39	(318.57)	420.64	(311.25)
<b>Legal/Case Processing Variables</b>					
# of prior DV arrests *	0-9	1.14	(1.00)	1.03	(.89)
Prior DV convictions **	0-1	.27	(.44)	.50	(.50)
# of prior non-DV arrests *	0-55	4.44	(6.45)	3.72	(5.68)
Dual arrest *	0-1	.03	(.18)	.05	(.23)
Strength of evidence **	0-4	.92	(.77)	1.59	(.90)
Weapon **	0-1	.18	(.39)	.26	(.44)
Victim injury	0-1	.78	(.41)	.78	(.41)
Legal representation **	0-1	.32	(.47)	.06	(.23)
Pretrial incarceration	0-958	7.76	(44.13)	6.89	(29.91)
<b>Extralegal Variables</b>					
Male	0-1	.88	(.33)	.85	(.35)
Caucasian (ref.) **	0-1	.20	(.40)	.60	(.49)
African American **	0-1	.77	(.42)	.32	(.47)

Hispanic **	0-1	.02	(.15)	.08	(.28)
Age	17-74	33.52	(10.03)	33.52	(9.76)
Married; cohabitating	0-1	.31	(.46)	.30	(.46)
Married; not cohabitating	0-1	.06	(.24)	.05	(.21)
Unmarried; cohabitating **	0-1	.42	(.49)	.55	(.50)
Unmarried; not cohabitating **	0-1	.21	(.41)	.10	(.30)
<i>N</i>		1068		716	

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\*\* Richland County and Lexington County were significantly different at  $p \leq .01$

\* Richland County and Lexington County were significantly different at  $p \leq .05$

Some significant differences emerged between the samples from Richland County and Lexington County. Significant differences in decision-making and recidivism rates between the two counties will be discussed in greater detail in Chapter 6. For now, the significant differences between the mean values of the predictor variables will be provided. In terms of the legal and case processing variables, significant differences existed in defendant criminal history, dual arrest, strength of evidence, weapon use, and legal representation . Defendants in Richland County had a greater number of prior DV arrests and a greater number of prior non-DV arrests than defendants in Lexington County. However, defendants in Lexington County were more likely to have had a previous DV conviction. The average number of dual arrest cases was higher in Lexington County than in Richland County. The strength of evidence was greater in Lexington County than in Richland County and defendants in Lexington County were more likely to have used a weapon during the DV incident. Defendants with legal representation were more common in Richland County compared to Lexington County.

There were also significant differences across the two counties in terms of extralegal factors. As would be expected from the racial/ethnic composition of the county, Caucasians were more likely to be defendants in Lexington County, and African Americans were more likely to be defendants in Richland County. A greater number of Lexington County defendants were Hispanic compared to in Richland County. Finally, defendants not married to but living with their victims were more common in the Lexington County sample, while defendants unmarried to and not cohabitating with their victims were more common in Richland County.

## **Qualitative Data**

Qualitative courtroom observations and semi-structured interviews of key court personnel from both counties were also conducted in order to provide additional context to the quantitative findings and garner information regarding decision-making and courtroom processes that is not typically available from official records.

**Courtroom observations.** Observations of court sessions in both courts were conducted over a seven-month period from April 2012 through November 2012. Because the courts differ on the types of sessions held (i.e., Lexington County CDV Court does not hold jury trials), and to ensure consistency in observations, only first appearances and bench trials in both counties were observed. The courts also differ on the number of court sessions held per month, which affected the number of observations conducted per court. Ten observations were conducted in Richland County and fifteen were conducted in Lexington County. I attempted to attend each of the court sections between April and November, however, sessions between the two courts often overlapped. When this was the case, I attended Richland County's sessions because they were fewer in number.

In Richland County, pleas and bench trials were heard on the same day. In Lexington County, bench trials were heard separately from guilty and no-contest pleas. During my fifteen observations in Lexington County, I only observed bench trials go forward on one day. During court sessions, I sat in the witness stand of both courts and was able to see and hear all court actors. Court observations were conducted until a saturation point was attained (Hesse-Biber & Leavy, 2011).

**Interviews.** In addition to the observations, semi-structured interviews with prosecutors, court investigators, and judges in both courts were conducted. Each

interview took approximately 1.5 to 2 hours to complete and were conducted in courthouses (the interview with a prosecutor in Lexington County was conducted at the Sheriff's Department). Interviewees were asked specifically about their experiences working with DV cases, the factors that influence their decisions, and how the processing of DV cases had evolved over time in their courts. Interviews were *not* recorded; rather, pen and paper techniques were used and the interviewees' responses were transcribed onto a computer directly after the interview. In addition, some responses were garnered from discussions with court actors before or after observed court sessions.

There is a noticeable limitation with collecting quantitative data from the mid 2000s and observing court sessions and conducting interviews with court actors in 2012 and 2013. It could be argued that because of this time lapse, the qualitative component cannot definitively reflect court processing in the early and mid 2000s. It is my belief that the qualitative component is informative because many of the actors in both courts have been stable over time and are able to provide insight into court processing in the earlier years. In addition, the qualitative component simply seeks to provide some context to court processing beyond what might be garnered from quantitative data.

## Measures

**Dependant variables – decision-making.** The outcome measures included in this study are displayed in Table 5.1. To address research question 1, one prosecutorial decision was included: the decision to prosecute.<sup>20</sup> *Prosecution* was defined as a

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<sup>20</sup> Other prosecutorial decisions, such as charging and diversion decisions, were not examined in this study. A prosecutor may choose to amend the arrest charge to a lesser offense (e.g., public disorderly conduct, simple assault) or a more serious offense (e.g., CDVHAN). Charge amendments were not examined here because the majority (98.7 percent) of cases were formally disposed of as DV cases and not amended to other charges. In addition, prosecutorial diversion decisions were not examined. Diversion decisions reflect decisions to “divert” defendants out of the criminal justice system, generally giving defendants a second chance to address their behaviors through some other form of intervention (i.e., DV counseling, parenting



dichotomous measure, indicating whether the case was prosecuted or was dismissed by the prosecutor (0 = case was dismissed; 1 = case was prosecuted) prior to being heard by a judge.

To address research question 2, two measures of judicial decision-making were assessed. Although the relevance of mode of convictions has been identified as important for understanding courtroom decisions (e.g., Albonetti, 1989; B. D. Johnson, 2003), the majority of cases convicted in both courts were done so by way of guilty or no-contest pleas<sup>21</sup>, as opposed to trial.<sup>22</sup> The *conviction* decision was assessed for those individuals charged with DV and whose cases were not dismissed (0 = defendant was acquitted or case was judicially dismissed; 1 = defendant entered a plea of guilty or no-contest or was found guilty by trial).<sup>23</sup>

The sentencing decision was modeled for defendants who were prosecuted and convicted. The sentencing outcome was operationalized as a categorical nominal variable which included receiving a sentence for *counseling*<sup>24</sup>, a sentence of a *fine*,<sup>25</sup> and a *jail* sentence.<sup>26</sup>

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classes, alcohol assessments and counseling). Only defendants in Lexington County were eligible for diversion during the years under study. There were defendants that may have been offered the opportunity for diversion but did not attend the orientation for the program or did not successfully complete the program; they may have then had the opportunity to request a jury trial and their case would have been sent out of the DV court. As a result, the diversion decision was *only* available for individuals whose cases were disposed of in the specialized court. As a result of this limitation, the diversion decision was not modeled.

<sup>21</sup> From here on, the term “pleas” will refer to both guilty and no-contest pleas.

<sup>22</sup> In Richland County, approximately 74 percent (n=523) of convicted cases were disposed of by either guilty or no-contest pleas. In Lexington County, of those cases that were not dismissed by the prosecutor and were ultimately convicted, approximately 76 percent were convicted via pleas.

<sup>23</sup> The majority of prior studies have included an overarching measure of “convictions” to reflect conviction by plea *or* by trial (Belknap & Graham, 2000; Davis et al., 2001; Frantzen et al., 2011; Henning & Feder, 2005; Kingsnorth et al., 2001; Peterson & Dixon, 2005; Wooldredge & Thistlethwaite, 2004).

<sup>24</sup> This outcome refers to jail time or the maximum fine suspended upon batterer intervention counseling with or without a fine.

<sup>25</sup> This outcome refers to jail time or the maximum fine suspended upon a fine without the option for counseling, or the maximum fine suspended upon a lower fine without the option for counseling.

<sup>26</sup> This outcome refers to jail time without the option to pay a fine to avoid jail, with or without an additional fine, and with or without counseling. Length of incarceration was not explored in this study

**Dependent variables – recidivism.** In addition to the court decisions and outcomes discussed above, three measures of recidivism were included to address research question 3. *Prevalence* of DV was defined as whether the defendant was re-arrested for DV within three years of his/her disposition date (0 = no; 1 = yes). *Incidence* of DV was defined as the number of DV re-arrests within three years of the defendant's disposition date. *Time-to-re-arrest* was defined as the number of days that lapsed between the defendant's disposition date and his/her first re-arrest for DV. All three recidivism measures were examined to provide an enhanced understanding of DV recidivism. Scholars have argued that assessing recidivism in multiple forms provides a more comprehensive understanding of offender criminality (Blumstein et al., 1978; Blumstein & Graddy, 1981-1982; Wooldredge & Thistlethwaite, 2005).

**Predictors.** Table 5.1 also lists the predictors that were selected for inclusion in this study primarily based on availability during data collection and theoretical relevance as guided by uncertainty avoidance theory, attribution theory, and focal concerns theory. Despite the number of variables included in analyses, there were no issues of multicollinearity (i.e., all variance-inflation factors were below 2.0 and all tolerance values were well above 0.5, Tabachnick & Fidell, 2007).

**Legal and case processing factors.** Because both the broader and DV-specific empirical literature have consistently highlighted the importance of prior criminal history for explaining court decision-making (i.e., perceptions of blameworthiness, likelihood of re-offending) and recidivism, three criminal history variables were included: *Number of prior DV arrests*; *prior DV convictions* (0= no; 1 = yes); and *number of prior non-DV*

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because of the limited variation in the number of days judges tend to sentence DV defendants to jail. Each misdemeanor DV charge can receive a maximum penalty of 30 days in jail. Individuals who were sentenced to jail typically received the maximum amount of time.

*arrests*. More extensive criminal histories may indicate that defendants have more stable dispositions toward criminality, are more blameworthy for their offenses, and are a greater threat to the community (Albonetti, 1986, 1987, 1991; Steffensmeier et al., 1998). Each criminal history variable reflects the defendants' criminal history prior to the date of his/her disposition.<sup>27</sup>

*Dual arrest* was coded as a dichotomous variable reflecting whether both defendant and victim were arrested stemming from the same incident (0 = no; 1 = yes). A dual arrest may be viewed as exculpatory evidence that mitigates the blame placed on the defendant because the victim may also be considered at fault for the offense (see Steffensmeier et al., 1998). Because Albonetti's (1986, 1987) uncertainty avoidance theory suggests that cases with more corroborating and physical evidence will result in less uncertainty surrounding defendants' guilt or innocence, a measure of evidence was included in this study. *Strength of evidence* is an additive scale reflecting the number of types of corroborating and physical evidence available during case processing. The scale is comprised of indicators of witness statement(s), victim statement, photographs of injuries and/or scene, and physical items taken from the scene. The scale ranges from zero to four, where higher values reflect more types of evidence available during case processing.

Following Kingsnorth and MacIntosh (2007), *weapon* use reflects a dichotomized measure (0 = no weapon, 1 = gun/knife/blunt object/other). Cases involving the use of

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<sup>27</sup> Several other criminal history measures were considered for inclusion in the models: any prior DV arrests, number of prior DV convictions, any prior non-DV arrests, any prior non-DV convictions, number of prior non-DV convictions, any prior non-DV incarcerations, number of prior non-DV incarceration. During the years under study, CDV 1<sup>st</sup> and CDV 2<sup>nd</sup> cases were processed in the specialized courts, so it was important to control for a measure of any prior DV convictions. Recall, CDV 1<sup>st</sup>, CDV 2<sup>nd</sup>, and CDV 3<sup>rd</sup> are distinguished by the number of DV convictions in the past 10 years. Number of prior DV arrests and number of prior non-DV arrests were included in analyses because they maintained the largest overall correlations with each outcome under study.

“personal weapons,” such as hands or feet were coded as 0. This measure does not attempt to differentiate between the actual use of a weapon or simply the threat to use a weapon. Theoretically, court actors might view weapon use as an indicator of a stable disposition toward engaging in violent crime (Albonetti, 1991). *Victim injury* is a dichotomous measure which refers to whether the police or the victim noted any injury stemming from the incident (0 = no, 1 = yes). Defendants in cases where victims were injured may be perceived as more culpable for their offenses (Steffensmeier et al., 1998). A dichotomous measure indicating whether a defendant retained or was appointed *legal representation* was also included (0 = no; 1 = yes) to control for the extent to which the courtroom workgroup and maintenance of courtroom relationships may impact case processing (Dixon, 1995; Eisenstein & Jacob, 1977).<sup>28</sup>

A measure of *pretrial incarceration* was also controlled for to account for the amount

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<sup>28</sup> Several measures that would theoretically be related to prosecutorial and judicial decision-making were excluded from analyses due to data limitations. Although uncertainty avoidance theory, and to a lesser degree attribution and focal concerns theory, would suggest that victim cooperation and victim wishes regarding prosecution would be especially salient predictors of courtroom decision-making (e.g., Bechtel et al., 2012; Dawson & Dinovitzer, 2001), these measures were not consistently noted in court files. In Richland County, data regarding victim presence in court was only noted in 21 percent of cases; information regarding victims’ wishes to prosecute was available in only 28 percent of cases. In Lexington County, only 8 percent of cases had available data on victim presence in court and 11 percent had valid data on victims’ wishes to prosecute. Further, aggravating (e.g., defendant substance use) and mitigating (e.g., victim substance use) case characteristics were missing in 45 percent and 39 percent of cases, respectively, in Richland County. In Lexington County, 36 percent of cases were missing data on defendant alcohol and/or drug use; 30 percent of cases were missing data on victim alcohol and/or drug use. It would have been interesting to assess the independent impact of having children and the interaction effect between having children and defendant sex on prosecutorial and judicial decision-making. Some scholars argue that victim decisions to assist with the court process – which may, in turn, impact prosecutorial and judicial decision-making – may be affected by whether the victim and defendant share a child(ern) (Rhodes et al., 2010; Rhodes et al., 2011). Although it was possible to determine whether defendants in Lexington County had children (for 94 percent of the sample), this information was only available for half of the Richland County sample (55 percent). In addition, employment status was not consistently noted across the counties. Although the employment status in Lexington County was only missing for approximately 6 percent of the sample, it could not be determined for approximately 38 percent of the Richland County sample. Finally, victim age and race were excluded from analyses because they were highly correlated with defendant age (in Richland County,  $r = .77$ ; in Lexington County,  $r = .76$ ) and race (in Richland County,  $r = .70$ ; in Lexington County,  $r = .69$ ).

of time a defendant was in jail prior to his/her case disposition.<sup>29</sup> Prior studies in general court processing have found an association between being held in pretrial detention and harsher sanctions at later stages of the criminal court process (Albonetti, 1991; Griffin & Wooldredge, 2006; C. Spohn, 2009). Pretrial incarceration either reflects the amount of time a defendant spent in jail prior to posting bail, his/her inability to successfully fulfill the conditions of his/her financial release, or reflects that the defendant was held in jail on another charge stemming from an arrest at the same time as the DV arrest.<sup>30</sup> Defendants who received a release on his/her own recognizance were coded as serving “0” days in jail if they were not held on any other charge. For those defendants who were not released on their own recognizance and bonded out of jail, the number of days between the arrest date and the date the defendant bonded out was calculated to determine pretrial incarceration. For those defendants who did not bond out of jail, pretrial incarceration equals the number of days between the arrest date and case disposition.

In South Carolina, a misdemeanor DV offense carries a maximum penalty of 30 days in jail (or a maximum fine). If defendants serve 21 days in jail prior to case disposition, and receive all of their good time credits during their time in jail, they may receive “credit for time served” as their sentence if they enter a plea of guilty or no-contest or are found guilty at trial. Individuals who received “credit for time served” were coded as receiving a jail sentence.

***Extralegal factors.*** Uncertainty avoidance theory (Albonetti, 1986, 1987), attribution

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<sup>29</sup> Pretrial incarceration was not controlled for in analyses predicting prosecutorial decision-making because this decision comes prior to case disposition.

<sup>30</sup> It is possible that the defendant posted bail for the DV arrest and was then arrested on another charge prior to coming before a judge for the DV case disposition. The measure of pretrial incarceration does not adequately capture these cases because information on other, non-DV-related arrests was not available for this study.

theory (Albonetti, 1991), and focal concerns theory (Steffensmeier et al., 1998), and prior research also guided the inclusion of extralegal variables. Since the focal concerns perspective argues that young, minority, males would be treated most harshly in the courtroom and are more likely to re-offend (C. Spohn & Holleran, 2000; Steffensmeier et al., 1998), I controlled for these demographics. *Male* was coded as a dichotomous variable reflecting defendants' gender (0 = female, 1 = male). Defendant race was tapped by three dichotomous race/ethnicity categories: *Caucasian* (0 = no, 1 = yes), *African American* (0 = no, 1 = yes), and *Hispanic* (0 = no, 1 = yes). Caucasian was the reference category. Defendant *age* was a continuous measure with higher values reflecting older defendants. Finally, to assess whether different forms of intimate relationships were treated differently by court actors (Albonetti, 1986, 1987) and/or increased the likelihood of future offending, four dichotomous measures were included: *married and cohabitating* (0 = no, 1 = yes); *married and not cohabitating* (0 = no, 1 = yes); *unmarried and cohabitating* (0 = no, 1 = yes); *unmarried and not cohabitating* (0 = no, 1 = yes). Married and cohabitating served as the reference category.

***Dispositions.*** For analyses assessing research question 3 (i.e., recidivism), I followed examples of previous research (e.g., Thistlethwaite et al., 1998; Wooldredge & Thistlethwaite, 2002, 2005), and included measures of five dispositions and court sanctions which were operationalized as dichotomous variables: case against the defendant was *nolle prosequied* (i.e., dismissed) by the prosecutor; defendant was *acquitted* of the charges; defendant received a sentence of *counseling*; defendant received a sentence of a *fine*; and defendant received a *jail* sentence. Each measure was coded as 1 for the specific disposition and 0 for all other dispositions. This approach allowed the

models to maintain the highest sample sizes. Using this operationalization, the modal sentencing outcome (i.e., going rate) in both counties was a sentence mandating that the defendant attend counseling with or without an additional fine to the court (in Richland County and Lexington County, approximately 47 percent and 56 percent of cases, respectively, received this sentence). This measure was the reference category and not included in the models predicting recidivism. The above dispositions were included as predictors *only* in the recidivism analyses.

### **Statistical Analyses**

#### **Research Questions 1 and 2: The Predictors of Domestic Violence Decision-Making**

Prosecutorial decision-making was modeled for all defendants, as these are the initial decisions in case processing. In both counties, the conviction decision was assessed for those cases not dismissed by the prosecutor. For defendants convicted of DV, the sentencing decision was assessed. Scholars have noted the importance of adjusting for sample selection biases that may occur as a result of individuals proceeding through multiple stages of the court process (e.g., Bushway et al., 2007; Demuth, 2003). Since the examination of several of the outcomes (e.g., court disposition outcomes) involve the analysis of samples that are conditional upon court actors' decisions made at earlier stages in the court process (e.g., prosecutorial dismissal), a correction factor to adjust for potential sample selection effects was generated and initially included in the models predicting conviction and sentence type. The selection term reflects the effects of unmeasured characteristics that might be related to prior decisions made during court processing. However, when the analyses were performed with the selection term included in the model, the correction factor was collinear

with many of the other predictors and caused many of the coefficient estimates to become unstable. As a result, the correction factor was excluded from the analyses.

Due to the dichotomous nature of the prosecution and conviction decisions, logistic regression techniques were used. Multinomial regression analyses were used for the models predicting the sentencing decision. The outcomes of receiving a fine or a jail sentence were compared to receiving a sentence of counseling.<sup>31</sup> The outcome was treated as nominal as opposed to ordinal because it is likely that the independent variables in the model have a different effect on the categories of the dependent variable. Separate analyses were conducted by county. Independent sample t-tests were used to compare the mean rates of prosecution, conviction, and the sentencing decision. The magnitude of the predictor coefficients derived from the multivariate county-specific analyses were compared using Clogg et al.'s (1995) equality of coefficient tests.

