PROSECUTORS' PERCEPTIONS OF HOW TO IMPROVE THE QUALITY OF
EVIDENCE IN DOMESTIC VIOLENCE CASES

Nina J. Westera*

Griffith Institute of Criminology, Griffith University, Queensland, Australia

* CORRESPONDING AUTHOR: C/O Griffith University; Mt Gravatt Campus,
Brisbane, Queensland, 4122, Australia

n.westera@griffith.edu.au; ph: 0061 73735 1017; fax: 0061 73735 1033

Martine B. Powell

Centre of Investigative Interviewing, Deakin University, Melbourne, Australia

martine.powell@deakin.edu.au

KEY WORDS: DOMESTIC VIOLENCE, PROSECUTION, VIDEO-EVIDENCE,
CRIMINAL INVESTIGATION, INVESTIGATIVE INTERVIEWING

In press, *Policing and Society*

IMPROVING THE QUALITY OF EVIDENCE IN DOMESTIC VIOLENCE

CASES: PROSECUTORS' PERCEPTIONS

Limited evidence in domestic violence prosecutions is a persistent problem. Focus groups with thirteen prosecutors from across Australia and New Zealand were used to explore how to improve the quality of evidence collected and presented in these cases. A thematic analysis identified three main strategies: improving the quality of investigations by initial police responders, supporting the complainant, and tailoring the trial process to the domestic violence context. The most discussed strategy within these categories has previously received little attention—police video recording the complainant's initial account and using that video as the basis for the complainant's courtroom testimony.

How to improve the quality of evidence available in domestic violence prosecutions has long troubled criminal justice professionals and policy makers (Burton, 2011; Garner & Maxwell, 2009; Hester, 2006). Often the violence is hidden from public view resulting in little direct evidence aside from the victim's account. Even having a victim's account as evidence is far from certain, as fear, shame, a lack of confidence in police, concerns about their children, or reconciliation with the offender lead many victims to withdraw from the judicial process (Epstein, 1999). For example, an analysis of 216 domestic violence cases heard in specialist family violence courts in England and Wales found that 50% of complainants retracted their statements (Robinson & Cook, 2006). This withdrawal is often fatal to the prosecution case. Without the victim's testimony, the prosecution must often rely solely on circumstantial evidence to establish the high evidential threshold of guilt beyond a reasonable doubt.

A wealth of research exists on the numerous reforms used by the broader criminal justice system to address victim retraction and the general lack of evidence in these cases. Specialist family violence courts, enhanced inter-agency responses, pro-arrest approaches, and reduced court delays are all strategies that have been introduced to varying effect (Burton, 2011; Gwinn, Strack, Adams, & Lovelace, 2007; Matczak, Hatzidimitriadou, & Lindsay, 2011). This study addresses another common policy reform that has received less attention in the research - strategies that improve the overall quality of evidence collected by police (from the victim and other sources) and presented in the courts.

Understanding how to improve the quality of evidence is important because, in criminal cases, strength of evidence is the strongest predictor of conviction (Devine, Clayton, Dunford, Searing, & Pryce, 2001). The same is true for domestic violence cases (Bechtel, Alarid, Holsinger, & Holsinger, 2012; Nelson, 2012;

Robinson & Cook, 2006). It is the role of police to collect evidence and therefore their ability to perform this task is pivotal to case outcomes. For instance, Nelson (2012) analysed 366 domestic violence cases in California to explore the influence of six 'police controlled antecedent' factors identified by the literature as likely to increase convictions. Both prosecutions and convictions were positively associated with four factors: finding and arresting the defendant, obtaining an emergency protection order, charging the defendant with more than one offence and completing the investigation on the same day. Two other factors examined, obtaining photographs and locating additional witnesses, increased the likelihood of prosecution but not conviction. In England, Robinson and Cook (2006) found that having a statement from a witness other than the complainant decreased the likelihood the complainant would retract and increased the likelihood the defendant would plead guilty. Police gathering a high quality of evidence may also improve victim satisfaction in the criminal justice response. Domestic violence victims reported being more confident in the criminal justice response when police took photographs, and feeling frustrated when they thought evidence gathering could be improved (Cook, Burton, Robinson, & Vallely, 2004; Hester & Westmarland, 2005; Vallely, Robinson, Burton, & Tregidga, 2005).