### **Research Question 3: The Effects of Decision-Making and Sanctions on Domestic Violence Re-Offending**

For both counties, three separate recidivism analyses were conducted. Beginning on their disposition date, defendants were tracked for three years.<sup>32</sup> The prevalence of re-arrest was analyzed using logistic regression due to the dichotomous nature of the outcome. The incidence of re-arrest – a count measure – was examined using negative binomial regression to account for overdispersion in the data. The final recidivism outcome, time-to-re-arrest, was examined using survival analysis (P. Schmidt & Witte, 1987). The data were right censored, as 85 percent and 82 percent of defendants in

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<sup>31</sup> SPSS software was used for all analyses. Multi-level analyses and corresponding software were not conducted or utilized as there are only two counties under examination in this study.

<sup>32</sup> It is possible that defendants were re-arrested for DV prior to their disposition date. However, given that the focus of this study is on the effect of court decision-making on recidivism, an examination of recidivism prior to case disposition was not examined.



Richland County and Lexington County, respectively, did not re-offend in the three-year period post-disposition (Hoffman, 2004). Removing individuals who did not re-offend from analyses would have resulted in a biased sample and subsequently biased the findings. Following previous research, Cox's regression analyses were utilized (Wooldredge & Thistlethwaite, 2005). Each of the recidivism analyses were examined using SPSS and separate analyses were conducted by county. Independent sample t-tests were used to compare the mean prevalence, incidence, and time-to-re-arrest rates across the two counties. Clogg et al.'s (1995) equality of coefficient tests were used to compare the magnitude of the effects of prosecutorial and judicial decision-making on recidivism across counties, while controlling for other relevant factors.

## CHAPTER 6

### QUANTITATIVE RESULTS

This chapter presents the results of the analyses predicting prosecutorial and judicial decision-making in Richland and Lexington County, and how court decisions impact the prevalence, incidence, and time-to-re-arrest of future DV. Table 6.1 displays the results from independent sample t-tests run comparing the mean values of each outcome between the two counties. The analyses of the county-specific samples and the results of the corresponding equality of coefficient tests, denoted by z-statistics, are displayed in Table 6.2 (prosecution decision), Table 6.3 (conviction decision), and Table 6.4 (sentencing decision). The county-specific recidivism analyses are displayed in Table 6.5 (prevalence of re-arrest), Table 6.6 (incidence of re-arrest), and Table 6.7 (time-to-re-arrest). For purposes of succinctly relaying the findings of the quantitative portion of this study, the results of the equality of coefficient tests (i.e., z-statistics) will only be provided for tests indicating a significant difference in the magnitude of effects between the two courts.

#### **Between-County Differences in Outcomes**

The results of the independent sample t-tests comparing the outcome measures between the Richland County and the Lexington County CDV Courts are reported in Table 6.1. During the years under study, a county policy restricted prosecutors in Richland County from dropping DV cases. Rather, cases were expected to proceed in front of a Judge and be disposed of via a plea, not guilty disposition, or judicial dismissal.

As a result, no DV cases were dismissed by prosecutors in Richland County. In Lexington County, no policy existed that restricted prosecutorial discretion; approximately 11 percent of cases were dismissed by the prosecutor in the years under study. Significant between-county differences existed in the percentage of defendants who were convicted among those defendants whose cases were prosecuted: In Richland County, 66 percent of cases resulted in a conviction, while 92 percent of cases resulted in a conviction in Lexington County (difference was significant at  $p \leq .01$ ).

Table 6.1. Independent Sample T-Tests Assessing Between-County Differences in Outcomes

	Richland County		Lexington County	
	Mean	SD	Mean	SD
<b>Court Dispositions</b>				
Nolle prosequi	--	--	.11	(.32)
Prosecution	--	--	.89	(.32)
Not guilty **	.34	(.47)	.07	(.27)
Conviction **	.66	(.47)	.92	(.27)
Counseling	.70	(.46)	.69	(.46)
Fine *	.12	(.32)	.17	(.37)
Jail	.18	(.38)	.15	(.35)
<b>Recidivism</b>				
Prevalence of re-arrest	.15	(.36)	.17	(.38)
Incidence of re-arrest	.20	(.55)	.24	(.62)
Time-to-re-arrest	413.39	(318.57)	420.64	(311.25)
<i>N</i>	1068		716	

\*\* Richland County and Lexington County were significantly different at  $p \leq .01$

\* Richland County and Lexington County were significantly different at  $p \leq .05$

There were no significant between-county differences in the percentage of convicted defendants who received a sentence of counseling: in both counties, roughly 70 percent of convicted defendants received a sentence mandating them to attend counseling. A significantly higher percentage of defendants received a sentence of a fine in Lexington County compared to Richland County (in Richland County, approximately 12 percent of

defendants received this sentence compared to approximately 17 percent of defendants in Lexington County;  $p \leq .05$ ). No significant differences emerged across the two counties in the percentage of defendants sentenced to jail. In addition, there were no significant between-county differences in the prevalence, incidence, or time-to-re-arrest for DV.

### Prosecution Decision

Table 6.2 presents the results of the prosecution decision in Lexington County.

Recall, during the years under study, a policy in Richland County restricted prosecutors from dismissing cases, and as a result, prosecutorial decision-making was not modeled for this county. Nearly 90 percent of all cases in Lexington County were prosecuted.

Table 6.2. Logistic Regression Models Predicting the Prosecution Decision in Lexington County

	b	SE
Intercept	.06	(.70)
Legal and Case Processing Variables		
# of prior DV arrests	.26	(.22)
Prior DV convictions	-.43	(.31)
# of prior non-DV arrests	.09*	(.05)
Dual arrest	-.51	(.46)
Strength of evidence	.42**	(.15)
Weapon	-.01	(.30)
Victim injury	.23	(.32)
Legal representation	-2.09**	(.38)
Extralegal Variables		
Male	1.30**	(.32)
African American <sup>a</sup>	.19	(.31)
Hispanic <sup>a</sup>	.41	(.57)
Age	-.002	(.01)
Married; not cohabitating <sup>b</sup>	-.66	(.52)
Unmarried; cohabitating <sup>b</sup>	.37	(.30)
Unmarried; not cohabitating <sup>b</sup>	.37	(.56)
Nagelkerke $R^2$	.23	
N	716	

\*\*  $p \leq .01$ ; \*  $p \leq .05$

<sup>a</sup> Caucasian is the reference category

<sup>b</sup> Married and cohabitating is the reference category

Legal and case processing variables explained most of the variation in the decision to prosecute a defendant.<sup>33</sup> Defendants with a greater number of prior non-DV arrests were more likely to be prosecuted than defendants with a less extensive criminal history. In addition, defendants with more evidence against them were more likely to be prosecuted. Defendants with legal representation were less likely to be prosecuted. There was no impact of prior DV-related criminal history, dual arrest, weapon use, or injury to the victim on prosecutorial decision-making. Only one extralegal factor impacted prosecutorial decision-making: male DV defendants were more likely to be prosecuted than female DV defendants. Race, age, and marital/cohabitation status did not significantly impact prosecutorial decisions.

### **Conviction Decision**

Table 6.3 displays the within- and between-county conviction results for those defendants who were prosecuted.<sup>34</sup> Among defendants processed in Richland County, a number of legal, case processing, and extralegal factors impacted the likelihood of conviction. Defendants with a greater number of prior non-DV arrests were more likely to be convicted than defendants with less extensive criminal histories. Dual arrest cases were less likely to result in a conviction than cases with a single defendant. The strength of evidence also increased the odds of a defendant being convicted in Richland County. Defendants who retained or were appointed legal representation were less likely to be convicted. There was no effect of the number of prior DV arrests, prior DV convictions,

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<sup>33</sup> It should be noted that the variable pretrial incarceration was removed from analyses predicting prosecutorial decision-making because there is no theoretical rationale as to why it should impact prosecutorial decision-making.

<sup>34</sup> It is important to note that in Lexington County, the variation in the conviction decision was far more limited than in Richland County (see table 5.1). As a result, only eight percent of the variation in the conviction decision can be meaningfully predicted. The conviction decision was still modeled in order to make comparisons to Richland County, however, this cautionary note is important to remember when considering the results in Lexington County.

weapon use, victim injury, or pretrial incarceration on the likelihood of being convicted in Richland County.

Table 6.3. Logistic Regression Models Predicting the Likelihood of Conviction for Prosecuted Defendants

	Richland County		Lexington County		<i>z-test</i>
	<i>b</i>	SE	<i>b</i>	SE	
Intercept	1.09 <sup>**</sup>	(.42)	1.12	(.90)	
Legal and Case Processing Variables					
# of prior DV arrests	-.09	(.09)	-.25	(.24)	
Prior DV convictions	.05	(.19)	.83 <sup>*</sup>	(.39)	
# of prior non-DV arrests	.03 <sup>*</sup>	(.01)	.16 <sup>*</sup>	(.07)	
Dual arrest	-.76 <sup>*</sup>	(.39)	-1.51 <sup>**</sup>	(.52)	
Strength of evidence	.26 <sup>**</sup>	(.09)	.14	(.18)	
Weapon	.01	(.19)	-.12	(.38)	
Victim injury	.09	(.17)	.33	(.38)	
Legal representation	-1.29 <sup>**</sup>	(.15)	-.95	(.62)	
Pretrial incarceration	.002	(.002)	.02	(.02)	
Extralegal Variables					
Male	.45 <sup>*</sup>	(.22)	.75	(.42)	
African American <sup>a</sup>	.36 <sup>*</sup>	(.17)	-.10	(.35)	
Hispanic <sup>a</sup>	-.09	(.45)	.75	(.78)	
Age	-.02 <sup>**</sup>	(.01)	-.002	(.02)	
Married; not cohabitating <sup>b</sup>	-.82 <sup>**</sup>	(.30)	-.79	(.65)	
Unmarried; cohabitating <sup>b</sup>	-.26	(.18)	.21	(.38)	
Unmarried; not cohabitating <sup>b</sup>	-.52 <sup>*</sup>	(.22)	-.57	(.58)	
<i>Nagelkerke R<sup>2</sup></i>	.17		.17		
<i>N</i>	1068		635		

<sup>\*\*</sup>  $p \leq .01$ ; <sup>\*</sup>  $p \leq .05$

<sup>a</sup> Caucasian is the reference category

<sup>b</sup> Married and cohabitating is the reference category

Extralegal factors also impacted the odds of conviction among defendants processed in Richland County. Males and African Americans were more likely than females and Caucasians, respectively, to be convicted. Older defendants were less likely than their younger counterparts to be convicted. Finally, defendants who were not cohabitating with their victims, regardless of their marital status, were less likely to be convicted compared

to defendants who were married and cohabitating with their victims. There was no effect of being Hispanic on the likelihood of conviction.

Among defendants processed in Lexington County, criminal history also impacted the likelihood of a case resulting in a conviction. Defendants with at least one prior DV conviction and with a greater number of prior non-DV arrests were more likely to be convicted than defendants with less extensive criminal histories. Like in Richland County, dual arrests cases were less likely to result in a conviction. No other legal, case processing, or extralegal factors impacted the conviction decision in Lexington County.

The results clearly show both similarities and differences within the two counties in the significance of the predictors in the conviction analyses. Although certain variables were significant predictors of decision-making within the two counties, the magnitude of the effects of all of the predictor variables did *not* differ across the two courts. It appears, then, that the factors that influence judicial conviction decisions are similar in strength across judges in Richland County and Lexington County.

### **Sentencing Decision**

Table 6.4 displays the multinomial models predicting the sentencing decision for convicted defendants. The top half of the table illustrates the findings comparing the likelihood of receiving a fine versus counseling; the bottom half of the table includes the findings comparing the likelihood of receiving a jail sentence versus counseling. The results pertaining to defendants processed within Richland County will be discussed first, followed by the results for Lexington County.

Table 6.4. Multinomial Models Predicting Sentence Outcome for Convicted Defendants

	Richland County		Lexington County		<i>z-test</i>
	b	SE	b	SE	
<u>Fine (vs.) counseling</u>					
Intercept	-.33	(.72)	-.34	(.73)	
Legal and Case Processing Variables					
# of prior DV arrests	.29*	(.15)	-.14	(.18)	
Prior DV convictions	-.25	(.33)	-.24	(.28)	
# of prior non-DV arrests	.03	(.02)	.04*	(.02)	
Dual arrest	-.50	(.85)	-.94	(.80)	
Strength of evidence	-.20	(.16)	-.08	(.14)	
Weapon	-.15	(.34)	.01	(.28)	
Victim injury	.07	(.31)	.26	(.32)	
Legal representation	.56*	(.28)	1.31*	(.56)	
Pretrial incarceration	-.001	(.003)	-.003	(.01)	
Extralegal Variables					
Male	-1.31**	(.34)	-.67	(.37)	
African American <sup>a</sup>	-1.03**	(.29)	.49*	(.25)	-3.94
Hispanic <sup>a</sup>	.33	(.74)	-.05	(.45)	
Age	-.01	(.01)	-.03	(.01)	
Married; not cohabitating <sup>b</sup>	.28	(.64)	.03	(.70)	
Unmarried; cohabitating <sup>b</sup>	.38	(.32)	.24	(.29)	
Unmarried; not cohabitating <sup>b</sup>	.95**	(.38)	.06	(.46)	
<u>Jail (vs.) counseling</u>					
Intercept	-2.08**	(.80)	-2.41**	(.90)	
Legal and Case Processing Variables					
# of prior DV arrests	-.02	(.13)	.20	(.16)	
Prior DV convictions	.43	(.27)	-.27	(.30)	
# of prior non-DV arrests	.08**	(.02)	.03	(.02)	
Dual arrest	-.99	(1.10)	-.05	(.80)	
Strength of evidence	-.37**	(.15)	-.09	(.15)	
Weapon	.28	(.28)	-.12	(.32)	
Victim injury	-.21	(.25)	-.15	(.32)	
Legal representation	-.07	(.27)	.40	(.79)	
Pretrial incarceration	.001	(.002)	.04**	(.01)	-4.94
Extralegal Variables					
Male	.86	(.55)	.07	(.52)	
African American <sup>a</sup>	-.22	(.29)	-.06	(.29)	
Hispanic <sup>a</sup>	-.18	(.84)	-.46	(.54)	
Age	-.02	(.01)	-.01	(.02)	
Married; not cohabitating <sup>b</sup>	1.30**	(.49)	1.71**	(.62)	
Unmarried; cohabitating <sup>b</sup>	.75**	(.29)	.88*	(.37)	
Unmarried; not cohabitating <sup>b</sup>	.91**	(.34)	1.15*	(.50)	



<i>Nagelkerke R<sup>2</sup></i>	.18	.17
<i>N</i>	709	586

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\*\*  $p \leq .01$ ; \*  $p \leq .05$

<sup>a</sup> Caucasian is the reference category

<sup>b</sup> Married and cohabitating is the reference category

Among defendants processed in Richland County, having a greater number of prior DV arrests was associated with an increased likelihood of receiving a fine versus counseling, but had no effect on judicial decisions to impose a jail sentence rather than counseling. Defendants with a greater number of prior non-DV arrests were more likely to receive a jail sentence than counseling, but the number of prior non-DV arrests had no effect on the odds of receiving a fine compared to counseling. Strength of evidence was associated with a greater likelihood of receiving a jail sentence, and retaining or being appointed legal representation was associated with greater odds of receiving a fine compared to counseling. Dual arrest, weapon use, victim injury, and pretrial incarceration had no impact on the sentencing decision in Richland County.

Males were less likely than females to receive a fine compared to counseling, but gender had no effect on judges' decisions to impose a jail sentence rather than counseling. Compared to Caucasian defendants, African American defendants were less likely to receive a fine versus counseling, yet they were no more or less likely to receive a jail sentence. Finally, compared to defendants who were married and cohabitating with their victims, all other defendants with different marital/cohabitation statuses were more likely to receive a jail sentence compared to counseling; defendants unmarried and not cohabitating with their victims were more likely to receive a fine. Defendants' age and ethnicity had no impact on the sentencing decision in Richland County.

Among defendants processed in Lexington County, those with a greater number of prior non-DV arrests were more likely to receive a fine compared to receiving a sentence mandating the defendant to attend counseling. Similar to in Richland County, defendants with legal representation were more likely receive a fine rather than counseling; legal representation had no impact on the likelihood of receiving a jail sentence. Finally, defendants who spent a longer time in jail prior to case disposition were more likely to receive a jail sentence than be mandated to attend counseling; pretrial incarceration had no impact on the decision to impose a fine. The number of prior DV arrests, prior DV convictions, dual arrest, strength of evidence, weapon use, and victim injury had no impact on the sentencing decision.

Extralegal factors also impacted the sentencing decision in Lexington County. Among defendants processed in this court, African American defendants were more likely to receive a fine compared to counseling; there was no impact of defendant race on judicial decisions to impose a jail sentence or counseling. Finally, compared to defendants who were married and cohabitating with their victims, all others were more likely to receive a jail sentence compared to counseling; there was no impact of marital/cohabitation status on the odds of receiving a fine versus counseling.

The equality of coefficients tests identified two differences in the magnitude of the effects predicting the sentencing decision across the two courts. Being African American had a stronger, negative impact on judicial decisions to impose a fine versus counseling among defendants processed in Richland County; among defendants processed in Lexington County, African Americans were more likely to receive a fine than counseling. In addition, spending more time in jail prior to trial exerted a greater impact on judicial

decisions to sentence an individual to jail rather than counseling in Lexington County compared to Richland County. There were no other differences in the magnitude of the effects of the predictor variables on the sentencing decision across counties.

### **Recidivism**

The recidivism analyses assessing within- and between-county differences in the effects of courtroom decisions, legal, and extralegal factors are presented in Tables 6.5 through 6.7.

#### **Prevalence of Re-Arrest**

Table 6.5 presents the results of the analyses predicting the prevalence of recidivism among defendants processed within the two courts. Among defendants processed within Richland County, those who were found not guilty were less likely to be re-arrested for DV. None of the sentencing outcomes impacted the likelihood of future offending among defendants processed in Richland County. Among defendants processed in Lexington County, none of the court dispositions or sentencing outcomes impacted the likelihood of future DV. In addition, there were no significant differences across the two courts in the magnitude of any of the court decisions on the prevalence of future DV.

Some legal and extralegal factors also emerged as significant predictors of the likelihood of a future DV arrest among defendants processed in Richland County. Defendants with a greater number of prior DV arrests were more likely to be re-arrested for DV compared to defendants with fewer prior DV arrests. No other legal factors impacted the odds of re-arrest among defendants processed in Richland County. Male defendants processed within Richland County were more likely to be re-arrested for DV compared to female defendants. Older defendants were less likely than their younger

counterparts to be re-arrested for DV. None of the other extralegal factors impacted the prevalence of DV among defendants processed in Richland County.

Table 6.5. Logistic Regression Models Predicting the Prevalence of Re-Arrest

	Richland County		Lexington County		<i>z-test</i>
	b	SE	b	SE	
Intercept	-2.24**	(.63)	-2.31**	(.68)	
Legal Variables					
# of prior DV arrests	.43**	(.10)	.48**	(.14)	
Prior DV convictions	.25	(.23)	-.20	(.25)	
# of prior non-DV arrests	.02	(.01)	.05**	(.02)	
Dual arrest	-1.50	(1.04)	.42	(.52)	
Weapon	.33	(.24)	.23	(.24)	
Victim injury	.09	(.22)	.38	(.27)	
Extralegal Variables					
Male	.99*	(.42)	.93*	(.42)	
African American <sup>a</sup>	-.35	(.23)	-.02	(.23)	
Hispanic <sup>a</sup>	-.06	(.66)	-.72	(.50)	
Age	-.03*	(.01)	-.02	(.01)	
Married; not cohabitating <sup>b</sup>	-.01	(.43)	.004	(.52)	
Unmarried; cohabitating <sup>b</sup>	.13	(.23)	-.27	(.25)	
Unmarried; not cohabitating <sup>b</sup>	-.27	(.30)	-.50	(.42)	
Court Dispositions					
Nolle prosequi <sup>c</sup>	--	--	-.84	(.46)	
Acquitted <sup>c</sup>	-.63**	(.23)	-1.13	(.62)	
Fine <sup>c</sup>	-.002	(.33)	-.10	(.31)	
Jail <sup>c</sup>	-.28	(.28)	-.14	(.33)	
<i>Nagelkerke-R<sup>2</sup></i>	.13		.14		
<i>N</i>	1068		716		

\*\*  $p \leq .01$ ; \*  $p \leq .05$

<sup>a</sup> Caucasian is the reference category

<sup>b</sup> Married and cohabitating is the reference category

<sup>c</sup> Counseling is the reference category

There were some similarities in the predictors of prevalence of re-arrest among defendants processed in Lexington County. Similar to defendants processed in Richland County, defendants processed in Lexington County with more extensive criminal histories were more likely to be re-arrested than defendants with fewer DV and non-DV

arrests. None of the other legal factors impacted the odds of future DV among defendants in Lexington County. Similar to defendants processed within Richland County, male defendants processed within Lexington County were more likely than female defendants to be re-arrested for DV. No other extralegal factors impacted the prevalence of re-arrest among defendants in Lexington County.<sup>35</sup>

### **Incidence of Re-Arrest**

Table 6.6 presents the results of the negative binomial regression analyses predicting the incidence of future DV arrests among defendants processed within the two courts. Among defendants processed in Richland County, none of the dispositions or sentencing outcomes impacted the incidence of re-arrest. Only one court disposition affected the incidence of re-arrest among defendants in Lexington County: defendants whose cases were dismissed by the prosecutor had a fewer number of future DV arrests compared to defendants who were convicted and given a counseling sentence. There were no significant differences in the magnitude of the court decision or sentencing effects on the incidence of future DV.

Richland County defendants with a greater number of prior DV arrests also had a higher incidence of future DV arrests compared to defendants with fewer prior DV arrests. In addition, defendants who used a weapon during their original DV offense had a higher incidence of DV arrests than those defendants who did not use a weapon or who used a personal weapon. Similar to the prevalence analyses, male defendants had a higher incidence of DV than female defendants and older defendants had a lower incidence of future DV compared to younger defendants.

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<sup>35</sup> Due to the focus of this study, equality of coefficient tests were not conducted to assess any differences in the magnitude of the effects of the legal and extralegal factors on the recidivism outcomes.

The analysis of the incidence of DV re-arrests among defendants processed in Lexington County revealed results that were similar to those observed in the analysis of the incidence of DV re-arrests among defendants processed in Richland County. Defendants with more extensive criminal histories had a greater number of re-arrests than defendants with less extensive criminal histories. In addition, males had a higher incidence of future DV than females. Finally, Hispanics and older defendants had a lower incidence of future DV than Caucasian and younger defendants, respectively. No other factors impacted the incidence of future DV.

Table 6.6. Negative Binomial Regression Models Predicting the Incidence of Re-Arrest

	Richland County		Lexington County		<i>z-test</i>
	b	SE	b	SE	
Intercept	-2.05**	(.56)	-2.17**	(.59)	
Legal Variables					
# of prior DV arrests	.25**	(.08)	.31**	(.11)	
Prior DV convictions	.19	(.20)	.09	(.21)	
# of prior non-DV arrests	.02	(.01)	.05**	(.01)	
Dual arrest	-1.73	(1.03)	.23	(.46)	
Weapon	.38*	(.20)	.24	(.20)	
Victim injury	.05	(.19)	.31	(.23)	
Extralegal Variables					
Male	1.12**	(.39)	.88*	(.37)	
African American <sup>a</sup>	-.32	(.19)	-.16	(.20)	
Hispanic <sup>a</sup>	-.13	(.57)	-1.00*	(.49)	
Age	-.02**	(.01)	-.02*	(.01)	
Married; not cohabitating <sup>b</sup>	-.32	(.40)	-.01	(.44)	
Unmarried; cohabitating <sup>b</sup>	.04	(.19)	-.24	(.21)	
Unmarried; not cohabitating <sup>b</sup>	-.27	(.25)	-.19	(.33)	
Court Dispositions					
Nolle prosequi <sup>c</sup>	--	--	-.81*	(.42)	
Acquitted <sup>c</sup>	-.30	(.19)	-.50	(.46)	
Fine <sup>c</sup>	-.08	(.29)	-.11	(.27)	
Jail <sup>c</sup>	-.19	(.24)	.16	(.26)	
$X^2$	64.67		69.98		
<i>N</i>	1068		716		

\*\*  $p \leq .01$ ; \*  $p \leq .05$

<sup>a</sup> Caucasian is the reference category

<sup>b</sup> Married and cohabitating is the reference category

<sup>c</sup> Counseling is the reference category

### Time-to-Re-Arrest

The results from the analyses of the time-to-re-arrest for DV are displayed in Table 6.7 Defendants who were acquitted of DV in Richland County had a greater time to re-arrest compared to defendants who were convicted and sentenced to counseling. None of the sentencing outcomes impacted time-to-re-arrest. Among defendants processed in Lexington County, the effect of a prosecutorial dismissal just failed to reach statistical significance ( $p = .056$ ) in predicting time-to-re-arrest. None of the other court

dispositions and sentencing outcomes impacted time-to-re-arrest among defendants processed in Lexington County.

Table 6.7. Cox Regression Models Predicting Time-to-Re-Arrest

	Richland County		Lexington County		<i>z-test</i>
	b	SE	b	SE	
Intercept	--	--	--	--	
<b>Legal Variables</b>					
# of prior DV arrests	.37**	(.08)	.26**	(.08)	
Prior DV convictions	.23	(.20)	-.002	(.21)	
# of prior non-DV arrests	.02	(.01)	.04**	(.01)	
Dual arrest	-1.38	(1.01)	.37	(.44)	
Weapon	.29	(.20)	.24	(.21)	
Victim injury	.11	(.20)	.25	(.24)	
<b>Extralegal Variables</b>					
Male	.92*	(.40)	.85*	(.38)	
African American <sup>a</sup>	-.29	(.20)	-.07	(.20)	
Hispanic <sup>a</sup>	-.14	(.61)	-.75	(.47)	
Age	-.02*	(.01)	-.02	(.01)	
Married; not cohabitating <sup>b</sup>	.05	(.39)	.10	(.45)	
Unmarried; cohabitating <sup>b</sup>	.14	(.20)	-.17	(.22)	
Unmarried; not cohabitating <sup>b</sup>	-.24	(.27)	-.31	(.37)	
<b>Court Dispositions</b>					
Nolle prosequi <sup>c</sup>	--	--	-.83	(.43)	
Acquitted <sup>c</sup>	-.56**	(.20)	-1.09	(.60)	
Fine <sup>c</sup>	-.05	(.29)	-.12	(.27)	
Jail <sup>c</sup>	-.22	(.24)	-.27	(.29)	
$X^2$	88.74		65.97		
<i>N</i>	1068		716		

\*\*  $p \leq .01$ ; \*  $p \leq .05$

<sup>a</sup> Caucasian is the reference category

<sup>b</sup> Married and cohabitating is the reference category

<sup>c</sup> Counseling is the reference category

The results of the legal and extralegal factors impacting time-to-re-arrest among defendants processed in Richland County parallels the results for the other two recidivism outcomes. Defendants with a greater number of prior DV arrests were re-arrested more quickly than defendants with a fewer number of prior DV arrests. Male defendants took



less time than female defendants to be re-arrested, while older defendants took a longer time to be re-arrested than younger defendants. No other factors impacted time-to-re-arrest among defendants processed in Richland County.

The time-to-re-arrest results among defendants processed in Lexington County is also similar to the other two recidivism outcomes modeled for defendants in this county.

Defendants with a greater number of prior DV and non-DV arrests took a shorter time to be re-arrested than defendants with less extensive arrest histories. Males had a shorter time to re-arrest than female defendants processed within Lexington County. No other factors impacted time-to-re-arrest among defendants processed in Lexington County.

## CHAPTER 7

### QUALITATIVE RESULTS

This chapter illustrates the findings garnered from court observations and semi-structured interviews with court personnel in Richland County and Lexington County. Court sessions were observed over a seven month period between April 2012 and November 2012, and semi-structured interviews with court personnel occurred throughout 2012 and 2013. Each interview took approximately 1.5 to 2 hours to complete. Information from discussions with court actors before and after court sessions is included in this section as well. No interview or discussion was recorded; notes were taken on interviewees' responses and were transcribed onto a computer directly following the interview.

The mixed methodological approach employed in this study helps to provide an understanding of the operation of the two courts over the years and provides a context for better explaining the quantitative results. It also helps to identify other factors that might impact decision-making but could not be collected from court or law enforcement records, and therefore, were excluded from quantitative analyses. The qualitative component focuses on the realities of prosecutors and judges in specialized DV courts and the factors that impact their decision-making. This section does not speak to the effects of sanctions on recidivism because recidivism could not be directly observed unless a defendant was in court as a repeat offender. However, whenever possible and appropriate, court actors' perceptions of how court decisions impact recidivism will be

discussed.

### **Structural Differences Between the Courts**

Although the Richland County and the Lexington County CDV Courts were both established with the goals of vigorously prosecuting DV and employing treatment-oriented sentencing approaches, there are some structural differences between the two courts that may impact case processing.

#### **The Judge**

One distinction revolves around the stability of the linchpin of the court: the judge. In Richland County, the magistrate judges in the county rotate presiding over the court; in Lexington County, one judge has presided over the court for approximately 10 years.

In the literature, much discussion centers on the importance of having specialized, dedicated judges presiding over DV cases. It has been argued that specialized judges should be better able to monitor defendant behavior and compliance with court orders than non-specialized judges (Keilitz et al., 2000; Winick, 2000). Others have suggested that judges in specialized DV courts receive substantially more training on DV than judges in more traditional court settings (Labriola et al., 2009). Effective January 1, 2006, all magistrate and municipal judges in South Carolina – including both specialized and non-specialized DV judges – are required to receive annual DV training. During at least two of the years under study in the quantitative component of this study, however, judges may not have received training on DV. Despite the uniform DV training required for judges in both counties, there still appears to be differences in opinions regarding the effect of having one or multiple specialized judges. According to a Richland County judge,

There is a benefit to having rotating judges in that it gives a fresh look on things. One person having too much familiarity is not a good thing.

His response highlights one of the primary critiques of having one dedicated specialized judge: some have argued that increased judicial expertise regarding the dynamics of DV may lead to a loss of judicial neutrality accompanied by an increase in anti-defendant sentiments (Epstein, 1999; Keilitz et al., 2000 both discuss the critiques of specialized DV courts). Using this rationale, having multiple judges presiding in DV court would allow judges to remain grounded and further removed from cases because DV cases would not comprise the majority of their docket.

Alternatively, courts which have one stable, specialized judge may have an advantage because he/she may become more attuned to the dynamics of DV cases and would hear cases on a “one family, one judge” basis. For instance, if a defendant is convicted, sentenced to counseling, and then does not successfully complete his/her counseling, he/she is brought back before the court for a “show-cause hearing” so the judge can address the defendant’s non-compliance. When the same judge addresses a case from start to finish, case processing may be more efficient and the handling of all cases may be more consistent. According to a Lexington County prosecutor,

I think with multiple judges, judges do not have the ability to see the “frequent fliers” that come through the court. Some of these defendants are very conniving and great liars, and if it’s the first time the judge is seeing the defendant, he/she may be easily sucked into their lies. It is important to have someone who understands that. The dedicated judge needs to want to be there, and understand the dynamics in DV cases. If not, it can be damaging.

Despite the differences in opinions regarding one or multiple judges, judges in both counties insisted that what made the courts unique and important was *not* the specialized judges, but rather the other court actors involved in processing. A judge in Richland

County noted,

The biggest difference in a DV court is the dedicated prosecutor. With a dedicated prosecutor, you have a trained person prosecuting DV cases.<sup>36</sup>

A Lexington County judge went further to state that it is not the actual judge, but rather the coordination of individuals in the court which is central to the court's success.

According to him,

From the judicial standpoint, there is no difference in how we process cases [*between DV cases and other cases*]. The advantage of this court compared to other courts is the other actors involved. The coordination of everyone else is what makes this court successful. [*italics included for clarity*]

Both responses reflect unique characteristics of specialized DV courts compared to more traditional courts. In particular, a dedicated prosecutor(s) and coordinated service providers help distinguish the specialized DV courts from more traditional courts. Recall, vertical prosecution – an approach in which a single prosecutor works on a case from start to finish – and the coordination of service providers is common in most specialized DV courts (Labriola et al., 2009) and is evident in both courts under study.

Judges in both Richland County and Lexington County preside over other magistrate-level cases and both reported that they do not approach DV cases any differently. However, having multiple judges rotate the bench within a court compared to one judge could compromise consistency in decision-making. In support of this argument, significant differences in the conviction decision and one sentencing outcome between the two counties emerged in the quantitative analyses. These differences may simply be due to various policies between the courts; this will be described in greater detail below as well as in Chapter 8. However, the dissimilarities in conviction and sentencing could

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<sup>36</sup> In South Carolina, police officers customarily prosecute their own misdemeanor-level cases in magistrate and municipal courts.

also be a result of the judicial makeup of the courts. Although all judges receive similar annual DV training, differences in their personal, pre-office-holding attitudes and differences in their socialization to the judicial position could impact their decisions. At the very least, these factors could impact the extent to which consistent dispositions and sentences are meted out. A limited number of scholars have attempted to explore whether judicial decision-making can be affected by individual differences and experiences brought with them prior to taking the bench or whether common professional training and organizational similarities constrain these effects (e.g., Gruhl et al., 1981; C. Spohn, 1990a, 1990b; Steffensmeier & Britt, 2001; Steffensmeier & Hebert, 1999). This point will be expanded upon in Chapter 8.

### **Prosecutorial Role**

The courts also differ in the number of prosecutors, prosecutors' place of employment, and policies that may have restricted prosecutorial decision-making over time. When the Richland County CDV Court was first established, only one full-time prosecutor was employed. However, shortly after the court began operating, two part-time prosecutors were employed instead. Over the years, at least five prosecutors have held positions in the Richland County CDV Court. In the Lexington County CDV Court, one prosecutor has prosecuted all DV cases since 2001. The relatively high turnover of prosecutors in Richland County may be due to the increased pressure and emotional effect DV cases may have on court personnel (Epstein, 1999). Further, some have argued that assignment to a specialized DV court might be viewed as "high-risk, low-benefit, and consequently, undesirable" (Keilitz et al., 2000, p. 4). Although this was unconfirmed, it is a plausible explanation for the turnover of prosecutors in the court.

Such turnover may also lead to accountability concerns. As a prosecutor in Lexington County noted,

This court has historical consistency; there is accountability. If a CDV happens in Lexington County, no one has to go very far to figure out who the prosecuting attorney was. When you have the same people in the positions throughout the years, that is where you have the most accountability. When you have people in and out, that is where you may see prosecutors more likely to dismiss cases because ultimately, there is no accountability.

Because of a county-wide policy limiting prosecutorial decision-making in Richland County during the years under study, quantitative analyses could not be conducted to determine whether the rate of prosecutorial dismissals differed between the two courts.

The prosecutors in the two courts also differ in their place of employment. The prosecutor in the Richland County CDV Court have been funded under a VAWA grant and employed by the county Solicitor's Office. The prosecutor in the Lexington County CDV Court is employed by the Lexington County Sheriff's Department. The differences in employers may have had an impact on policies restricting prosecutorial decision-making, as well as an impact on the coordination between law enforcement practices and prosecution of DV cases. Regarding the former, during the years under study, the Solicitor in Richland County mandated a "no-drop, no-charge reduction" policy which severely limited decision-making by DV prosecutors. Prosecutors were not given discretionary authority to dismiss any DV case and only reduced a DV charge to a lesser charge if the victim-defendant household membership could not be established. Currently, no such policy exists in Richland County. Both during the years under study as well as currently, the prosecutor in Lexington County was under no such policy restriction.

Because prosecutors in Richland County did not dismiss cases in the years included

in the quantitative component of this study, all cases went forward in front of a judge, regardless of the prosecutor's belief about the convictability of a case or appropriateness of a conviction. Recall that the quantitative analyses illustrated that there were significant differences in the likelihood of conviction between cases in Richland County and Lexington County. It is possible, then, that the policy limiting prosecutorial decision-making during this time impacted the conviction rates. Uncertainty avoidance theory suggests – and prior research partially supports – the notion that prosecutors may be more likely to dismiss a case that lacks victim cooperation and/or substantiating evidence (e.g., Albonetti, 1986, 1987; Dawson & Dinovitzer, 2001). In fact, in Lexington County, strength of evidence was associated with a greater likelihood of prosecution. Under this assumption, then, it is possible that in some cases where victims were not present and no other evidence existed, a prosecutor in Richland County could have dismissed the case prior to going before a judge. This might have increased the conviction rate in Richland County because fewer non-convictable cases would come before the judge. This point will be also be discussed further in Chapter 8.

Further, as noted by the quantitative analyses predicting the conviction decision in Richland County, evidentiary strength was particularly important. Because the Lexington County Sheriff's Department employs the prosecutor in Lexington County, the prosecutor is more accessible to officers, more involved in policy decisions, and more involved with the operation of how deputies respond to DV cases. Thus, she may be able to better convey to deputies the pieces of evidence that are necessary for obtaining convictions in DV cases, even without a victim being present at court. In Richland County, however, the prosecutor is employed by the Solicitor's Office, which inherently



makes her less connected with the officers at the Richland County Sheriff's Department. Although the way deputies collect evidence and write down the facts of the case has improved over the years, a prosecutor in Richland County did note that "deputies don't always write it down the way it happened. They need to understand hearsay laws."<sup>37</sup> The difference in evidence strength may partially explain the effect of evidence in Richland County. Recall, there were significant differences between the strength of evidence in Richland County compared to Lexington County (In Richland County, mean = .92; in Lexington County, mean = 1.59; difference is significant,  $p \leq .01$ ). Thus, perhaps the more limited evidentiary strength in Richland County makes evidence a particularly important predictor for obtaining convictions in that county.

### **Attorneys**

Finally, the extent of legal representation differs substantially between the two courts. In the years under study and currently, public defenders and privately retained attorneys could represent defendants in the Richland County CDV Court. Public defenders did not represent defendants in the Lexington County CDV Court until 2013. Prior to 2013, defendants could request a court-appointed attorney or retain private counsel. As noted in the quantitative section, only 6 percent of defendants in Lexington County were represented by counsel while 32 percent of defendants in Richland County were represented. These differences likely occurred not only as a result of the presence of

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<sup>37</sup> Hearsay is a statement other than that made by an individual while testifying in court. In 2012, the Richland County Sheriff's Department allotted positions for two DV-investigators who help train officers about how to write proper incident reports and how to note excited utterances in incident reports. These investigators work closely with the prosecutor. An example of an excited utterance is as follows: *A victim runs out of the house towards an officer and screams "he just hit me" without any prompt from the officer to ask what happened.* A custodial interrogation (non-excited utterance that cannot be used in cases where victims are not present) is as follows: *An officer responds to a call to a DV incident, walks up to the house, and asks the victim who opened the door, "what happened here?"* Properly detailing exactly what happened at the scene and exactly what was said is extremely important to allow cases to go forward even without a victim present in court.

public defenders, but also because jury trials in Lexington County were sent out of the CDV Court and into the magistrate courts in the district where the offense occurred. It was my observation that many attorneys who came to first appearances with their clients requested jury trials in Lexington County. Even if these cases did not eventually result in a jury trial (i.e., the defendant decided to enter a plea), they were kept in the magistrate courts once they were transferred. In Richland County, all proceedings for DV cases occurred in the CDV Court.

The sheer number of defendants who were represented by attorneys in Richland County may account for some of the differences in the conviction decision. In fact, the quantitative analyses suggest that having an attorney reduced the odds of conviction. This finding likely reflects the ability of attorneys to better navigate through legal arguments and court proceedings than defendants who appear pro-se (i.e., represent themselves). Other themes pertaining to attorneys were evidenced through qualitative observations and interviews with court actors. These will be discussed below.

### **Themes Regarding Court Processing**

Despite some of the structural differences between the Richland County CDV Court and the Lexington County CDV Court, some general themes and consistency in case processing were identified.

### **Perceptions about Specialized Domestic Violence Courts**

Traditionally, DV cases in Richland County and Lexington County were heard in general magistrate courts alongside other magistrate-level offenses (e.g., simple assault, DUI). However, since both courts received federal funding to help establish specialized courts, neither court in either county has reverted to the generalized approach for

processing DV cases. Interviews with court actors in both Richland County and Lexington County provided overwhelming support of specialized processing of DV cases and cited reasons for keeping DV cases separate from all others.