In the United States, England, Australia and similar countries, the general approach taken to improve the quality of evidence in domestic violence cases is to focus on 'victimless prosecutions' (also known as 'evidence-based' prosecutions; Corsilles, 1994; Ellison, 2002; Hanna, 1996). This approach attempts to address criticisms that police and prosecutors rely too much on the victim's views when deciding whether to prosecute the alleged offender (Gwinn & O'Dell, 1992). Police are encouraged to gather as much evidence as possible from sources other than the victim (e.g. detailed statements, photographs of the victim, medical evidence, emergency call recordings) and charge the alleged offender regardless of the victim's

views (Hanna, 1996). Prosecutors are encouraged to proceed with the case, by relying on this other evidence, even when the victim seeks to withdraw.

Despite these reforms, the persistent problem remains—without the victim's evidence it is difficult to secure a conviction in these cases (Bechtel et al., 2012; Hester, 2006). Contributing to this difficulty is the inadequacy of many police investigations, even when police have policy and training targeted at gathering a broad range of evidence (Hester & Westmarland, 2005; HMIC, 2014; Nelson, 2013; Ruff, 2012). In 2014 in England and Wales, HMIC conducted one of the few documented evaluations on the effectiveness of victimless prosecutions. In a review of case files from 43 police forces they found that there was an 'alarming and unacceptable weaknesses in some core policing activity, in particular the collection of evidence by officers at the scene of domestic abuse incidents' (p7; HMIC, 2014). In files where visible injury resulted from an assault, only 80% had a victim statement; 69% had a statement produced by the officer detailing the scene, injuries and demeanour of the victim or suspect; 46% had photographs; 23% had evidence of house to house enquiries; 16% had emergency call recording as an exhibit; and 4% had body camera recordings of initial scene attendance. These findings led HMIC to recommend police take urgent action to improve the effectiveness of investigations.

Together these findings suggest that a better understanding of how to improve the quality of evidence collected in domestic violence cases may increase justice outcomes in these cases. One key group of decision makers in this process, who are likely to have useful perspectives about this issue, are prosecutors. The experience of prosecutors in reviewing cases to decide whether to prosecute and what charges to lay, negotiating guilty pleas and sentences, and prosecuting contested cases provides them with a unique insight into evidence in domestic violence cases. Prosecutors also receive immediate feedback about what types of cases do and do not result in a

successful prosecution, which places them in an ideal environment to learn what is and is not effective practice. From these experiences, prosecutors may have ideas about how to improve the quality of evidence collected and presented in domestic violence cases that go beyond what has been captured by the literature. Currently we are unaware of any studies that systematically examine their perspectives about how to improve the quality of evidence in domestic violence cases. Identifying prosecutors' ideas about how to improve practice would provide a strong basis for empirical research to test the validity of those ideas.

The purpose of this study was therefore to explore the perceptions of prosecutors about how to improve the collection and courtroom presentation of evidence in domestic violence cases. Due to the exploratory nature of the research, we used a grounded theory approach that involves the simultaneous collection and inductive analysis of the data (Glaser & Strauss, 1967). We purposefully sampled prosecutors, considered by their peers as experts on this topic, to find what they thought were the key issues for improving evidence quality (Creswell, 1998; Patton, 2005). To ensure a representative sample of participants we sampled prosecutors from two neighbouring countries with similar criminal justice systems, Australia and New Zealand¹.

In Australia and New Zealand police procedure for responding to domestic violence is similar. Uniformed general duties officers who are responsible for responding to emergency calls for service typically respond to domestic violence calls. These officers tend to have minimal investigative training, but conduct the whole investigation. This may include a scene examination, interviews of the victim and other witnesses (usually reproduced by the officer into a written statement that is endorsed by the witness), and an interview of the suspect (recorded in the officer's notebook or on video at the police station).

In courtroom procedures in these countries, with rare exceptions, for a witness's evidence to be admissible they must attend court. If a witness (such as a complainant) fails to attend court the judge may issue a warrant for his or her arrest. Further, when a witness gives evidence that appears to lack veracity, shows an intention to be unhelpful to the party that called them or refuses to answer questions, the judge may rule that they are 'hostile' which enables the party that called them to cross-examine them (Mahoney et al., 2010).

METHOD

Participants

After obtaining approval for the study from the Griffith University Human Research Ethics Committee, we invited Crown Prosecuting agencies from different regions in each country to participate. These agencies only deal with cases that may result in a criminal trial, usually those that involve serious violence. All agencies agreed to participate. A senior manager in each agency was asked to nominate a prosecutor who they considered an expert in cases involving vulnerable witnesses. In total thirteen Crown Prosecutors were nominated and agreed to attend the focus group that was held in their country. In Australia, the focus group consisted of seven prosecutors who represented every Australian State or Territory, except for one small jurisdiction. In New Zealand, the focus group consisted of representatives from the Crown Prosecuting agencies from six different regions. The prosecutors, 8 female and 5 male, were experienced and had spent a mean time of 14.23 years as a prosecutor (experience ranged from 6 to 18 years).

Procedure

Due to the exploratory nature of the research, we used a non-directive approach to gain an in-depth understanding of prosecutors' views. Prior to each focus group, we provided the attending prosecutors with the broad research topics for

preparation as follows: (1) “In terms of evidence, please reflect on what distinguishes successful from unsuccessful prosecutions of domestic violence”; (2) “Please reflect on what police could do to facilitate the likelihood of a successful prosecution”. We both administered the focus groups that were held face-to-face and lasted approximately 60 minutes. During the focus groups we used an unstructured interviewing method where we exerted minimal control over the discussions (Patton, 2005).

We arranged for each focus group to be audio recorded and transcribed. We separately analysed and made notes about the themes in the transcripts of prosecutor’s responses. After meeting to discuss these themes, we found there was strong agreement in our interpretation of the responses. Large overlaps in the responses to both the research topics led us to collapse all responses into one group and analyse them together. In the next section, we report on the themes of the responses and provide quotes to illustrate prosecutors’ views. We have edited these quotes to de-identify all participants, correct grammatical errors and improve readability.

RESULTS

Prosecutors were passionate that changing the criminal justice response to domestic violence could dramatically increase the likelihood of successful prosecution. The discussions highlighted participants’ detailed understanding of the unique context of domestic violence and the difficulties this creates when prosecuting these cases. A major theme in their discussions was how to obtain sufficient evidence to reach the standard of proof (“beyond a reasonable doubt”) given the high likelihood the complainant would retract. Prosecutors’ main concern was that poor evidence gathering by initial police responders meant they often did not have the most reliable, complete and relevant evidence available. This view was consistent across both countries and all regions. Adding to this problem, prosecutors were concerned that

delays in the court process, restrictive rules of evidence and a lack of support for the complainant meant the unique needs of domestic violence cases were not met and fact-finders did not receive the best evidence possible.

Prosecutors' discussions focused on solutions to these problems, and our analysis identified three main strategies to improve the criminal justice response—two related to improving the police response and one related to improving courtroom processes. Each strategy was strongly focused on maximising the evidential value of the complainant's initial account as the central piece of evidence. The first strategy was to ensure that initial police responders conduct a quality investigation; second, was police arranging support for the complainant between the arrest of the defendant and trial; and third, was tailoring the court process to improve the reliability and credibility of the complainant's evidence. The remainder of this section elaborates on how prosecutors concerns could be addressed by each of these strategies.