Court actors believe that the nature of DV and the effects of a DV conviction substantially distinguish DV from other misdemeanor-level offenses. Although statutorily, the maximum penalty that can be assigned to one count of DV is similar to other magistrate level offenses, DV cases may have more collateral consequences than other cases.

As a judge in Lexington County noted,

You are dealing with families and households. It's not like these cases are just 'pay your 85 dollars' because someone was speeding. With these cases you are dealing with a lot of constitutional issues, such as taking away the right to own or possess a firearm.<sup>38</sup>

A prosecutor in Richland County also suggested that DV cases are different from other misdemeanor-level offenses due to the nature of the offense and the relationship of the parties involved.

Having a specialized court to deal with CDV cases allows the dedicated CDV judges to become more familiar with the cases and the CDV cases get the attention that they need. You know, they are unique cases. In other courts, CDVs are rushed through - they are 30 day misdemeanors; they are treated like any other case. You really need more time to deal with CDVs.

Her response reflects the understanding that DV cases require more time and resources than traditional courts may have to adequately respond to these cases. Recall, problem-solving courts, including DV courts, were established for a number of reasons, including the struggles of general courts to monitor defendant compliance with court mandates, and because of rising caseloads that may limit general court responses to crime

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<sup>38</sup> Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of any variant of DV to ship, transport, possess, or receive a firearm or ammunition.

(Berman & Feinblatt, 2001). The specialized nature of the court allows court actors to better understand and concentrate on the unique dynamics of DV cases and attempt to provide defendants, and victims in particular, more attention than they might receive in more traditional court settings.

The percentage of defendants prosecuted and convicted in the two courts supports the purpose of the specialized DV courts. In Richland County, 66 percent of cases resulted in a conviction; in Lexington County, 90 percent of defendants were prosecuted, and of those defendants who were prosecuted, 89 percent were convicted. Although these rates cannot be compared to rates in these counties prior to the establishment of the courts, they can be compared to prosecution and conviction rates in other jurisdictions.

Conventional wisdom has consistently noted low prosecution and conviction rates in DV cases, although more recently, scholars have acknowledged that the rates vary across jurisdiction (Garner & Maxwell, 2011). For example, Hirschel and Hutchinson (2001) reported 64 percent of DV offenders arrested in a southern jurisdiction were *not* prosecuted – the majority of cases were voluntarily dismissed by the prosecutor and the remaining were dismissed by the chief judge in the jurisdiction. Thus, the high prosecution and conviction rates in the two courts under study suggest that DV is prioritized, and that specialized processing of cases may provide the tools necessary for adequately responding to DV. This point is highlighted by a prosecutor in Lexington County who noted,

I think specialized courts are necessary for two main reasons. First, these courts coordinate service providers – mental health providers, PTI providers, counseling providers. These service providers are already low on resources so to have a specialized court with a set time that everyone meets better allows the providers to dedicate someone to be present at court. It is much more efficient than trying to coordinate with everyone at separate times. Also, having a specialized court sends

the message that crime is important and won't be tolerated.

Her response is two-fold. First, her response highlights the symbolic function of specialized DV courts. Advances in the response to DV continue to cast DV as a major societal problem worthy of the criminal justice system's attention. Specialized courts may educate residents that DV is a crime; send a message to victims of DV that the criminal justice system is aware of their plight and cares about their safety; threaten DV offenders that their behavior will not be ignored by the courts; and send a message to the entire community that DV will not be tolerated (see Stolz, 1999 for a discussion of symbolic politics).

At the court-level, her response underscores how the Lexington County CDV Court addresses efficiency concerns that may plague courts without specialized dockets. In more traditional courts, service providers are generally not present because at any given session, there is no guarantee that DV cases would be on the docket. Thus, a coordinated criminal justice response which includes service providers, law enforcement and other court agencies and organizations that would independently encounter victims and offenders in traditional courts, is essential in specialized court settings (Labriola et al., 2009). Furthermore, her response highlights the focus of therapeutic justice – specifically, defendant treatment – in specialized courts' responses to DV (Winick, 2000). Coordination of a number of service providers allows for the opportunities for defendants, victims, and others affected by the incident to receive services that allow them to improve upon their psychological and emotional well-being. Therapeutic justice has remained a staple of both courts throughout the years. In Richland County and Lexington County, the going rate for defendants convicted of DV is the maximum

sentence suspended upon 26 weeks of batterer treatment counseling with or without an additional fine to the court and with or without additional treatment recommendations (e.g., parenting classes). Approximately 70 percent of convicted defendants in both courts received this sentence, providing evidence of a treatment-based approach within the courts which is consistent with the problem-solving court movement and in-line with the philosophies of many specialized DV courts nationwide (Labriola et al., 2009). Although the prosecutors and judges in both counties were supportive of a treatment approach, they were quick to note that some defendants either do not deserve the opportunity for counseling or do not deserve more than one chance at counseling. These points will be expanded upon in the sections below which discuss prosecutorial and judicial decision-making.

### **Prosecutorial Decision-Making**

Although during the years under study policy restrictions in Richland County limited prosecutorial decision-making, currently, no such policy exists. During semi-structured interviews, a Richland County prosecutor was able to shed some light onto the factors that impact her decision-making in current cases. Unfortunately, the qualitative responses regarding prosecutorial decision-making in the Richland County CDV Court could not be quantitatively assessed.

**Prosecution decisions and sentence recommendations.** In neither county did prosecutors dismiss cases with regularity as might be the case in more traditional courts. The desire to prosecute defendants emerged from accountability concerns stressed by the prosecutors in both counties. According to a prosecutor in Richland County,

I don't do it [*dismiss cases*] often. I am scared to. In most of the cases, something happened. I certainly don't want to be the person to nolle pross a case and then

something happen. If the defendant says he/she didn't do it, then let's take it to a jury trial and let the jury decide. Domestic violence cases are just so volatile. *[italics included for clarity]*.

Prosecutors stressed that the possibility of future violence impacted their decisions. Although dismissing cases early on in the process would ease caseloads and provide more efficient processing of DV cases, prosecutors appear to focus more on accountability than efficiency when making decisions. According to a prosecutor in Lexington County,

I make the best decisions I can with what I know at the time. With every case, I think 'in two years, if one of these parties ends up killing the other, can I defend the decision that I made? You have to do your job. When dealing with domestic violence, the lazy and the 'I don't give a damns' get people hurt. Sometimes the easiest decision is not always the right decision. It would be the easy decision to see a case with no victim and just dismiss it right away. I'd have fewer cases and be less backlogged. But that's not necessarily the right thing to do.

Her response is consistent with the quantitative results. In Lexington County, 90 percent of defendants whose cases came to the court's attention were prosecuted. Prosecutorial accountability concerns in both of these courts may either reflect the specialized nature of the court or the increased knowledge among these court actors about the nature of DV cases. Although specialized DV training is not required for either prosecutor, both have either attended or put on training programs designed for court actors actively engaged in processing DV cases. Thus, they may be more aware of the unique dynamics in these cases and less likely to dismiss cases simply due to efficiency concerns.

Some general themes surrounding the predictors of prosecutorial decision-making emerged during interviews with prosecutors and observations of court sessions. These themes will be discussed below.

*Courtroom workgroups.* Prior to first appearances, prosecutors in both counties compile files on all defendants listed on the day's docket. These files include the arrest ticket or warrant, incident report, bond information, photographs, and any other evidence or information needed for prosecutors to address the case on the first appearance date. In each county, defense attorneys meet with the prosecutor to discuss the case, any options available, and strategies for moving forward. According to both prosecutors, their relationships with defense attorneys are generally positive. A prosecutor in Richland County noted,

My relationship with the defense attorneys in this court is very good. The public defenders know that if there are kids involved at all – for example, intermingled with the violence, let's say that the defendant pushed a child into a wall to get to the victim – I am not negotiating. In fact, I have probably already called DSS (*Department of Social Services*).

This suggests that courtroom actors in Richland County have come to accept and adopt into practice a local legal culture in the CDV Court. Legal culture shapes the behavior of individuals and characteristics of a court community; in these communities, values and perceptions of members of a court community and how they should behave and interact with others is pervasive (Eisenstein et al., 1999). Defense attorneys and the prosecutors make up two key components of the courtroom workgroup. Recall, researchers have identified courts as interdependent communities where legal decision-makers rely heavily on each other to make decisions and hold common beliefs regarding proper case processing (Eisenstein et al., 1988; Eisenstein & Jacob, 1977; Nardulli et al., 1988). Increased familiarity between the workgroup members can improve the efficiency of case processing because members are likely to be more familiar with the expectations of other members. This point is clearly illustrated by the above example in Richland



County. Further, the mere presence of attorneys as part of a courtroom workgroup may impact decision-making in Lexington County. According to a prosecutor in Lexington County,

I have heard my reputation is that I am a hard ass, but I am fair. I take a big picture approach. I will listen to their legal arguments, but most defense attorneys know that if their approach is to trash the victim or trash the responding police officer, I am not going to hear them out.

A prosecutor in Lexington County also discussed how familiarity between courtroom workgroup members can impact efficiency in case processing and at times, may impact her decision to offer a defendant the opportunity to enter into a diversionary program (e.g., PTI, other diversion program) or dismiss a case.

There are lawyers that I trust, and there are lawyers that I don't trust. Sometimes a lawyer will ask me straight up about PTI for a defendant and I say no. He then requests that we continue the case for a few months to see if the defendant has any additional issues. If I see that the defendant has no additional acts of violence, I may change my mind about PTI. As another example, there is one lawyer in particular that requires individuals to enroll in counseling as soon as he is retained. Starting counseling will always impact my decision to do more [*offer PTI, dismiss case*]. Basically, a lawyer can navigate the defendant through the criminal justice process, and the steps that he/she advises affect my position and decisions. [*italics added for clarity*]

The quantitative findings in Chapter 7 illustrate that being represented by an attorney was negatively related to prosecution in Lexington County. Combined with the qualitative response above, these findings suggest that the local legal culture in Lexington County is well defined so that attorneys understand that if they want their client to be eligible for prosecutorial leniency, they must abide by the informal rules set forth by the prosecutor. Further, it appears that lawyers can direct their clients to take steps (i.e., voluntarily begin counseling) that might impact prosecutorial decision-making in favor of either offering a defendant entrance into a diversionary program or dismissing a case.

*Dual arrests.* A theme also emerged regarding the impact of dual arrest cases on prosecutorial decisions. Theoretically, dual arrest cases would be met with a higher burden to prove a defendant's culpability (Albonetti, 1986, 1987; Steffensmeier et al., 1998). Two parties arrested alongside each other for DV may mitigate the blame placed on each individual and create greater uncertainty regarding who to blame for the offense. I observed a number of dual arrest cases in both courts. There were different strategies for dealing with these cases. According to a Richland County prosecutor,

Usually with dual arrest cases, if there is a public defender, then the case gets dismissed due to Fifth Amendment issues because there are usually no witnesses other than the victim, who was also arrested. In these cases, it is my strategy to determine who the primary aggressor is, nolle pross the individual who was *not* the primary aggressor, and then go after the other party for the charge. You can usually figure out who the primary aggressor is by pictures and looking at prior criminal history. In cases without a public defender, I can try to go after both individuals.

The above response highlights the difficulty with prosecuting dual arrest DV cases, especially when those cases are represented by attorneys who can make legal arguments designed to increase uncertainty regarding the party responsible for the offense. In addition, with dual arrest cases, the other party may invoke their Fifth Amendment right against self-incrimination. The strategy to dismiss charges against the individual not deemed to be the primary aggressor allows the prosecutor to reduce the amount of uncertainty when proceeding with a case, reduces issues of self-incrimination, and attempts to ensure that at least one party will be held accountable.

Determining the primary aggressor in a dual arrest case is not as simplistic as the above commentary suggests. Due to the dynamics in DV cases, it is difficult to disentangle the role each party played in the incident. According to a prosecutor in Lexington County,

You have to figure out ‘who is the batterer; who is the victim? Who is this person?’ Not everyone who gets arrested is a batterer; not everyone who gets arrested is a victim. In some cases, you have a true-victim that gets arrested. In other cases you have a victim get arrested that was the offender in this case, but a victim in the larger picture.

A prosecutor in Richland County described a case in which the latter was true.

There was this one case where the victim – he was a male - came to court and told us that he didn’t really want to prosecute the defendant. We tried to offer the defendant PTI but she insisted she didn’t do anything. A few weeks later she came to court and had a black eye. I asked her how she got that and she told me. I put it all together and realized she was the victim and he used the case against her as a way to control her. I nolle-prossed that case fast once I figured out what was really going on.

Although the responses by the prosecutors regarding dual arrests are consistent across the two courts, the quantitative results do not support this qualitative discussion. The effect of dual arrest on the prosecution decision in the multivariate models is in the predicted direction, but it is not significant. However, dual arrest and prosecution are negatively associated with each other ( $r = -.11$ ;  $p \leq .01$ , results not shown). The non-significance in multivariate models appears to reflect the greater importance of other measures (criminal history, strength of evidence, legal representation, and gender) on prosecutorial decision-making. The potential effect of dual arrest cases on prosecutorial decision-making, however, should not be discounted.

***Lethality and control.*** Prosecutors also rely on other defendant and case characteristics to make their decisions. Interestingly, control tactics in an incident were cited by prosecutors in both counties as indicators of whether defendants should be prosecuted, and if so, what sentence they might recommend to the judge. Recall, feminist scholars often emphasize that DV is a consequence of patriarchal values and attempts by males to maintain control over women (R. E. Dobash & Dobash, 1979). Johnson (1995,

2006b, 2008) identified this form of DV as intimate terrorism; it is distinguished by the degree of coercive control, the motivations for committing violence, and patterns of behavior in a relationship. Intimate terrorism cases may be most likely to come to the attention of the criminal justice system because they tend to be more severe, although it is important to remember that single incidents of situational couple violence may look similar to intimate terrorism. As a result, many of the cases brought to the attention of the criminal justice system may be situational couple violence. According to a prosecutor in Lexington,

I look for lethality indicators; I look for signs of contempt of women. When there are things like forced sex, degradation in front of people, violent acts in front of children, offensive language that is used, if a victim tells me the offender is obsessed with porn. Violence in public and in front of children indicates to me that this is an ongoing issue. I look for power and control dynamics, and evidence of emotional terrorism. There is a difference to me between someone who says ‘I am going to slit your [expletive] throat’ and someone who destroys a phone so the victim cannot call for help. Although the former is awful and should never be said, a threat does not necessarily indicate action. Someone who destroys a phone acted upon that and took away the ability for the victim to call for help.

A prosecutor in Richland County also mentioned that she is less likely to dismiss cases against defendants with characteristics of controlling behavior.

I look at the prior record, the level of violence. If it’s a choking case or a biting case...no. Biting? That’s control. So many times, though, those are going to go away (*i.e., judicially dismissed or found not guilty*) because the victim is not going to show up because she/he is scared. [*italics included for clarity*]

The quantitative analyses did not control for specific acts of DV. However, the analyses did control for lethality measures such as the use of a weapon during the commission of the incident and injury to the victim. Neither variable exerted significant effects on prosecutorial decision-making. Perhaps weapon use and injury to the victim are not ideal measures for capturing “contempt” of women and lethality. The null

findings might also reflect the limited variation in weapon use and injury to the victim in the DV cases brought to the attention of the two courts; cases with more serious weapon use and injuries to the victim may be outside the purview of the specialized CDV Courts which address misdemeanor cases only.

Furthermore, prosecutors in both counties made mention that a defendant's criminal history and acts of defiance and control impacted their sentence recommendations to a judge if the defendant is found guilty or pleads guilty or no-contest. Recall that the sentencing norm in both courts is to recommend 26 weeks of counseling with or without an additional fine and with or without additional treatment requirements (e.g., parenting classes, alcohol/drug counseling). However, prosecutors sometimes deviate from the going rate in sentence recommendations made to the judge. A prosecutor in Richland County said,

Generally I look at their prior record. If they have a number of simple assault convictions or assault-high and aggravated convictions then you start figuring out it could be the same victim as in this DV. If he has a record a mile long, I don't mind asking for jail. If he pleads, I am usually not going to recommend anything – I'll leave it up to the judge. But if he has a record a mile long, a number of prior convictions, requests a jury trial, and is found guilty, I don't mind requesting jail. It's a defiance thing then, a control thing. But you know, for a lot of people, 26 weeks in DAC (a local treatment center for DV offenders) is tougher than 21 days in jail. It is a tough sentence.

A prosecutor in Lexington County also mentioned the importance of therapeutic approaches for defendants in the specialized court, but suggested she sometimes deviates from recommending the going rate in favor of a non-counseling involved sentence.

I believe in a therapeutic-punitive approach. I like to give people the opportunity to make changes. For the majority of defendants in this court, I recommend counseling. However, when I look at a defendant and see that counseling is going to be a waste of time, or the defendant is going to be disruptive in counseling and affect the group, I'll recommend straight jail time. If the defendant is going to be disruptive in counseling, he/she will interfere with the group process and may

reduce the likelihood of others succeeding. In this court, however, rarely do people walk in free [*bonded out of jail and came to court on their own*], plead, and then go to jail. [*italics included for clarity*]

Her response was corroborated by observations made in Lexington County. Often times, when defendants came through the court and were previously convicted of DV but it was unknown or unclear whether the defendant had the opportunity to attend counseling in the past, the prosecutor would recommend counseling. However, for those defendants who had come through the court multiple times and had previously received the opportunity for counseling, the prosecutor was less amenable with her recommendations. Put succinctly, she noted,

I am willing to work with people and give them opportunities to better themselves. If they still fail, then I have no problem with giving them jail.

She further noted,

There is also a general “ick” factor. You just know something is off; we know more than we think we know because we are constantly processing information. If I just get a general “ick” feeling about someone, I’ll recommend jail time. In the 12 year I have been doing this, I can only count on my hands and toes the number of times that has happened.

The degree of violence involved in the incident and the defendant’s criminal record may contribute to the “ick” factor and impact sentencing recommendations. In one particular case, a defendant did bond out of jail, came to court on his assigned court date, and his victim was also present at court. Under typical circumstances described by court actors, this case would receive a sentence of counseling. However, there were specific attributes about the crime itself, the defendant’s past criminal history, and his demeanor that impacted the prosecutor’s sentence recommendation.

*The prosecutor read the facts of the case which included the defendant throwing the victim down on the bed and pinning her down. When the victim tried to call police, the defendant took the phone and threw it. He then spit in the victim’s face*

*and punched her.*

*Prosecutor:* “Your honor, in this case we request jail for 30 days. Based on the level of force in this particular incident, and a previous conviction for assault with intent to kill, we feel that counseling would be a waste of time”

The quantitative findings did not speak to predictions of prosecutorial sentence recommendations. This information was not included in court files. However, factors that impact prosecution decisions may also impact recommendations. The quantitative results illustrated the defendants with more extensive non-DV criminal histories were treated more harshly by the prosecutor.

***Quantitatively unmeasured factors.*** Based on my observations and interviews with court personnel, other potentially important influences not accounted for in the quantitative portion of this study could impact prosecutorial decisions. In particular, prosecutorial decisions and actions may also be impacted by victim cooperation and victim presence in court. Historically, prosecutors were more likely to dismiss cases involving intimate partners because victims would often recant their stories and not want to press charges against their abusers (e.g., Sanders, 1988). The uncertainty avoidance theory (Albonetti, 1986, 1987) underscores the importance of victim credibility and cooperation for understanding prosecutorial decisions to continue forward with cases. In specialized DV courts, this is no exception.

The state of South Carolina operates under a no-drop policy for DV cases whereby cases cannot be dropped based solely on victim request. However, there are legal limitations to what prosecutors can do without victims’ cooperation. The Confrontation Clause in the Sixth Amendment to the Constitution notes the defendant’s right to be confronted by the witnesses against him (or her). *Crawford v. Washington* – a case heard by the United States Supreme Court in 2004 – helped clarify the Confrontation Clause

and had significant implications for DV case processing. According to the decision in *Crawford v. Washington*, the introduction of a statement made during police interrogation, where the witness is unavailable at trial and had never been subjected to cross-examination, violates the Confrontation Clause of the Sixth Amendment. Thus, statements made under police interrogation are not admissible to the court if the victim does not appear at court to testify. Although the Confrontation Clause is certainly important for providing due process, it does place limitations on the extent to which DV cases can be prosecuted without a victim. Unless a 9-1-1 call for help is made by victims or others, and/or statements are made spontaneously and not under police interrogation, hearsay statements may not necessarily be admissible in court. As a result, other forms of evidence become particularly important.