Quality investigation from initial responders

A strong theme in prosecutors' discussions was their frustration that poor police investigations were undermining successful prosecutions in domestic violence cases. A failure of police to investigate thoroughly often resulted in charges not being laid, or when they were, a low prospect of conviction. Prosecutors attributed this problem to both the poor attitudes of officers and a lack of investigative skills.

But when I've had a woman that said "He grabbed a knife from the kitchen and held it to my throat," and the policeman hasn't even thought to get the knife while they were there. I say, "Where's the knife?" And the policeman says, "Oh, I didn't think to look for that."

Prosecutors perceived the problem with police attitudes was due to many police officers not understanding victim retraction and becoming frustrated from prior experiences of failed prosecutions due to victim withdrawal. They suggested these

factors resulted in many officers losing motivation to investigate these cases thoroughly.

Our biggest thing is police, just not even getting the case to us. They see the same type of case they've seen before, they're making the judgement call that it's going to end up the same way again, and they don't bother.

The problem with police attitudes was considered to be exacerbated by a lack of understanding by others in the criminal justice system such as lawyers, judges and jurors. Prosecutors suggested police attitudes could be improved if there was a deliberate and co-ordinated move by organisational leaders within the criminal justice system to change the culture across the sector. They suggested public attitudes also needed to change. Prosecutors discussed the importance of educating police and other stakeholders about victim retraction to reduce scepticism.

At varied times over a number of years, police have tried so hard to work out what the solution is, or what would make things better, and they become disillusioned and now you've got a huge culture shift to get them back... If it's going to be ad hoc change it's not going to work. It has to be from high up, at an organisational level, particularly for police because it does involve big change in their culture, and that will only happen if they're forced. You can't just say one section of the community or the criminal justice system is able to change it on their own—they can't. Part of the culture shift involves a team effort, where the magistrates come around to allowing that evidence to be used and convicted upon, scholars start saying public policy is in favour of us issuing warrants, and the whole system has faith in working together in a different way. I think it's tricky to say reflect on what police could do to facilitate the likelihood of successful prosecution. Everyone needs to work together in the justice system—there is no one entity that could make the system better on its own.

Prosecutors attributed the problem of poor investigative skills to frontline officers, who are not specially trained investigators, conducting the investigations.

Here's your problem. There are varying degrees of intra-partner violence. You get your badly smashed up victim who's admitted into hospital and the doctor rings the police... In these cases it is usually grievous bodily harm. The police will do that properly. They'll probably video the victim, they'll take photographs and they'll get the medical report. But then you get your mid-range cases; the victim

gets a clump of hair pulled out, bruised and battered and that sort of thing. The victim rings the police to get the offender out of the house for the night and that's handled by the first responder, who's a uniformed constable who takes a poor miss-spelt notebook statement. And then you get your low level below that – a slap, hit, punch, spit, that's handled by a first responder, who's a constable in uniform, who thinks it's a load of rubbish and wonders whether it's some on-going fight between the two that they've just been called in for. Those two: the mid-range and low level are just very poorly done.

Despite these concerns about officer skill level, initial police responders were considered best placed to conduct the investigation because of the small window of time the complainant would co-operate with the police. Any delay could result in the complainant retracting and the loss of evidence.

When the police first arrive, the victim wants to stop the violence, so that's the time at which they'll make a statement. Because the victim is likely to try to stop the prosecution after that and they don't want to deal with going to court.

Prosecutors suggested that with appropriate training and support initial responders had the ability to conduct these investigations.

There were three main sub-themes to prosecutors' suggestions on how to improve the quality of investigations by initial responders: video record the complainant's initial account, obtain a detailed and relevant account from the complainant, and gather corroborating evidence. A central theme to these strategies was to get the best quality initial account from the complainant and do everything possible to bolster the evidential weight of this account. The remainder of this section elaborates on each of these strategies.