According to a prosecutor in Richland County,

CDVs are more frustrating than other cases. Even though I used to be on the other side of law [*defense versus prosecution*] I did not have to rely on the cooperation of the victim. With CDV cases, you are dealing with a lot of word-of-mouth circumstances. [*Italics were included for clarity*]

In Richland County, I observed an interesting trend in cases involving absent victims. If an attorney represented a defendant and he/she noticed that the victim was not present at court, the defense attorney would often enter a motion for the case to be dismissed due to “lack of prosecution.” If the prosecutor and the DV investigator could not successfully contact the victim prior to court, the case was generally dismissed by the judge. If the victim did appear at court and did want to go forward with the charges, defense attorneys would often request a jury trial to be rescheduled for another date. According to a DV Investigator in Richland County,

When there is no victim, they [*defense attorneys*] jump on it to not go forward



with a case. If a victim does show up at first appearance, the attorney generally requests a jury trial. So now the victim has to sit in that room and take off from work and sit for hours and the case is just scheduled for a jury trial. The victim tells me they can't take off another day. It's a game that the defense attorneys and the prosecutor play. We're going to lose victims over a longer process. *[italics included for clarity]*

Although similar tactics were likely used by attorneys in Lexington County, it was less clear to me due to the fewer number of attorneys representing defendants whose cases remained in the CDV Court. However, the prosecutor in Lexington County did indicate that when victims do not show for scheduled court sessions, their absence invokes some questions:

When a victim doesn't appear at a bench trial, my first thought is that the victim's participation was compromised. If I have some reason to believe the defendant did something to compromise the victim's presence, then I will request a jury trial. To just dismiss the case because the victim wasn't there would not be doing my job. You can go forward with a case without a victim, but you need to comply with the rules of evidence. 9-1-1 tapes with cries for help, witnesses, photographs – those can all help. But if you have delayed reporting and no victim come to court, it is going to be virtually impossible to go forward.

The victim's presence in court is particularly important, even if other pieces of evidence implicate the defendant. For example, in one Richland County CDV Court case, a victim was not present at court, but the case went forward with a bench trial because the detective who actually witnessed the assault was present in court. The detective told the Court that he witnessed the assault take place when he was working duty at a movie theater. He said he saw the female defendant punch the male victim in the chest. During cross examination, the public defender representing the defendant argued that neither party had sustained any injury, and the detective could not prove that the defendant intended to inflict injury unto the victim. The defense attorney further stated that the victim was not present in court, so "clearly" he did not want to go forward with the case. Although the prosecutor argued that the act of punching someone is inherently intended

to cause injury to another person, the defense countered and said that simply making contact with a punch is not sufficient. The judge ruled the defendant was not guilty.

This scenario highlights the salience of victim presence and victim testimony in DV cases. The defense attorney in the above case used the victim's absence from court as an indication that the victim "clearly" did not wish to go forward with the case, attempting to reduce perceptions surrounding the culpability of his defendant and the harm inflicted upon the victim. Although research provides evidence that victim's absence from court certainly does not provide indisputable evidence that the victim was unharmed (e.g., Berk et al., 1984; Carlson & Nidey, 1995; Felson et al., 2002; Felson & Pare, 2005; Wolf et al., 2003), in certain cases, it is virtually impossible to go forward without victim presence.

During the years in the quantitative portion of this study, victim's advocates – individuals who help provide services to victims, explain court processing, and provide general support to victims of DV (Tomz & McGillis, 1997) – were actively present in both courts. Research has found that prosecutorial ability to obtain victim cooperation in court proceedings, and subsequently reach guilty dispositions, can be positively impacted by services provided by victim's advocates (Camacho & Alarid, 2008). However, over the years, the presence of victim's advocates in the courts has changed, particularly in Richland County.

Back in the day, the victim's advocates were engaged. They contacted the victims before we even got the case file. They usually snagged the victims at bond court and they kept in constant communication with victims, which kept them in the loop. They used to come into the courtroom and communicate with me.

In response to whether victim's advocates could help with the issue of victims failing to appear for court, a Richland County prosecutor said, "I think we can make a small dent in some of them".

A prosecutor in Lexington County reinforced her concerns:

The victim's advocate's relationship with the victim can make or break a case. If the victim comes and sits in a room and no one explains to him/her what is going on, he/she is probably not going to come back to court.

In Richland County, the victim's advocates associated with the Sheriff's Department and the Solicitors Office tend to be preoccupied with other cases, such as murder cases and kidnapping. The lack of a dedicated victim's advocate in the Richland County CDV Court, then, requires that the DV investigator and prosecutor also take on the role of victim's advocate. Prosecutors in both counties cautioned about the potential harm in individuals *other than* victim's advocates taking on the role of support system for the victim. A prosecutor in Richland County noted,

Now, here you have [the CDV investigator] and I going 30 mph because we have 30 victims we need to talk to. We don't get to spend the time with them we need. They have needs that the victim's advocates can be all over. Those women [*the victim's advocates from the past*] would come in with so much information available. [*italics included for clarity*]

According to a prosecutor in Lexington County,

The important thing to recognize is what your role is. It is my role to hold offenders accountable, make sure that due process is being protected, and make sure the system is fair. I am not a victim's advocate. I don't think prosecutors' goals and victim's advocates' goals are necessarily simpatico. I think when prosecutors serve as victim's advocates it impacts their ability to do their job.

Thus, the presence of victim's advocates and the ability of these advocates to connect with the victim can impact the role that the prosecutors in both counties must take on for DV cases. Specifically, successful victim advocacy may impact the odds of a victim coming to court, which may increase the odds of successful prosecution, and subsequently impact the likelihood of conviction. Both prosecutors noted the importance of having dedicated victim's advocates in DV court.

Prosecutors in both counties made it clear, however, that victim cooperation and victim testimony were not the only important predictors of their decisions. In fact, evidentiary strength – as postulated by the uncertainty avoidance theory (Albonetti, 1986, 1987) – can significantly impact prosecutorial decision-making. Prosecutors rely on evidence – photographic evidence, officer testimony, witness testimony – both with and without victim cooperation. However, victim presence and cooperation in prosecution appear to be valuable tools to prosecutors. The limitation of not including measures of victim presence, cooperation, or contact with victim’s advocates cannot be glanced over. Both prior research and qualitative interviews with court actors suggest that these victim-related-variables are integral to court processing. This limitation will be discussed in greater detail in Chapter 8.

### **Judicial Decision-Making**

**Conviction decisions.** As evident in the quantitative results, certain case characteristics do impact the likelihood of conviction.

**Evidence.** Upon speaking with judges in both counties and observing courtroom sessions, strength of evidence was identified as a salient factor for understanding the conviction decision. Increased evidence corroborates claims that a crime occurred and the defendant should be held accountable.

According to a judge in Lexington County,

Guilt/innocence has to be decided with proof beyond a reasonable doubt that an individual committed the crime. To establish proof beyond a reasonable doubt, I look at things such as evidence, testimony, and secondary eyewitness testimony to back up statements. Evidence can be backed up with photographs, for example. When it’s a he said-she said case...those get tough.

The quantitative findings suggest that evidence was particularly important for

understanding the conviction decision within Richland County, but not in Lexington County. The magnitude of the effect of evidence did not differ across counties, however. These findings may reflect two things: first, the variation in the conviction decision in Lexington County may be too limited to uncover a significant effect of evidence. Second, there were significant differences in the strength of evidence between the two counties, where the strength of evidence was greater, on average, in Lexington County compared to Richland County. This might suggest that Richland County judges see a greater variation in strength of evidence, which might substantially impact their decisions.

**Sentencing decision.** Once a defendant is convicted of DV, the judge can determine the appropriate sentence. Judges in both counties noted the importance of providing defendants the opportunity to attend counseling. According to a judge in Lexington County,

I think having treatment is a valuable tool, but on the same token, there are many times where my gut tells me the treatment is not going to help. Anytime I have the opportunity to stop the cycle *[of violence]*, I try to. Also, to me, 30 days in jail would be horrible. But unfortunately to others, it is just a way of life. I want to be able to give someone the opportunity to change their life with counseling. Maybe the defendant is that kid who was brought up in the home with domestic violence. Maybe that is all they know. *[italics included for clarity]*

Similarly, a judge in Richland County said,

For first time offenders, counseling probably has an effect *[on future offending]*. I am sure jail does too. But I would hope counseling does because the counseling is geared toward the specific conduct they are in court for. *[italics included for clarity]*

These responses are supportive of the quantitative findings: approximately 70 percent of convicted defendants in both counties received a sentence mandating them to attend counseling. Furthermore, the quantitative and qualitative findings are consistent with the

therapeutic approach adopted by many specialized courts (Labriola et al., 2009). Unlike traditional courts where sanctioning practices for more culpable and blameworthy defendants may focus more on incapacitation, the specialized courts under study focus more on treatment and providing opportunities for defendants to address the issues leading to DV. This is the case even for defendants who are no longer intimately involved with their victims. Judges in these two specialized courts may be more trained than judges in non-specialized DV courts to understand that DV defendants may displace their violent behaviors on other victims in the future. In one case, a defendant in Richland County pled guilty to DV, but was no longer intimately involved with his victim. The prosecutor made a sentence recommendation in the case:

*Prosecutor:* The state recommends the minimum fine in this case, Your Honor.

*Judge:* The sentence of this court is 30 days suspended upon 26 weeks counseling and the minimum fine.

*Prosecutor:* Your Honor, although it is ultimately your decision, we did not request counseling. The defendant and the victim are not around each other anymore.

*Judge:* If he had a problem in this relationship, he is going to have issues with the next woman too.

The above scenario is not supportive of the quantitative results: in both Richland County and Lexington County, overall, relative to defendants who were married and cohabitating with their victims, all other defendants were less likely to receive counseling and more likely to receive jail time. It is possible, however, that sentencing decisions were also impacted by victim presence in court and their wishes regarding sentencing. Judges often asked victims who were present in court what sentence they would like to see handed out. Unfortunately, these measures were not included in the quantitative portion of the analyses. This limitation is discussed further in Chapter 8.

It is important to note that simply meting out a sentence other than jail does not

suggest leniency on the court's end. The judges make it clear when speaking to defendants that they must *successfully* complete the suspended sentence.

*A Lexington County judge to defendant: "Successfully complete does not mean just sitting in a chair. It means participating. They [the treatment center] send me updates. If I look through these updates and don't feel like you are doing your job, you get the original sentence." [italics included for clarity]*

Thus, although judges may sentence someone to attend counseling, it does not necessarily mean that the defendant will not spend time in jail. If he/she does not successfully complete his/her suspended sentence, then the original sentence will likely be imposed. This is important to remember, especially when taking note of the quantitative analyses which suggest that imposing a suspended sentence has no influence on recidivism. In separate semi-structured interviews with me, a judge in Lexington County followed up on this point,

*Life is pretty simple. Do what's right and take advantage of the opportunities presented to you. If you don't take advantage of the opportunity [to do counseling], accept the penalty. I like being able to give someone the opportunity to better themselves. [italics included for clarity]*

***Deviations from the "going rate"***. Despite the clear goals of treatment in the specialized courts under study, the quantitative results illustrate some variations in sentencing. In both counties, approximately 30 percent of convicted defendants received sentences other than counseling. In particular, judges in both courts argued that past criminal history is an indicator that counseling may not be particularly effective.

According to a judge in Lexington County,

The best indicator of future behavior is past behavior. Let's say someone already had the opportunity for counseling and they have a long criminal history of violent crime – things like simple assaults, etc. I see that pattern and I see we're not going to break the cycle. Counseling isn't going to work for some people and those people can sit in jail for their sentence. Some cases are just so volatile that repairing the family is not as important as protecting the victim.

His response is partially supported by the quantitative findings in Chapter 6. In Richland County, but not Lexington County, defendants with more extensive criminal histories were more likely to receive a jail sentence compared to counseling. The magnitude of these effects did not vary across county, however. In addition, in both counties, the likelihood of imposing a jail sentence compared to counseling was impacted by the victim-defendant relationship, so it could be that judges perceive victim-offender relationships with less social controls (e.g., cohabitating but not married) as potentially more volatile than other relationships. Prior research has found some evidence that cohabiting, unmarried couples have particularly high levels of violence in their relationships (Stets & Straus, 1989; Yllo & Straus, 1981). Cases involving separated husbands and wives may also be volatile because of the stress and heated emotions typically involved in legal separations and/or divorce.

I observed an example of a judge's latter concern regarding the appropriateness of counseling for a young male defendant who had not bonded out of jail on his DV charge; his young, cohabitating, pregnant girlfriend was present at court. The defendant told the judge he wanted to receive counseling.

*Judge:* "If you get out today and go to counseling, you understand there are restrictions, right? You are to have absolutely zero contact with her. If you do not complete counseling, I am going to put a bench warrant out for your arrest and you will receive no good time – nothing for the time you've done."

*The victim then informed the victim's advocate and the prosecutor that she was in fear for her life. She stood before the judge and told him she was in fear for her life, her family's life, and her unborn child's life. She told the Judge she wanted the defendant to stay in jail at least until the hearing for a protection order against him.*

*Defendant:* "I just want to put this behind us and raise a child. I am sorry."

*Judge:* "Let me tell you what concerns me. She doesn't appear to want anything to do with you. Your statement seems like a statement from someone who doesn't



understand ‘no’. I am going to go with my gut – you are going to do 30 days in jail. I’ve been doing this for nine years; I have heard a lot of stories. Everyone in Lexington County who has been arrested for CDV has come before me. I consider myself a pretty good judge of character. And before this, I was in a position to read people. I am going to go with my gut – you’re going to do 30 days.”

In the above case, the judge believed that the defendant would not successfully complete counseling and would be a greater risk to the victim if he were out in the community than if he were incarcerated in jail. The above scenario supports the focal concerns perspective that judges are especially concerned with protection of the community – in DV cases, protection of the victim (Steffensmeier et al., 1998). While it could be argued that counseling might benefit the defendant in the long-term, regardless of whether he stayed in a relationship with the victim, the judge viewed that in this particular case, immediate victim safety was the most important concern. Although 30 days in jail is only a limited amount of time, it does give the victim some leeway to obtain protective orders and move away from the home that she cohabitated with the defendant.

A judge in Richland County also mentioned that for some defendants, counseling will serve no substantial purpose. According to him,

I will sentence someone to jail who demonstrates that counseling won’t benefit them. Maybe they have a history of domestic violence 10 years back, or maybe they have an alcohol problem.

***Quantitatively unmeasured factors.*** Based on my observations, it is also likely that other factors unmeasured in the quantitative portion of this study may impact judicial conviction and sentencing decisions. Similar to its effect on prosecutorial decisions, victim and victim presence may impact judicial decisions. Unfortunately, these measures were not uniformly recorded in court and prosecutor files. In addition, interactions

between defendants and judges and the degree of deference shown to the Court may also impact judicial decisions. It was impossible to capture these interactions in the quantitative analyses because they were not recorded in court or prosecutor files. The limitations of these exclusions are noted in Chapter 8. A discussion of how they might impact decisions is provided here.

*Victim presence and wishes.* It has already been identified that victims can serve as invaluable tools for prosecutors and aid with reducing uncertainty in decision-making. Victim presence appears to have a similar effect on judicial conviction and sentencing decisions. The philosophies of the two courts appear to differ in regards to victim presence and victim preferences. A judge in Richland County was asked how DV cases can proceed without a victim, and he replied:

It doesn't happen often. I have found someone guilty without a victim, though. There were good photographs, evidence, and officer testimony. Cases where victims recant hardly ever make it to trial. That is a help to the court because those are difficult cases.

A judge in Lexington County had a slightly different perspective on the effect of victim presence on court processing:

Can proof beyond a reasonable doubt only be established with a victim present?  
No. There is so much more you can do. Think about it – how do you prosecute a murder? Do you bring the victim in?

These two responses and philosophies regarding victim presence differ substantially from one another. In Richland County, it appears that more emphasis is placed on victim cooperation than in Lexington County. It could be that because attorneys are more commonplace in the Richland County CDV Court, they are able to make more convincing legal arguments to the judge as to why a defendant should be acquitted of a DV charge if his/her victim does not appear in court. Further, the independent sample t-

tests in the quantitative section suggest that the strength of evidence in Richland County significantly differed from the strength of evidence in Lexington County. Thus, with less evidence available, Richland County judges may be more dependent on victim cooperation. In Lexington County, however, the strength of evidence was greater, so the judge may be less constrained by victim presence in court.

Furthermore, according to at least one judge and based on my observations, judges often consulted victims who were present in court about what type of sentence they would like their defendant to receive. Although victim preferences were not always followed, there was evidence that judges at least considered victims' wishes. Based on my observations, it is possible that the inclusion of victim presence and sentencing preference would impact the quantitative results. Unfortunately, this data was not available. The impacts of these limitations are provided in the next chapter.

*Deference exchange.* The degree to which case proceedings follow a normative process (e.g., defendants receive the going rate) may be partially determined by the informal dynamics between individuals in the courtroom. The extent to which the judge-defendant informal dynamic reinforces a deference exchange and upholds the authority of the judge may dictate the degree of normative case processing. The judge is the sole arbitrator in the courtroom, held in the highest regard, and is considered to hold the power of the courtroom. Eisenstein & Jacob (1977) express this point by describing that “he represents the ideals of justice, he sits above the others, wears a robe, and requires all others to show visible respect for him by addressing him as “your honor” and by rising when he enters and leaves the courtroom. No one may openly criticize him in the courtroom; he may charge those who do with contempt of court (not contempt of the

judge) and fine or imprison them on the spot....” (1977, p. 22).

As such, the courtroom is run by inherent rules which dictate that the defendant must show deference to the judge. Due to his occupational role as arbitrator of the court, the judge is considered the individual with higher status and authority than the defendant. Deference patterns that openly counter the authoritative position of the individual with higher status (i.e., the judge) can result in potentially hostile interactions (Lanza-Kaduce & Greenleaf, 2000).

My observations uncovered that the lack of deference and respect impacted sentencing in the courts – especially in Lexington County. Lack of deference and respect may be behaviorally-induced. A defendant’s body language, eye contact, or actions may display ill-appreciation to the Court. Such behavioral displays may suggest that the defendant is outwardly displaying resistance to authority. While generally a judge will not modify sentences based on defendants’ body language and behavioral actions, he will certainly correct the defendant and imply proper courtroom behavior (e.g., ‘Don’t sit down when you are talking to me;’ ‘Don’t walk away when I am talking to you’). In addition to behavioral displays of disrespect, the judge may perceive verbal exchanges to reflect a defendant’s lack of deference. The most common examples are speaking quietly when addressing the judge or interrupting the judge when he is speaking to the defendant or any other court actor. Depending on the severity of the disrespect, the informal dynamics between the judge and the defendant may impact judicial sentencing decisions.

As an example, a young male defendant who was being held in jail on a property offense in a separate county came before the Court on his DV charge and pled no-contest. When the judge asked him if he understood what entering a plea of no-contest meant, the

defendant said yes. After the judge reminded the defendant that pleading no-contest carried the same penalty as a guilty conviction but in no-contest pleas the defendant was neither admitting to nor denying the facts of the case, the defendant said sarcastically “change it to guilty.”

*Prosecutor:* “Judge, the State is fine with credit for time served”

*Judge:* “I am not. Life is about attitude and manners. The sentence of this court is 30 days to run consecutive to any other sentence.”

This case clearly illustrates the reciprocal relationship between case processing and the informal dynamics between the defendant and the judge. Unfortunately, defendants’ demeanor and attitude are not noted in court or prosecutorial files and cannot be controlled for in quantitative analyses. However, as evidenced by my observations, they can substantially impact sentencing. Defiance and lack of respect to the court may instill perceptions that defendants are less likely to benefit from counseling, more likely to be disruptive in counseling, and more likely to be re-arrested because of their overall attitudes and contempt for authority. The limitation of not being able to control for these factors is discussed in Chapter 8.

It is possible that these informal dynamics were more noticeable in Lexington County compared to Richland County because Lexington County has one dedicated judge rather than rotating judges. Although the judge in Lexington County also presides over other cases, he sees DV cases perhaps more consistently than the judges in Richland County. Thus, he may be more attuned to the courtroom control attempts of defendants, attitudes of defendants, and DV dynamics than other judges.

Overall, judges must take into consideration all of the information they have in front of them to make their decisions. In DV cases, this is likely not particularly easy.

According to a judge in Lexington County,

I'll tell you the hardest part of this job is the fear of not doing enough. But I always do everything I can do. For example, say you have someone come into bond court arrested on a DUI, but they don't have any prior record...they just went out, drank too much, and made a mistake and got behind the wheel of a car. Let's say I don't hold them in jail because they don't have a record at all. Then the next day, they go out, get drunk and drive again and kill someone. Now I feel that's on me. But I've learned that I don't have a crystal ball to predict what is going to happen...you are dealing with human nature. That's tough. But that is how I've grown in general doing this job in all courts... but in particular with this court. My affirmation is doing the right thing.

## CHAPTER 8

### DISCUSSION AND CONCLUSION

The quantitative analyses in Chapter 6 and the qualitative component in Chapter 7 provide insight into the response of two specialized DV courts in South Carolina and how court decisions impact future DV offending. This chapter summarizes and discusses the findings regarding the predictors of prosecutorial and judicial decision-making in the context of broader criminal justice theories and prior research. In addition, the effects of court decisions on recidivism are discussed. There are several main conclusions that can be drawn from this study.

The findings reported here clearly indicate that DV is prioritized in both Richland County and Lexington County. Contrary to more traditional arguments that DV defendants are rarely prosecuted or convicted (e.g., D. Hirschel & Hutchinson, 2001), prosecution rates in Lexington County and conviction rates in both counties were relatively high. However, there were significant differences in dispositions and sentencing between the two courts.

Philosophies supportive of therapeutic justice for DV defendants are pervasive within both courts. The treatment-orientation approach of the two courts in this study is consistent with many, albeit not all, specialized DV courts nationwide (Labriola et al., 2009) and the overall philosophy of the problem-solving court movement (Berman & Feinblatt, 2001).

In addition, the findings from this study lend only partial support for applying general

theories commonly used in studies of courtroom decision-making to specialized DV courts. Although legal, case processing, and extralegal factors impacted prosecutorial and judicial decisions in the two courts, the effects of certain variables were not as salient as uncertainty avoidance (Albonetti, 1986, 1987), attribution (Albonetti, 1991), and focal concerns (Steffensmeier et al., 1998) theories would generally assume. The findings may be driven by court actors' perceptions regarding the uniqueness of DV or by the structural differences between traditional courts and specialized courts. Furthermore, although the two courts differed in terms of policies, conviction rates, and sentencing outcomes, there were few differences in the magnitude of the effects of the predictor variables across the two counties, suggesting that decision-makers in both counties acted more similarly than different.

Defendants in both counties were equally likely to be re-arrested for DV, had similar incidences of re-arrest, and similar amounts of time from disposition to re-arrest. Thus, despite differences in conviction rates and sentencing outcomes between the two courts, no significant differences emerged in the rates of recidivism.

Finally, there appears to be a limited effect of courtroom decisions on future DV recidivism. Defendants whose cases were dismissed by the prosecutor (Lexington County) had fewer re-arrests for DV than defendants who were convicted and received a sentence mandating that the defendant attend counseling. Among defendants processed in Richland County, those who were found not guilty, were less likely to be re-arrested and took a longer time to re-arrest than defendants who were convicted and given a counseling sentence.

Each of these main conclusions is expanded on below.



### **Domestic Violence Cases are Prioritized**

Prosecution and conviction rates in both counties were substantially higher than conventional wisdom would suggest. In Lexington County, 90 percent of cases were prosecuted, and of those cases, 92 percent resulted in a conviction. In Richland County, 66 percent of cases resulted in a conviction.

The high prosecution and conviction rates in both counties may be affected by South Carolina's no-drop policy which mandates that victims cannot willingly drop cases against their abusers. Instead, the State (i.e., prosecutor) pursues charges against the defendant. As noted earlier, no-drop policies are a source of contention among scholars. No-drop policies pit arguments of protection of victims and ensuring justice prevails against notions that victims are disempowered when their own decision-making capacities are taken from them. Despite the existence of no-drop policies in South Carolina, a prosecutor must still adhere to the defendant's right to confrontation as stipulated in the Confrontation Clause. Thus, it could be argued that a prosecutor can only do so much beyond filing charges without victim cooperation and victim presence in court. Recall, during the qualitative component of this study, I detailed the importance of victim presence in court even in cases with other pieces of evidence implicating a defendant in his/her offense. Thus, although victims cannot *request* that a case be dropped, their actions (i.e., absence in court) could increase the odds that a case be dropped. This sets up a unique nexus between victims' presence in court, defendants' right to confrontation, and courtroom decision-making. Although failing to obtain victim cooperation may complicate prosecutorial attempts to obtain a conviction in DV cases, it is not impossible. In particular, statements about what occurred at an incident that were

made by a victim when he/she was not under interrogation are admissible into court even if a victim does not show for the court proceedings. For example, excited utterances made by victims without law enforcement interrogation are admissible in court. Further, statements made by victims to medical personnel treating the victim's injuries (if the statements were made in response to inquiries regarding how to treat the victim's injuries) may provide an avenue for successfully prosecuting a DV case without the victim's presence in court. Overall, then, while South Carolina's no-drop policy may make the prosecution of cases more difficult without victim cooperation, it is certainly not impossible, especially with a prosecutor dedicated to prosecuting DV cases (as in Lexington County). With increased and improved evidence techniques, it is possible for prosecutors to successfully prosecute a case without victim cooperation, all while satisfying the defendant's right to confrontation.

The high prosecution and conviction rates in the two courts may also be in part due to the specialized nature of the courts. Unlike in traditional courts where DV cases may be seen as less serious when compared to other types of offenses, in specialized DV courts, DV is prioritized as a serious offense deserving of specialized attention. Interviews with court actors in both counties supported this argument.

Although DV was vigorously processed in both counties, the quantitative analyses revealed significant differences between the courts in the conviction rates and the extent to which a sentence of a fine was meted out. These findings may be due to policy differences between the two counties. During the years under study, prosecutors in Richland County were limited by a county policy which restricted them from dismissing DV cases. As a result, cases that were either not appropriate for further processing or

cases in which a victim was not present and the evidence was lacking would still go before a judge, regardless of prosecutorial preference in prosecution. These cases would often be dismissed or defendants would be found not guilty by the judge. Such policy may be driving the lower conviction rate in Richland County compared to Lexington County.

The lower conviction rate in Richland County may also be a function of the number of cases represented by attorneys. Recall that in Lexington County, only 6 percent of defendants were represented by attorneys, while approximately 32 percent of defendants were represented by counsel in Richland County. This is partially because public defenders did not represent defendants in the Lexington County CDV Court until 2013. In addition, many defendants who were represented by privately retained or court appointed counsel in Lexington County requested jury trials, resulting in their cases being transferred out of the CDV court. The conviction rate could be impacted by the number of attorneys present in court; attorneys can better navigate through the court process and can better make and understand legal arguments compared to pro-se defendants.

The relationship between attorneys and court processing may also be more nuanced. Often times in Richland County, if a defendant was represented by an attorney and his/her victim was not present in court, attorneys would enter a motion to have the case dismissed, citing the defendants' right to confront his/her accuser. If the prosecutor and the DV investigator could not reach the victim prior to the court date, the case was often judicially dismissed. The high likelihood of victims not showing for court appearances due to the nature of the offense may partially be reflected by the lower conviction rates in Richland County. Further, because bench trials and first appearances were held on the

same day, the prosecutor and her investigator may have had less time to contact the victim than if bench trial days were scheduled for a later date.

In Lexington County, attorneys were less commonplace in the court, so defendants may have been more willing to go forward with pleas, with or without their victims present in court. Even if defendants in Lexington County requested a bench trial, these cases were rescheduled for later dates which may have given the prosecutor and victim's advocates in the court more time to locate the victim for court. Further, according to a prosecutor in Lexington County, if a victim did not appear at a bench trial and the prosecutor had some reason to believe the defendant did or said something to the victim to compromise his/her presence in court, the prosecutor would request a jury trial.

The greater percentage of defendants having a fine imposed upon them in Lexington County compared to in Richland County may reflect the larger percentage of defendants who failed to appear for court in Lexington County compared to Richland County. Based on observations and post-hoc statistical analyses, it appeared that failing to appear in court was above and beyond the strongest predictor of receiving a fine. Significant differences between the counties emerged in the percentage of defendants who were tried in their absence (in Richland County, approximately 6 percent of defendants were tried in their absence; in Lexington County, approximately 10 percent of defendants were tried in their absence; results not shown).

Finally, differences in conviction rates and sentencing outcomes between the two counties could also be due to the judicial makeup of the courts. In Richland County, the county magistrate judges rotated; in Lexington County, one dedicated judge presided over the court. It is plausible that greater consistency in case processing occurs when only

one judge is presiding over cases. Scholars have identified that judges' decision-making can be affected by individual differences such as race and gender (e.g., Gruhl et al., 1981; C. Spohn, 1990a, 1990b; Steffensmeier & Britt, 2001; Steffensmeier & Hebert, 1999). Conversely, common professional training and organizational constraints placed on judges may supersede any impacts of individual factors on decision-making. Among South Carolina magistrate judges, it is possible that both socialization and individual differences may impact case processing. Magistrate judges in South Carolina are not required to have a law degree. Judges appointed prior to July 2001 were required to have a high school diploma, and judges appointed between July 2001 and July 2005 were required to have received at least a two-year college degree. Magistrate judges appointed on or after July 1, 2005 were required to have at least a four-year baccalaureate degree. Although all magistrates must pass a certification examination and must complete annual DV training, they may have different organizational and socialization backgrounds as well as bring with them to the bench a number of different perspectives based on their own individual experiences. Scholars in general court research have acknowledged that judicial characteristics may impact decision-making, however, it has been the focus of very few empirical studies (e.g., Gruhl et al., 1981; C. Spohn, 1990a, 1990b; Steffensmeier & Britt, 2001; Steffensmeier & Hebert, 1999). Thus, it is possible that the rotating judges in Richland County differ both in their socialization and personal attributes, which may result in inconsistency in decision-making and subsequently impact the lower overall conviction rate in Richland County compared to Lexington County.

Overall, DV was (and currently is) vigorously pursued in both courts. There were some differences in conviction rates and sentencing outcomes between the two courts,

but these were likely due to policies and structural setups unique to the two courts.

### **Therapeutic Justice is Pervasive**

Despite the differences listed above, the Richland County CDV Court and the Lexington County CDV Court maintained philosophies supportive of therapeutic justice for DV defendants. In both courts, roughly 70 percent of convicted defendants were sentenced to attend counseling (with or without an additional fine to the court, and with or without additional treatment programs). The treatment-orientation approach of the two courts in this study is consistent with many specialized DV courts nationwide (Labriola et al., 2009) and the overall philosophy of the problem-solving court movement (Berman & Feinblatt, 2001). Decision-makers in both courts stressed the importance of providing defendants with the opportunities to address the underlying issues leading to DV.

The coordination of service providers in both courts is also supportive of the treatment approach to sentencing. During my observations, at every court session in the Lexington County CDV Court, a staff member from a local batterer treatment program, PTI, a local program for female defendants and victims of DV, and victim's advocates were present. The presence of these service providers allowed for more efficient and quicker contact to be made between defendants and/or victims and the service providers. Many of these service providers were also able to provide assessments for other issues (i.e., substance use treatment) as advised by the judge. In the Richland County CDV Court, I observed a staff member from a local program for female defendants and victims of DV present at all sessions. However, only on occasion was a member from the local batterer treatment program or PTI present. As noted in the qualitative section, dedicated victim's advocates were not present at the Richland County CDV Court. Instead, the

prosecutor and the DV investigator largely took on the role of the victim's advocates.

### **General Theoretical Frameworks Only Partially Explain Decision-Making in Domestic Violence Courts**

The findings suggest that legal, case processing, and extralegal factors each impact prosecutorial and judicial decision-making, albeit to varying degrees. Although the variables selected for inclusion in this study were largely based off of the assumptions of uncertainty avoidance theory (Albonetti, 1986, 1987), attribution theory (Albonetti, 1991), and focal concerns theory (Steffensmeier et al., 1998), the results of this study are only partially supportive of these broader theoretical frameworks when they are applied to specialized DV courts.

Furthermore, although the courts differed in policies, conviction rates, and the odds of receiving a fine, there were more similarities than differences in the magnitude of the legal, case processing, and extralegal factors that influenced judicial decision-making between the two counties. This statement cannot be extended to comparing prosecutorial decision-making between the counties because of the restrictions placed on prosecutors in Richland County in the years under study. Although there may have been individual differences in the predictors that significantly impacted decisions within the two courts, the equality of coefficient tests revealed that the magnitude of the effects of most predictors was no different across counties. Thus, despite differences in policies between the two counties, judges in both counties appeared to approach cases similarly.<sup>39</sup>

Table 8.1 summarizes the overall effects of the legal, case processing, and extralegal

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<sup>39</sup> Although the significance of some of the legal, case processing, and extralegal variables discussed in this section varied within the two courts, this section speaks in terms of generalities surrounding the effects of these variables on decision-making. Unless specifically noted, the reader can assume that the magnitude of the effects did not vary across counties. For those predictors that did vary in magnitude across the two courts, a brief discussion is provided.

factors that were related to judicial decision-making in Richland County. Table 8.2 displays the overall effects of the factors that influenced prosecutorial and judicial decision-making in Lexington County.

Table 8.1. Summary of Decision-Making Findings Among Defendants Processed in Richland County

	Prosecution	Conviction	Fine v. Counseling	Jail v. Counseling
<b>Legal and Case Processing Variables</b>				
# of prior DV arrests	NA	NS	+	NS
Prior DV convictions	NA	NS	NS	NS
# of prior non-DV arrests	NA	+	NS	+
Dual arrest	NA	-	NS	NS
Strength of evidence	NA	+	NS	-
Weapon	NA	NS	NS	NS
Victim injury	NA	NS	NS	NS
Legal representation	NA	-	+	NS
Pretrial incarceration	NA	NS	NS	NS
<b>Extralegal Variables</b>				
Male	NA	+	-	NS
African American	NA	+	-	NS
Hispanic	NA	NS	NS	NS
Age	NA	-	NS	NS
Married; not cohabitating	NA	-	NS	+
Unmarried; cohabitating	NA	NS	NS	+
Unmarried; not cohabitating	NA	-	+	+

Notes: NA = not applicable; NS = not significant; + = positive relationship; - = negative relationship



Table 8.2. Summary of Decision-Making Findings Among Defendants Processed in Lexington County

	Prosecution	Conviction	Fine v. Counseling	Jail v. Counseling
<b>Legal and Case Processing Variables</b>				
# of prior DV arrests	NS	NS	NS	NS
Prior DV convictions	NS	+	NS	NS
# of prior non-DV arrests	+	+	+	NS
Dual arrest	NS	-	NS	NS
Strength of evidence	+	NS	NS	NS
Weapon	NS	NS	NS	NS
Victim injury	NS	NS	NS	NS
Legal representation	-	NS	+	NS
Pretrial incarceration	NA	NS	NS	+
<b>Extralegal Variables</b>				
Male	+	NS	NS	NS
African American	NS	NS	+	NS
Hispanic	NS	NS	NS	NS
Age	NS	NS	NS	NS
Married; not cohabitating	NS	NS	NS	+
Unmarried; cohabitating	NS	NS	NS	+
Unmarried; not cohabitating	NS	NS	NS	+

Notes: NA = not applicable; NS = not significant; + = positive relationship; - = negative relationship

### **Legal and Case Processing Variables**

Uncertainty avoidance, attribution, and focal concerns theories would suggest that legal variables are highly explanatory of court actors' decision-making (Albonetti, 1986, 1987, 1991; Steffensmeier et al., 1998). The effects of criminal history, dual arrest, evidence, weapon use, injury to victim, legal representation and pretrial incarceration on courtroom decisions within and across the two courts are discussed below.

**Criminal history.** Overall, individuals with more extensive prior criminal histories were treated more harshly than individuals with less extensive criminal histories. Court actors may perceive defendants with more extensive criminal histories to be especially blameworthy for their offenses, a greater danger to the community, and more likely to re-

offend in the future (Albonetti, 1986, 1987, 1991; R. D. Hartley et al., 2007; Steffensmeier et al., 1998). In the qualitative component of this study, multiple court actors cited criminal history as a major determinant of decision-making. In particular, they noted that past violent behavior – regardless of whether it was DV-related – was suggestive of a disposition toward violence. Overall, the effects of criminal history on decision-making in DV cases are supportive of the broader theoretical frameworks explaining courtroom decisions.

**Dual arrests.** In both counties, dual arrest cases significantly reduced the likelihood of conviction. Supportive of the focal concerns perspective, these findings suggest that judges take into consideration the blameworthiness, culpability, and harm to the victim when making decisions (Steffensmeier et al., 1998). In dual arrest cases, the blame to each party may be mitigated because judges may perceive less harm was imposed on the victim since he/she was also arrested. Further, it is more difficult for judges to determine beyond a reasonable doubt that a defendant is guilty for DV if the other party is also arrested – and consequently somewhat culpable – for the offense. Prior research has largely failed to control for dual arrests on judicial decisions (for exceptions, see, Henning & Feder, 2005; Kingsnorth et al., 2001), but findings from this study suggests that it should be considered in studies of case processing.

Theoretically, prosecutors would be less likely to prosecute defendants involved in dual arrest cases because of the uncertainty in conviction associated with these cases (Albonetti, 1986, 1987). Using jury trials as the benchmark for determining convictability, prosecutors might assume that jurors would have a more difficult time convicting a defendant whose culpability may be mitigated by the victim's behavior.

Qualitative information garnered from an interview with a prosecutor in Lexington County partially supported this assumption; she noted that dual arrest cases require her to disentangle the dynamics in a relationship in order to determine whether the defendant is truly a batterer, whether the victim is truly a victim, and whether the roles have been reversed during the course of the relationship. Thus, based on her response, it would seem plausible that dual arrest cases would be dismissed with greater regularity than non-dual arrest cases. Although the effect of dual arrest on prosecutorial decisions was not significant in the quantitative analyses, interviews with court personnel suggest that dual arrest cases do weigh on prosecutorial decisions.<sup>40</sup> Furthermore, according to a prosecutor in Lexington County, dual arrest cases were higher in the years preceding the years under study; however, because of the prosecutor's employment with the Sheriff's Department, she has increased access to the officers to discuss with them techniques for determining primary aggressors and reducing the number of dual arrests. Perhaps these techniques have been employed by the officers and have subsequently reduced the number of dual arrest cases that would typically be dismissed by the prosecutor. Other studies have attempted to explore the effect of dual arrest on prosecutorial decision-making and have found mixed results regarding its effect on prosecution decisions (Henning & Feder, 2005; Kingsnorth & Macintosh, 2007; Kingsnorth et al., 2001; Worrall et al., 2006).

**Strength of evidence.** Consistent with theoretical expectations, strength of evidence significantly impacted prosecutorial and judicial decisions. In Lexington County, cases

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<sup>40</sup> Dual arrest cases were more likely to receive the opportunity for diversion (results not shown), so it is possible that the prosecutor in Lexington County realized these cases would be less likely to be successfully prosecuted and in accordance with the desire to provide the defendant with treatment, gave him/her the opportunity to enter a diversionary program.

with more evidence against defendants were more likely to result in prosecution. In Richland County, strength of evidence positively impacted judicial conviction decisions and lowered the odds of a judge imposing a jail sentence versus counseling. The findings pertaining to prosecutorial decision-making are supportive of Albonetti's (1986, 1987) uncertainty avoidance theory which would argue that increased corroborating and physical evidence and decreased exculpatory evidence would reduce uncertainty about defendants' guilt and increase the likelihood of prosecuting a case.