Video record the complainant's initial account

Prosecutors strongly voiced the opinion that the main method used by police to record the complainant's account, the officer reproducing a written statement from the interview, was inadequate. Instead, video recording (or, if video was not available, audio recording) the complainant's initial interview would improve the quality of this

evidence. Prosecutors unanimously agreed that if police video recorded all interviews with complainants the prospect of a successful prosecution would dramatically increase. This view was expressed most strongly by prosecutors who had experienced the difference electronic recording could make because police in their jurisdiction were using it. With the increased access of police to smartphones, tablets and other technology, many prosecutors expressed frustration that police were not already electronically recording all complainant interviews in domestic violence cases.

There were many perceived benefits to video recording this central piece of evidence. Written statements were considered unreliable and incomplete. This method did not enable the prosecutors to make the most effective decisions about plea-bargaining or how best to present the case. A more reliable and transparent recording of what was said and how this information was elicited was seen to increase the evidential value of the complainant's account. The greater the evidential value, the greater the likelihood prosecutors could successfully argue that this account should be admitted as evidence. A video record would also provide the prosecutor with a better understanding of what the complainant would say in proceedings and create a stronger basis to cross-examine the complainant if they changed their story and were declared hostile by the court.

For the woman to come forward is out of the ordinary, and there's a high probability that having made the complaint she'll either be got at, or will rescind it later. So with these ones, it's do it early, do it once—so on video every time. Police just have to get what they can, because we have this one opportunity before she will be got at.

Hit the start button and video the whole thing. And if the officer has been trained properly they'll ask the woman, who's on the ground, what happened, who did this, and she'll start talking. You've got a live recording. The victims still go back to the defendant, even if they say there's been seven callouts in the last year between these two, the women still go back to these people. She will be

uncooperative and therefore hostile by the time you come to trial. And so the recording is everything.

Another benefit of video recording was that the record captured the complainant's demeanour at the time of reporting. Prosecutors perceived that emotions were heightened at this time, which meant the video record was more compelling than a written statement. For this reason, video was preferred to audio recording. If the complainant had injuries that were visible on the video, this would further enhance the evidential value and credibility of the complainant's initial account. Audio recording was still preferred to the written statement process. Whatever the method of recording, prosecutors stated that the earlier the record was made, after the victim was safely with police, the more reliable and credible the account was likely to be (*e.g.* in the police car outside the scene, at the hospital).

Get it on video. Get it while they're angry. Zoom it on that black eye. Get a video of her while she's lying in the hospital bed.

Obtain a detailed and relevant account from the complainant

Prosecutors were adamant that recording the victim's statement was in itself not enough, but that police needed to obtain a detailed account about issues relevant to the investigation and evidence.

The quality of the statements is hugely important... The amount of money that is spent to get a jury before a court with a trial judge is a lot of money, so if you've got a really poor statement it's not worth it. You've got to have a decent statement to make it worthwhile, to give yourself some chance of getting a conviction.

Producing a quality account was considered to involve getting as much detail as possible about the legal elements of the alleged offences and possible defences, and establishing any potential investigative leads that could help corroborate the victim's account. The ability of police to link the complainant's account to corroborating evidence was considered essential to enabling the prosecutor to argue later that this account was reliable. Given the high likelihood of repeat abuse, prosecutors suggested

the interviewer should explore incidents of prior abuse as another important source of corroborating evidence. Prosecutors preferred police to use narrative-eliciting questions so the complainant could give her account in her own words because they thought this made for a more compelling account. But, due to the level of detail required and limited opportunity to gather evidence, they suggested more direct questioning was also required to ensure all evidentially relevant points were covered.

You go through trial, you have to have enough information to tie the injuries to the account, and hopefully with no inconsistency. So how many times? Whereabouts did it strike you? When you fell down what part of your body did you fall on? Who started it? He always says she attacked me, I was defending myself. I think it's got to be a far more forensic enquiry because this is it, this is all you've got, and the photos. You need a directed discussion. If you say what happened, she'll just say he bashed me. Or she'll generalise, 20 times. What did he bash you with? I need detail. How many times? How many times do you remember being hit? Where hit? Closed or open fists? Which part of your face? And direct it. You've got a cut here, how do you think that happened? I can see you're bruised here, can you tell us anything about that? Smashed furniture?