Furthermore, focal concerns theory might argue that cases with more evidence against a defendant would provide support for victims' allegations of DV, impact judicial perceptions of defendants' blameworthiness and the harm caused to the victim, and subsequently result in more punitive dispositions and sanctions (Steffensmeier et al., 1998). Although this rationale certainly pertains to conviction decisions, its effect on sentencing is not as straight forward. Theoretically, more culpable defendants would receive more punitive sentences (e.g., jail). It could be that in certain cases, counseling is considered more punitive than a fine or jail because it keeps the defendant under court supervision for a longer period of time. The approved counseling programs in these two counties are 26 weeks long and judges receive reports from the batterer intervention programs if defendants are non-compliant. In fact, two judges that were interviewed noted that counseling is severe because defendants are threatened with 30 days in jail if they do not successfully complete the required counseling program. It could also be that in intervention-focused courts – such as the courts under study – judges may be more willing to sentence an individual to attend counseling in cases where there is more evidence a crime was committed in an attempt to address the underlying causes of the

incident.

Few studies of decision-making in DV cases have controlled for the strength of evidence, and those that have, have generally found it not to be significant in predicting prosecutorial and judicial decision-making (Bechtel et al., 2012; Dawson & Dinovitzer, 2001; Dinovitzer & Dawson, 2007; Kingsnorth et al., 2001; Rauma, 1984). However, the majority of these studies dichotomized variables into one or more types of evidence and did not provide a measure of strength of evidence. To test whether the operationalization of evidence variables impacted the findings, I re-ran the prosecution and conviction models with the four types of evidence variables (i.e., photographs, victim statement, witness statement(s), physical evidence from the scene) entered independently – only victim statement was significant in the prosecutorial decision-making model and only photographs was significant in the conviction model; the effects were substantially reduced compared to the effect of the cumulative measure of evidence (results not shown). It appears, then, that the cumulative effect of evidence, rather than the effect of independent forms of evidence, impacts decision-making. This finding is supportive of uncertainty avoidance theory and focal concerns theory.

**Weapon use and victim injury.** Inconsistent with uncertainty avoidance theory (Albonetti, 1986, 1987), attribution theory (Albonetti, 1991), and focal concerns theory (Steffensmeier et al., 1998), the effects of weapon use and injury to the victim were not significantly predictive of any prosecutorial or judicial decisions in either court. The findings pertaining to weapon use are largely consistent with prior research that find no substantial effect on prosecutorial (Dawson & Dinovitzer, 2001; Henning & Feder, 2005; Kingsnorth & Macintosh, 2007; Worrall et al., 2006), conviction (Henning & Feder,

2005), or sentencing decisions (Dinovitzer & Dawson, 2007; Henning & Feder, 2005; but see, Kingsnorth et al., 2002). The null effect of victim injury is found in light of prior research that has been mixed in regards to the effect of victim injury on prosecutorial and judicial decisions. Some studies have found a significant impact of victim injury on prosecutorial decisions to charge and/or prosecute defendants (Henning & Feder, 2005; D. Hirschel & Hutchinson, 2001; Kingsnorth et al., 2001; Kingsnorth et al., 2002; Worrall et al., 2006), while others have found no effect of injury on prosecutorial decisions (Davis et al., 2003; Dawson & Dinovitzer, 2001). Likewise, some studies have reported significant impacts of injury on judicial decisions (Dinovitzer & Dawson, 2007; Kingsnorth et al., 2001), while others have found no effect (Dinovitzer & Dawson, 2007; Henning & Feder, 2005). The findings from this study, along with those of prior studies, may suggest that court actors are not willing to conclude that DV did not occur simply because a weapon was not used or a victim was not injured (Kingsnorth et al., 2001). This might be especially evident in these two courts because of the specialized nature of the court and because the judges and prosecutors are trained to recognize the dynamics in DV cases. They may be aware that DV cases often involve the use of personal weapons (e.g., feet, hands) as well as verbal threats to threaten, harm, or place a victim in fear for his/her safety. It is also likely that the null findings indicate that cases with more extreme weapon use and severe injury to the victim are outside the purview of the Court. Instead, such cases would likely be charged as a CDVHAN. In sum, the null impact of weapon use and victim to injury do not support more general theoretical frameworks of courtroom decision-making.

**Legal representation.** The effect of retaining or being appointed legal representation

was a significant predictor of prosecutorial and judicial decisions, supporting the notion of organizational maintenance and maintenance of courtroom workgroups (Dixon, 1995; Eisenstein & Jacob, 1977; Steffensmeier et al., 1998). Familiarity among workgroup members can aid in more efficient court processing. In Lexington County, one prosecutor and one judge comprise stable members of the courtroom workgroup. The pool from which other members of the workgroup can be drawn is relatively small, resulting in a degree of familiarity between the prosecutor, judge, and private and court-appointed attorneys. Increased familiarity between workgroup members can improve the efficiency of case processing, as workgroup members may be familiar with the expectations of the other members. This may be especially evident in courts with specialized dockets, as in the Richland County CDV Court and the Lexington County CDV Court (Dixon, 1995). The results of this study support these ideas: defendants represented by an attorney were less likely to have their cases prosecuted, less likely to be convicted, and if convicted, were more likely to receive a fine as opposed to counseling. The effects of legal representation appear to be especially significant within Lexington County, which has a more stable workgroup than in Richland County.<sup>41</sup> Recall that in Richland County, during the years under study, between one and three prosecutors worked DV cases at a time and judges rotated the court. It is difficult to compare these findings to the results of other studies because so few studies have controlled for a measure of attorney (D. Hirschel & Hutchinson, 2001).

**Pretrial incarceration.** Pretrial incarceration was important for understanding the sentencing decision, but only within Lexington County. Defendants who spent more time in jail prior to case disposition were more likely to receive a jail sentence and less likely

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<sup>41</sup> The magnitude of the effect did not vary across the two counties, however.

to receive a counseling sentence. Scholars have found that defendants held in jail prior to trial are often treated more harshly at later stages of the court process (e.g., sentencing) (e.g., Albonetti, 1991; C. Spohn, 2009). However, this has generally been reported in studies of felony cases not limited to one offense category. Thus, in such studies, there may be greater disparities in pretrial decisions (i.e., bond decisions) because of the greater variability in the types of defendants coming to the attention of the court. Disparities could exist in decisions to deny bail, grant release on one's own recognizance, and if a financial bail was imposed, the amount of the bail. In misdemeanor DV cases in South Carolina, bond is not denied for a DV charge, and for each individual DV magistrate charge, bail amounts can only be assigned up to the maximum fine amount punishable for a DV charge. Furthermore, since the maximum jail time penalty for a misdemeanor DV charge is 30 days, defendants who did not post a bond prior to trial and had spent approximately 21 days in jail, were generally given credit for time served. Recall, defendants who received credit for time served were coded as receiving a jail sentence. Thus, the effect of pretrial incarceration on the sentencing outcome in Lexington County does not appear to reflect judicial attempts to treat defendants who could not satisfy the financial conditions of their bond more harshly; rather, it likely reflects those cases in which a defendant received credit for time served. Unexplored in this study were disparities during *pretrial* in DV cases. Future research might consider this line of inquiry.

### **Extralegal Variables**

Uncertainty avoidance theory (Albonetti, 1986, 1987), attribution theory (Albonetti, 1991), and focal concerns theory (Steffensmeier et al., 1998) have each identified that



extralegal factors also account for some of the variation in court decisions. The effects of gender, race/ethnicity, age, and marital/cohabitation status on prosecutorial and judicial decision-making are discussed below.

**Gender.** Being male was associated with more punitive treatment in both counties. Under the assumptions of uncertainty avoidance theory, less uncertainty would surround cases involving male defendants because DV was traditionally considered a male-on-female offense (Albonetti, 1986, 1987). Consequently, prosecutors would be more likely to prosecute cases involving male defendants compared to female defendants because there would be fewer convictability concerns. The findings from the quantitative portion of this study support this assumption.

Attribution theory and focal concerns theory would also hypothesize that male DV defendants would be treated more punitively than female DV defendants because males may be perceived to be more dangerous and may be attributed a higher likelihood of future criminality (Albonetti, 1991; Steffensmeier et al., 1998). Judges may perceive that female DV defendants are simply responding to the violence and victimization they have endured by their male partners, thus mitigating the amount of blameworthiness and culpability assigned to them (Steffensmeier et al., 1998), and reducing the likelihood of being convicted of DV. Further, compared to females, males tend to commit more serious crimes, have longer criminal histories (Steffensmeier et al., 1993), are over-represented in the general offender population (Steffensmeier & Allan, 1996) and DV offender population, and may be perceived as more likely to re-offend. Prior research has suggested that if female defendants come back to the attention of the courts, they are more likely to be victims of DV and less likely to be offenders (Henning et al., 2009).

Thus, judges may view that female DV defendants, unlike male DV defendants, are simply responding to abuse. Finally, it is possible that judges view fewer social costs with treating male defendants more punitively compared to female defendants. Female defendants may be perceived as more likely to be primary caregivers to dependent children, and therefore, treating them more punitively may impact their caregiving responsibilities. This finding may reflect why female defendants in Richland County were more likely to be sentenced with a fine instead of attending 26 weeks of counseling. Perhaps imposing counseling would require female defendants to find alternative means of supervision for their children, and judges are aware that this may be difficult for some women. Past studies of decision-making in DV cases have found more leniency extended to women by prosecutors (Dawson & Dinovitzer, 2001; Henning & Feder, 2005; Worrall et al., 2006) and judges (Belknap & Graham, 2000; Henning & Feder, 2005; Peterson, 2004; Peterson & Dixon, 2005). In sum, the findings from this study support the broader theoretical frameworks and past research.

The findings pertaining to gender also have implications for understanding how courtroom decision-makers perceive the identity of “true victims.” Recall, in South Carolina, the definition of a household member comprises spouses, former spouses, individuals who share a child(ren), cohabitating males and females, and males and females who have previously cohabitated. This definition inherently requires the victim and defendant to be of the opposite sex. As such, not only do the results point to evidence that courtroom decision-makers may use gender to determine culpability and blameworthiness of the defendant, but may also use gender to determine which victims are truly victims of DV. The results suggest that defendants tend to be treated more

harshly when their victims are female, as opposed to male. It appears then, that decision-makers may retain gendered expectations of victimization status.

**Race/ethnicity.** Race/ethnicity had no effect on the decision to prosecute. This finding is consistent with the majority of prior research on prosecutorial-decisions in DV cases (D. Hirschel & Hutchinson, 2001; Kingsnorth et al., 2001; Kingsnorth et al., 2002; Worrall et al., 2006; but see, Henning & Feder, 2005; Wooldredge & Thistlethwaite, 2004).

Race effects were evident in judicial decisions; however, the effect of being a minority was inconsistent across the different decisions in the two counties. Among defendants in Richland County, African Americans were more likely than Caucasians to be convicted. There was no effect of being Hispanic. The relationship between race and convictions might reflect the strong and positive association between being African American and entering a plea of guilty or no-contest. In Richland County, the relationship between being African American and entering a plea of guilty or no-contest was strong and in a positive direction ( $r = .10$ ;  $p \leq .00$ ; bivariate correlations not shown) compared to the negative relationship between being Caucasian and entering a plea of guilty or no-contest ( $r = -.09$ ;  $p \leq .00$ ; results not shown). Recall, guilty pleas, no-contest pleas, and guilty trial dispositions were all coded as convictions. It is also possible that the findings reflect unmeasured differences between races – perhaps differences in victim appearances at court may account for this finding. Unfortunately, this data was unavailable at the time of data collection.

Among defendants in Richland County, African Americans were less likely than Caucasians to receive a fine relative to receiving a sentence mandating they attend

counseling. Perhaps this finding reflects judicial awareness of the economic conditions in Richland County – especially among African Americans – and did not want to impose more financial burdens on defendants. It may also suggest that judges in Richland County attribute African American defendants’ behaviors to the greater concentration of African Americans growing up in more disadvantaged and violent neighborhoods (Benson et al., 2004; Sampson & Wilson, 1995; Wilson, 1987) and exposed to violence as a mechanism for solving interpersonal problems (Anderson, 1999). As a result, they may view African Americans as especially likely to re-offend, and thus, believe they would benefit less from a fine and more from counseling than Caucasian defendants. On the contrary, among defendants in Lexington County, African Americans were *more* likely than Caucasians to receive a sentence of a fine.

**Age.** Consistent with some prior research (Wooldredge & Thistlethwaite, 2004; Worrall et al., 2006), defendant age was not related to prosecutorial decision-making (but see, Dawson & Dinovitzer, 2001; Henning & Feder, 2005). Defendant age was, however, influential in the conviction decision in Richland County: older defendants were less likely to be convicted than their younger counterparts. This finding is supportive of the focal concerns perspective as judges may perceive that older defendants have more experience to pro-socially resolve arguments with their intimate partners, while younger defendants may have more instability in their romantic relationships (A. A. DeMaris et al., 2003; Wright, 2011) and may be seen as highly likely to have engaged in DV. Supporting this assumption, research has found that the typical DV offender population is young (e.g., Bachman & Saltzman, 1995; Caetano et al., 2008; Holtzworth-Munroe et al., 1997; Stets, 1991; Straus et al., 2006; Yllo & Straus, 1981). Further, these findings may

also reflect beliefs that older defendants are less likely to re-offend in the future compared to their younger counterparts. This belief would support the notion that antisocial and violent behavior generally decrease with age (Hirschi & Gottfredson, 1983; Holtzworth-Munroe et al., 1997). Wooldredge and Thistlethwaite (2004) also reported that older defendants were less likely to be convicted of DV than their younger counterparts, however, other studies have reported no effect of age on conviction decisions (e.g., Bechtel et al., 2012; Belknap & Graham, 2000; Henning & Feder, 2005; Peterson & Dixon, 2005). Overall, the effect of age on decision-making does not support the expectations of the general theoretical frameworks (i.e., attribution theory, focal concerns theory) referenced in this study.

**Marital/cohabitation status.** Marital/cohabitation status did not impact prosecutorial decision-making in Lexington County, a finding inconsistent with what would be postulated by the uncertainty avoidance theory (Albonetti, 1986, 1987). According to the uncertainty avoidance theory, prosecutors would be less likely to prosecute defendants intimately involved with their victims because victims historically recanted or became uncooperative if they had reconciled with their defendants. Without cooperative victims, perceptions of convictability decrease. In Lexington County, this was not the case. These findings are consistent with most prior research on decision-making in DV cases that suggest the victim-defendant intimacy level does not impact decision-making (D. Hirschel & Hutchinson, 2001; Kingsnorth et al., 2001; J. D. Schmidt & Steury, 1989; Worrall et al., 2006; but see, Dawson & Dinovitzer, 2001; Kingsnorth et al., 2002). The findings reported here suggest that DV is aggressively prosecuted regardless of efficiency concerns, and regardless of the victim-defendant relationship. In fact, in an interview

with a prosecutor in Lexington County, she noted that the dynamics of a relationship should drive the statutory definition of DV, rather than the intimate relationship status of the two parties. That is, any intimate relationship that displays violence should be processed as a DV. Her response supports the quantitative findings regarding the null effect of marital/cohabitation status.

Marital/cohabitation did impact judicial decisions. In Richland County, defendants who were not cohabitating with their victims (regardless of their marital status) were less likely to be convicted than defendants who were married *and* cohabitating with their victims. There were no differences in the likelihood of conviction between married and unmarried cohabitants. Perhaps judges perceive that cohabitants have greater opportunities for committing DV. The findings may also reflect judicial perceptions that defendants who have greater opportunities (i.e., defendant and victim live together) to re-offend will do so, and thus should be held accountable for their offenses in order to deter them from acting on the increased opportunities for re-offending presented to them. Attribution theory argues that cases involving intimates are less likely to be treated harshly by court actors compared to cases involving strangers (Albonetti, 1991). Although Albonetti did not specifically hypothesize about the victim-defendant relationship in DV cases, using her logic, DV cases characterized by more intimacy (e.g., married, living together) would be treated more leniently by judges. This was not supported. Focal concerns theory (Steffensmeier et al., 1998), on the other hand, might argue that defendants in more intimate relationships with their victims may be particularly more likely to re-offend, and in an attempt to protect the victim, may treat defendants more harshly. The quantitative findings support this assumption. Some prior

research of DV case processing has also found that defendants in more active intimate relationships (e.g., married, living together) were more likely to be found guilty for DV (Belknap & Graham, 2000; Cramer, 1999). The results could also partially reflect the presence of victims in court; perhaps victims who were cohabitating with their partners were more likely to be present at court to seek help with their victimization status. Some recent research has suggested that victims married and/or cohabitating with their defendants engage in high levels of help-seeking activity to aid with their victimization (Kaukinen, 2004a). Unfortunately, data pertaining to victim presence in court was plagued by high levels of missing data.

Overall, in both counties, relative to defendants who were married and living with their victims, all other defendants were less likely to receive counseling and more likely to receive a jail sentence. It could be that judges perceive that defendants married and cohabitating with their victims are more likely to remain in an intimate relationship with their victims and would be most likely to benefit from counseling and less likely to benefit from serving jail time without being given the opportunity to address their behaviors. It may also reflect victim presence in court and preferences regarding the sentencing of their defendants: perhaps victims married and cohabitating with their defendants would prefer to stay in their current relationships and request that the defendant be given the opportunity to attend counseling. Consistent with this postulation, I observed judges give victims that opportunity to express their opinions regarding sentencing. Prior research has largely failed to examine the effect of victim-defendant relationship on sentencing. Of the two studies that have examined this relationship (Henning & Feder, 2005; Kingsnorth et al., 2001), only one modeled a sentencing

decision under investigation in this study. Henning and Feder (2005) found no impact of victim-defendant intimacy on the decision to incarcerate a defendant.

### Significant Differences in the Magnitude of Effects

Table 8.4 displays the results of the significant differences across the two courts in the effects of the predictor variables on decisions made in court. Differences in prosecutorial decision-making across the two courts could not be assessed due to a county-wide policy restricting prosecutorial decision-making in Richland County. There were no significant differences across the two courts in the magnitude of any of the predictor variables on the likelihood of conviction.

Table 8.3. Summary of the Significant Between-County Differences in Predictors of Decision-Making

	Prosecution	Conviction	Fine v. Counseling	Jail v. Counseling
<b>Legal and Case Processing Variables</b>				
# of prior DV arrests	--	--	--	--
Prior DV convictions	--	--	--	--
# of prior non-DV arrests	--	--	--	--
Dual arrest	--	--	--	--
Strength of evidence	--	--	--	--
Weapon	--	--	--	--
Victim injury	--	--	--	--
Legal representation	--	--	--	--
Pretrial incarceration	--	--	--	NS (Richland) + (Lexington)
<b>Extralegal Variables</b>				
Male	--	--	--	--
African American	--	--	+ (Richland) - (Lexington)	--
Hispanic	--	--	--	--
Age	--	--	--	--
Married; not cohabitating	--	--	--	--
Unmarried; cohabitating	--	--	--	--
Unmarried; not cohabitating	--	--	--	--

Notes: -- = no significant difference; + = positive relationship; - = negative relationship



The magnitude of the effect of pretrial incarceration on the likelihood of receiving a jail sentence versus counseling differed across the two courts. This finding does not appear to be theoretical in nature, but likely reflects data imputation efforts for this measure that primarily affected cases in Richland County. In Richland County, more cases were missing bond sheets that determined whether the defendant bailed out of jail. Based on conversations with court personnel, assumptions were made that defendants who did not have a bond sheet in their file were considered to have not bonded out of jail. To determine the amount of time a defendant spent in jail prior to case disposition, the number of days between the date of arrest and the date of case disposition was calculated. However, once it was discovered that significant differences existed in the magnitude of the effect of pretrial incarceration on the jail versus counseling outcome, I re-ran the sentencing analyses in Richland County excluding the pretrial incarceration measure and instead including a measure for *missing* on the pretrial incarceration days. The missing cases represented those cases that did not have a bond sheet in their files and for whom the data imputation assumptions were used. In these models, the *missing* measure was significantly and positively predictive of receiving a jail sentence versus counseling; the coefficients and significance levels of the other predictor variables in the model did not change. Thus, the findings regarding the effect of pretrial incarceration on sentencing in Richland County should be read with caution.

The magnitude of the effect of being African American on receiving a fine versus counseling was significantly different among defendants processed in Richland County than in Lexington County. In Lexington County, imposing a sentence of a fine is often meted out to defendants who do not show for court. Thus, these findings may be

confounded by the presence of defendants at court.

No other factors exerted a differential effect on decision-making across the two courts, suggesting that overall, judges in both counties appeared to approach cases similarly

### **Summary of Decision-Making Results**

The results of the decision-making analyses suggest that theories used in general court research are only partially applicable to understanding predictors of case processing in DV cases, and specifically, in specialized DV courts. Furthermore, the results indicate that judges in both counties weigh factors similarly when making decisions.

The following factors were supportive of uncertainty avoidance theory as they pertain to prosecutorial decision-making: criminal history, strength of evidence, and male. Legal representation was also a significant factor impacting the decision to prosecute. Contrary to what might be assumed by the uncertainty avoidance theory, there was no impact of dual arrest, weapon use, victim injury, race/ethnicity, age, or marital/cohabitation status on prosecutorial decision-making.

The following factors predicted conviction decisions: criminal history, dual arrest, strength of evidence, attorney, male, African American, age, and marital status. Although attribution theory and the focal concerns perspective are generally used to predict sentencing decisions, some of their assumptions (e.g., blameworthiness) may be useful for explaining conviction decisions. There was no effect of weapon use, injury to the victim, pretrial incarceration, or Hispanic on the conviction decision.

The following factors impacted sentencing: criminal history, strength of evidence, male, African American, and marital/cohabitation status. Legal representation and pretrial

incarceration also impacted judicial decisions. Contrary to the postulations of attribution theory and focal concerns theory, there was no significant influence of dual arrest, weapon use, victim injury, being Hispanic, or age on sentencing outcomes.

General courtroom theories may not be wholly supported in these two courts for at least two reasons. First, the cases under study are misdemeanor cases, not felony cases. They are further limited to only one type of offense – DV – which inherently reduces the variation in offense severity which would typically guide court actors' perceptions regarding culpability and risk to the community. Second, specialized courts appear to have structural differences both in terms of court actor composition and philosophies which guide court processing. Judges and prosecutors in specialized DV courts may receive additional training on the dynamics of DV cases and may be more aware of the difficulties in processing them. They may be especially aware of the barriers to victim cooperation, evidence, and legal arguments that may mitigate defendants' blame and reduce the odds of full case processing in more traditional courts. Because of their dedicated positions in the DV courts, court actors may develop more innovative strategies for increasing prosecution and conviction rates (e.g., increased victim services and coordination of service providers).

In addition, in traditional courts, more culpable and blameworthy defendants may be perceived as deserving of the most punitive treatment. In specialized courts, however, such defendants may be considered especially deserving of the opportunity to attend a treatment program in hopes of addressing the behaviors that led them to be arrested for DV. Service providers are often present in court and help hold defendants accountable to court sanctions by providing the judges with compliance reports.

### **Recidivism Rates are Similar Among Defendants in Both Courts**

There were no significant differences in the prevalence, incidence, or time-to-re-arrest three years post-disposition between defendants in the two counties. In Richland County, approximately 15 percent of the sample was re-arrested for DV; in Lexington County, approximately 17 percent was re-arrested. Other studies have found similar re-arrest rates in samples from other jurisdictions ([e.g., Kingsnorth (2006) reported that 15 percent of his sample from Sacramento, California was re-arrested for DV within 18-months of the initial incident; Wooldredge and Thistlethwaite (2005) reported that 16 percent of their sample from Hamilton County, Ohio was re-arrested for DV within 2-years after their sentence completion]). The incidence of re-arrest was .20 and .24 in Richland County and Lexington County, respectively. The incidence rates are similar to that reported by Wooldredge and Thistlethwaite (2005) (mean = .19). Finally, in both counties, among those who re-offended, the average number of days until re-arrest was 413 days (median = 331) and 420 days (median = 361 days) in Richland County and Lexington County, respectively. This is equivalent to approximately 14 months, or just over one year (median is equivalent to approximately 12 months). Wooldredge and Thistlethwaite (2005) reported that on average, it took defendants 10 months to re-offend.

### **Courtroom Decisions Have a Limited Effect on Future Offending**

Overall, the effects of courtroom decisions on the prevalence, incidence, and time-to-re-arrest were limited. Further, despite differences in policies, conviction rates, and sentencing in Richland County and Lexington County, comparisons of the effects of courtroom decisions on future DV offending yielded no significant differences across the two courts.

Prosecutorial decisions to dismiss cases were associated with a lower number of subsequent DV arrests among those defendants processed in Lexington County compared to defendants who were convicted and received a sentence of counseling. There was no effect of prosecutorial decision-making on the prevalence of re-arrest or time-to-re-arrest. Among defendants processed within Richland County, those who were found not guilty were less likely to be re-arrested and took a longer time-to-re-arrest than defendants who were convicted and were sentenced to attend counseling. There was no relationship between the conviction decision and incidence of future DV arrests. The conviction decision yielded no significant impact on any of the recidivism outcomes among defendants processed in Lexington County. In neither Richland County nor Lexington County did the sentencing outcomes significantly impact the prevalence, incidence, or time-to-re-arrest.

Overall, these findings are contrary to the assumptions of specific deterrence theory which would suggest that individuals who have been caught and sanctioned for committing a crime are less likely to commit another crime because they fear penalty. Instead, these findings may reflect efficiency and accuracy in prosecutorial and judicial perceptions of defendant culpability and the likelihood of re-offending. As an example, cases dismissed by the prosecutor in the Lexington County CDV Court appear to be dismissed not because of the same convictability concerns as in more traditional courts, but rather because the prosecutor believes the defendant was not responsible for the incident or believes that prosecution would do more harm than benefit the defendant. It is also possible that defendants whose cases were dismissed by the prosecutor completed more counseling as a condition of the dismissal compared to cases which were convicted

and received a counseling sentence. It is important to remember that the measures used in this study reflect the sentence judges meted out at case disposition. These measures do not necessarily indicate *successful* completion of the sentences. If any suspended sentence is not successfully completed, the judge has the authority to impose the original sentence. Other studies have also found a positive relationship between conviction and sentencing and recidivism compared to cases that were dismissed by the prosecutor (Peterson, 2004; Wooldredge & Thistlethwaite, 2005).<sup>42</sup>

These findings may also indicate that judges are accurately assessing culpability and acquitting those defendants not blameworthy for their offenses and/or less likely to re-offend in the future. It is also possible that recidivism is higher among defendants who receive a counseling sentence because their victims may be more willing to stay in intimate relationships with them under the pretense that counseling will be effective (Wooldredge & Thistlethwaite, 2005). This is speculative, however, because this study could not determine the relationship status of victims and defendants post-disposition. The findings may also reflect differences in future reporting behavior among victims whose defendants were found not guilty. An argument could be made that victims who did not want a case to go forward would simply not attend court, lowering the likelihood that prosecutors' could successfully obtain a conviction, and increasing the odds of an acquittal. If a DV occurs in the future, the victim may be less likely to contact law enforcement if he/she knows that the specialized court will proactively prosecute the case. Again, this is speculation and cannot be empirically tested with the current data, but it may be a possible explanation for the findings.

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<sup>42</sup> It is somewhat difficult to compare studies that have examined the effects of court processing on recidivism because studies vary on the operationalization and comparison of criminal sanctions.

Finally, although this study failed to find an effect of sentencing on the prevalence, incidence, or time-to-re-arrest for another DV offense – which is contrary to what might be expected based on specific deterrence theory – it is supportive of the majority of past research that finds no real effect of sentence severity on recidivism (Finn, 2004; Friday et al., 2006; Gross et al., 2000; Kingsnorth, 2006; Steinman, 1988; Thistlethwaite et al., 1998). It is too premature to argue that these findings should be interpreted as evidence that therapeutic sentences of specialized courts are ineffective at reducing future violence. First, comparisons to sentencing in traditional courts are necessary for such a statement to be made. Second, the measures included in this study's analyses simply reflect the sentence imposed on the defendant at disposition; it does not reflect *successful* completion of the 26 week counseling program. It could be that defendants who successfully complete the counseling program have significantly different prevalence, incidence, and/or time-to-re-arrest for another DV than other defendants (Babcock & Steiner, 1999).

### **Study Limitations**

Although this study contributes to the literature on court processing of DV cases and recidivism of DV defendants, there are some limitations worth mentioning. First, this study relied on data from two specialized magistrate-level courts in one state. Because magistrate courts only have jurisdiction over misdemeanor-level offenses, the results of this study might not be generalizable to more statutorily severe, felony cases. In addition, specialized courts may not be directly comparable to traditional courts due to the structural differences evident between them. Moreover, because these two courts were located in one state – South Carolina – the results may not be generalizable to courts in

other states.

Another limitation lies with the nature of the data. All data was taken from official records, and although extensive efforts were made to obtain the most complete and accurate data, there are still potential limitations with using official data. First, the recidivism measures are based on official police records of re-arrest. Although official data may have an advantage over self-report data because it does not require or rely on victim participation (Davis et al., 1998), it may underestimate DV offending (Tjaden & Thoennes, 2000). Recall that scholars estimate that only approximately one-quarter of DV cases are reported to the police (Tjaden & Thoennes, 2000). Past scholars have compared recidivism findings based on police reports and victim reports and identified little, if any, significant differences (e.g., Dunford et al., 1990; D. Hirschel et al., 1992; Sherman & Berk, 1984), however, this limitation should be mentioned. In addition, the analyses presented in this study do not differentiate between recidivism against the same victim as in the original incident or a different victim. According to Sherman (1992), recidivism results do not appear to differ by same-victims versus any-victims; it would be interesting to see if this holds up in a sample of defendants from a specialized court.

Similarly, due to data limitations, this study could not control for many potentially important influences of courtroom decision-making and recidivism. First, data retrieved from state law enforcement files could not distinguish which past non-DV criminal histories involved prior violent offenses. Controlling for prior violent behavior would have been preferred over a control for any type of non-DV arrest because multiple court actors reported that prior violent behavior significantly impacted their decisions. Prosecutors and judges alluded to their beliefs that extensive violent criminal histories



may reflect a tendency for violent crime or may even reflect prior DV arrests that were erroneously coded as other types of violent crimes (e.g., simple assault, aggravated assault). When court actors make decisions, they have access to defendants' entire criminal history. Unfortunately, criminal history data broken down to the individual offense was only available for DV offenses for this study; all other offenses were combined together as non-DV related.

In addition, this study could not control for potentially relevant victim and defendant factors. Victim cooperation, victim presence in court, and victim wishes regarding case processing were not consistently reported in the files I had access to for this study. However, they may have had implications for the results of this study considering that prior research has found victim cooperation to be significantly related to prosecutorial decisions and case outcomes (e.g., Bechtel et al., 2012; Dawson & Dinovitzer, 2001; Kingsnorth et al., 2001). Furthermore, prosecutors in both courts noted the importance of victim presence on their decisions. Given the importance of victim presence and cooperation that was noted in the qualitative component of this study, the exclusion of such variables from this study is a significant limitation. If included, the quantitative findings reported here may have been impacted.

This study also failed to control for victim and defendant substance use which could theoretically impact the amount of blame placed on a defendant and/or affect the sentence he/she received (Steffensmeier et al., 1998). Victim substance use could mitigate the blame placed on a defendant, while defendant substance use could increase the amount of blame attributed to the defendant and impact perceptions of defendants' likelihood of re-offending if he/she is deemed to have a substance dependency issue. Victim and

defendant substance use was retrieved from local law enforcement incident reports and officers across the two counties did not consistently note the parties' states of intoxication during the incident. Although prior studies have generally found no evidence that victim and/or defendant substance use impact decision-making in DV cases filed (Henning & Feder, 2005; D. Hirschel & Hutchinson, 2001; Kingsnorth et al., 2001; Worrall et al., 2006), the effect of these measures could be more pronounced in courts with treatment-oriented approaches. For example, it is possible that judges may view defendants who were intoxicated when they committed DV as benefiting more from a counseling intervention than jail. Recall that many of the batterer treatment programs conducted assessments for substance abuse issues if requested by the judge.

In addition, this study could not control for defendant-related factors such as stakes in conformity (e.g., employment status, education status, income, residential stability) which might impact courtroom decision-making (Dinovitzer & Dawson, 2007; Henning & Feder, 2005; Wooldredge & Thistlethwaite, 2004) and recidivism (Ventura & Davis, 2005; Wooldredge & Thistlethwaite, 2002, 2005). This information was not uniformly noted in files across both counties. Similarly, the quantitative analyses could not control for potentially defendant-relevant factors, such as defendant demeanor and attitude in court. Based on observations in the court, it appeared that in some cases, defendants' degree of deference and respect to the Court impacted sentencing. This type of data is not noted in official court or prosecutor files and cannot be controlled for in quantitative analyses. The inability to control for these variables serves as a limitation of this study, specifically when explaining sentencing decisions.

This study also did not control for the selection processes inherent in court

processing. Because court decisions often rely on previous court decisions, whenever possible, selection processes should be controlled for in analyses. That is, studies should correct for selection biases that may occur as a result of individuals proceeding through multiple stages of the court processing. This can be achieved by calculating the likelihood of reaching a particular stage of case processing (e.g., convicted cases first have to be prosecuted), and then controlling for this selection term in models predicting outcomes at the next stage of case processing (see Heckman, 1976). Unfortunately, due to the data limitations in this study, a selection term could not be included in any of the analyses. However, future studies should do so to avoid sample bias and help compensate for the effects of omitted – yet potentially relevant – factors.

Finally, the analyses presented here were based on non-experimental research design as arrested defendants were not randomly assigned to receive certain dispositions. As a result, it is possible that the statistical procedures used in this study found spurious relationships between court decisions and recidivism. Although the analyses controlled for a number of legal and extralegal factors in attempt to reduce the odds of any spurious findings, it cannot be completely discounted as a possibility. Unfortunately, this is inherent in the nature of non-experimental research designs. Other analytic approaches may be more fitting for this type of research. These approaches will be discussed in the section below.

### **Future Directions**

Although this study helped fill some gaps in the literature on specialized DV courts, the predictors of courtroom decision-making in DV cases, and how these decisions impact future DV offending, there is still much about decision-making and the

relationship between decision-making and recidivism that remains unclear. Overall, the sheer volume of research dedicated to examining prosecutorial and judicial decision-making in DV cases is limited compared to research on decision-making in other types of cases. This is unfortunate considering the criminal justice system's long-standing unwillingness to proactively respond to DV (Siegel, 1996). Although scholars have begun to explore decision-making in DV cases, there is much that is still untapped. In particular, little is known about decision-making in specialized DV courts and whether decisions on DV cases processed in more traditional courts parallel decisions made in specialized courts. Additional research is necessary to establish the basic predictors of decision-making for prosecutors and judges in DV cases in both specialized and traditional courts. It could also be interesting to explore the strength of different variables on decisions made in traditional courts versus specialized courts (Peterson, 2004) – such studies may help develop a theoretical framework for explaining decision-making in DV cases.

Scholars should also consider taking a multi-level statistical approach to understanding decisions made in DV cases. The lack of multi-level studies pertaining to DV court processing is surprising given that court research has uncovered important variation in case processing and outcomes between counties and courts (see, e.g., Eisenstein & Jacob, 1977). Scholars have compared courts to interdependent communities where legal decision-makers operate within a workgroup, relying heavily on each other to efficiently make decisions, and hold common beliefs regarding how cases should be processed (Eisenstein et al., 1988; Eisenstein & Jacob, 1977; Nardulli et al., 1988). While decision-making may be impacted by individual factors such as the

attitudes and perceptions of individual court actors and the degree of familiarity among the workgroup, it may also be affected by court-level and environmental factors outside the immediate court setting (Eisenstein et al., 1999; Nardulli et al., 1988). For example, sociodemographic factors and sociopolitical environments may pressure decision-makers and shape differences in court decisions (Britt, 2000; Fearn, 2005; Ulmer et al., 2008; Ulmer & Johnson, 2004). As a result, it is likely that decision-makers in the same courts and counties are exposed to the same influences and are more apt to act similarly to one another than decision-makers in different courts or counties. Research has suggested that court- and community-level factors do indeed influence decision-making (e.g., Britt, 2000; B. D. Johnson, 2006a; Ulmer & Bradley, 2006; Ulmer & Johnson, 2004; Wooldredge, 2007b), and multi-level and multi-spherical frameworks most accurately capture the realities of decision-making (Kautt & Spohn, 2007). This line of research, however, has largely not translated to court decisions in DV cases (for an exception, see, Wooldredge & Thistlethwaite, 2004).

Scholars should not only extend this work to examine how characteristics of the court and the surrounding neighborhoods and communities (e.g., political environment, religious environment, crime rate) may impact court decisions, but also explore the possibility that characteristics of decision-makers within courts influence decision-making in DV cases (see, e.g., B. D. Johnson, 2006a). According to Hogarth, “one can explain more about sentencing by knowing a few things about a judge than by knowing a great deal about the facts of the case” (1971, p. 350). Interestingly, however, even in general court research, relatively few studies have examined how judicial characteristics influence decision-making. Studies that have attempted to assess this relationship suggest

that while the characteristics of judges do matter to a degree, the impact is quite limited (Gruhl et al., 1981; B. D. Johnson, 2006a; C. Spohn, 1990a, 1990b; Steffensmeier & Britt, 2001; Steffensmeier & Hebert, 1999). This line of research has not been extended to prosecutors. Of particular interest would be how characteristics of decision-makers influence case processing of DV cases. Considering these cases are largely brought to the court system as offenses against women, it is plausible that male and female judges and prosecutors may behave differently when issues concerning traditional sex roles and women's rights are at stake (C. Spohn, 1990a). For example, perhaps female court actors feel more directly affected by DV. It is also plausible that older and younger judges and prosecutors may behave differently in light of the fact that DV was generally not processed prior to the 1970s. If judges or prosecutors still hold values that these cases should not be processed, differences in decision-making may be apparent. These are speculations, and empirical studies must be conducted to assess the relationship between prosecutorial and judicial characteristics and decision-making.

Major gaps in the court literature also concern research on DV recidivism. It is possible both in the extant literature and in this study that using regression techniques to examine the effects of court dispositions on recidivism may report spurious relationships. For example, perhaps defendants who were acquitted would have already been less likely to re-offend than convicted defendants. Thus, any observed differences in recidivism outcomes could be due to differences between defendants rather than the disposition they received. Although in this study, multiple controls were included in the recidivism analyses to increase the odds of finding valid relationships, the potential for finding spurious results cannot be ruled out. Sampson (2010) has recently identified advances in

statistical techniques, such as propensity score matching, designed to reduce the potential threat to the internal validity of observational study designs and improve the ability to estimate causal parameters with observational data. Propensity score matching can create statistically equivalent groups of defendants (e.g., using characteristics such as gender, race, prior criminal history) who receive certain dispositions; recidivism effects can then be compared across the different dispositions. A propensity score is the conditional probability of receiving a treatment (e.g., conviction) given a set of observed covariates (Guo & Fraser, 2010). Propensity score matching essentially “balances” out any differences in characteristics between groups of defendants receiving different dispositions so that the only difference between them is the type of disposition they received. Using methods such as propensity score matching may be more reasonable than employing experimental research designs to randomly assign defendants to different dispositions. However, experimental research designs may also be interesting to pursue if possible. Regardless of the approach taken, improvements in statistical techniques and research design may provide stronger testaments of the effects of court dispositions on DV recidivism.

Finally, if possible, future research should attempt to be more consistent in the operationalization of court decisions and sanctions imposed (see also Garner & Maxwell, 2011). As it currently stands, it is difficult to make comparisons across studies in the effects of prosecution, conviction, and sentence severity on recidivism. Specifically, studies vary in the statistical comparisons under examination (e.g., decisions to dismiss a defendant’s case compared to defendants who were convicted and received counseling). These differences across studies make it difficult to take stock of the literature examining

the effects of court decisions on recidivism.

### **Summary**

DV has received increased empirical attention over the past four decades. Although the majority of research has focused on understanding the correlates of DV and the dynamics within these relationships, a growing number of studies have examined the criminal justice response to DV. The growth in this type of research is promising, however, scholars still have a limited understanding of the predictors of decision-making in DV cases and how these decisions impact future offending. Further, relatively little is known about how specialized DV courts process cases.

This study expanded on prior research by examining prosecutorial and judicial decision-making in two specialized DV courts in South Carolina. To better understand the factors driving decision-making, statistical models predicting decision-making were conducted within each county and the magnitude of the predictor variable effects were compared across counties. Further, qualitative courtroom observations and interviews helped contextualize the quantitative results and provide insight into additional factors that may be important for understanding decision-making. Lastly, this study examined the effects of decision-making on future DV offending using three distinct measures of recidivism. Overall, this study, along with the extant literature, provides fertile ground for additional research on case processing in DV cases. It is only with continued research that we can better understand the criminal justice response to this unique form of violence and how decisions made by court actors may impact future DV offending.



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