The realism of the complainant describing or showing in detail what happened was also considered to make the account more credible. Due to the high likelihood of retraction, prosecutors suggested it was important for police to gather information from the complainant that would help to establish the context of the offending so it was more believable to fact-finders. Exploring the history of the relationship, and establishing the complainant's reasons for staying in the relationship and contacting police were all considered important.

We need to know the why. I think the interviewer can really delve into the why. I know it's tricky to ask that in a non-confrontational or non-accusatory way, but I think it's essential that it is asked.

Gather corroborating evidence

Prosecutors described the importance of gathering as much corroborating evidence as possible to strengthen the case. The more the complainant's initial account could be bolstered by these details, the greater evidential weight it would accumulate, and the more useful it would be for cross-examining the complainant should she or he be declared hostile. They perceived that collecting this evidence involved doing the fundamentals of investigation well. Photographs of the scene and injuries, obtaining medical evidence of any injuries, a recording of the emergency response call, and talking to family and friends were all considered essential.

You will lose her. But, you need to say "Has this happened before? Can you tell us anything about that?", interview other family members, friends, people like that will know. And you go and ask them and they say, yes, that was the occasion when we were driving and he pulled in front of us and he got out of the car and he yelled through the window, punched her and then he got back in his car. So other people will remember, or the victim's been to hospital previously and you've got the hospital records – gold. Absolute gold.

In the cases where we get photographs, we're far more likely to get up on an unfavourable witness, because she got the injuries from somewhere. And the initial statement was that this is how it occurred, and it just happens to be that there's an injury that matches the description of the assault... But also emergency calls to the police, the woman rang up in tears.

Support for the complainant

Another theme arising from the analysis of prosecutors' responses was that initial police responders did not understand the potential benefits of providing support to the complainant between when the defendant was arrested and trial. Prosecutors perceived that providing support would increase the likelihood that the complainant would engage in the prosecution process. A number of different support mechanisms were suggested, one was for police to have on-going contact with the complainant during this time. Another was for police to initiate a network of support for the complainant's general wellbeing, including housing and counselling services.

These people need supporting... because they've gone out on a limb... I quite often tell the officer in charge of the investigation I want someone assigned to that victim. I want a policeman to be her friend – the right policeman – who the victim's got the relationship with. And I've had really successful prosecutions where the police have been proactive in maintaining the relationship; here's my number, ring me.

Crisis support gives the victim other options for women who have been quite isolated and haven't told anybody and don't really know what else to do.

Tailor trial process to domestic violence context

Our analysis found that many of the prosecutors expressed strong views that the trial process did not cater for the complexities of domestic violence and thereby reduced the likelihood of successful prosecution. Delays in the court process, restrictive rules of evidence and a lack of support for the complainant was seen to reduce the quality of evidence received by fact-finders. We identified three sub-themes to prosecutors' discussions about areas for reform: having the ability to use the complainant's initial account as evidence, having a mechanism to explain the complainant's counter-intuitive behaviour to jurors, and making the court process more 'complainant-friendly'.

Using the complainant's initial account as evidence

The most animated discussion between prosecutors was about two reforms that created exceptions to the hearsay rule by allowing the video record of the complainant's initial account to be used as evidence. Without these legal exceptions to the hearsay rule, prosecutors could only use this initial account to discredit her testimony if she became hostile, rather than as evidence as to the truth of its contents. Prosecutors perceived that jurors and judges were more aware of the issues around retraction in domestic violence, but an absence of evidence still meant the threshold for a guilty verdict could often not be met. They highlighted that this problem could be overcome if the complainant's initial account could form part of the evidence. One

reform involved allowing the initial account of the complainant captured on video to be introduced as a prior inconsistent statement when the complainant provided a different story in the courtroom to what was initially said. Another reform was the ability to use the video record as an alternative type of evidence. By forming the basis for the complainant's direct evidence, this measure meant the complainant did not have to go through the stress of having to recall the events in the stand. Some jurisdictions had already undergone such reforms, which they believed had substantially increased the likelihood of conviction. Those that had not undergone reforms could see the potential benefits and were impatient for legal reform in this area.

If we could play the recording of the complainant at the trial, oh my god, our prosecutions would go absolutely through the roof because our magistrates know dead set what's going on with complainant retraction, but there's nothing they can do about it. And they will try what they can to facilitate the means of a complainant giving useful evidence, but at the end of the day they know that we can't pull words out of their mouths. So I think it would make a massive difference.

So that if the woman goes to ground, we can play the video if we can establish that the circumstances of the making of the interview were reliable, which is why we come back to getting it early, getting it absolutely so that you can establish evidentially that it was reliable. You've got the injuries that back up what she says. We can have a trial without her, and we have.

For video-evidence to be useful, prosecutors perceived it was essential that police interviews were of high quality (as described in the previous section). Prosecutors suggested the spontaneity of the complainant's account and his or her emotional demeanour whilst providing it made the initial interview more compelling and credible than a potentially concocted account given in courtroom testimony. This was especially the case if the initial account was corroborated by other evidence. Prosecutors expressed firm views that having certainty about what evidence the

complainant will provide, rather than waiting to see what he or she said in the stand, would result in more guilty pleas and save many complainants from having to attend a trial.

It depends on the quality of that statement, because I've had prosecutions fall down having a cruddy, inconsistent statement and a hostile witness. The judge and the jury wouldn't accept the charges.

Regions with these reforms to the hearsay rule already in place still required that the complainant attend the trial. To achieve this, many prosecutors supported the idea of arresting the complainant in the public interest. Those from regions without these reforms were uncertain about this strategy because they could not effectively cross-examine the complainant without the initial statement forming part of the evidence and hence were unlikely to gain a conviction. They were also concerned that arresting the complainant would place him or her at risk of reprisal from the defendant. Prosecutors who had implemented a pro-arrest approach also had these reservations initially, but perceived this reform more favourably after it was embedded due to the higher prospect of conviction and the ability for the complainant to attribute blame to police for forcing her to attend court.

I have to say, at first I found it very uncomfortable getting an arrest warrant for the victim, because it is quite a distressing thing to have to do. But, what has happened is that the defence lawyer knows that that's what we'll do, so it's like, you don't even think about it, you just say can I have a warrant Your Honour? And the magistrates go, yeah, there's no complainant, we've got a warrant, and then all of a sudden, I can't tell you the number of times the defence goes, "What if he pleads to this?" and so it actually resolves matters. It's very, very rarely that we've actually had to get people locked up. And you can arrest them in a nice way, not dragging them, kicking and screaming but getting the police to bring them straight to court and they give evidence straightaway.

I guess the complainant's got that fall-back position of "they arrested me and I was forced to be here". And, yes, there are cases where it's really, really hard and you are a bit worried. But I guess for me, overall, the implications have been so

profound and we get so many more pleas of guilty, and that to me is just the whole benefit of the whole question. And the victim needs to know that she can pick up the phone if it happens again. And what's more, if the defendant is convicted, and they're ultimately convicted enough of the time, they'll start getting serious jail time, and the woman might actually use a two-year break to get away, find a new partner and move on.

Explaining counter-intuitive behaviour

Prosecutors perceived many jurors did not understand victim retraction or why he or she would stay in an abusive relationship, and that this made the complainant's account seem less credible.

Evidence on counter-intuitive behaviour can be helpful because some jurors think that no one could put up with that. Surely you would leave? That's the logical answer. That's the intuitive thing to do. Not after the first time, the second, but after the third time you'd go. So logically the victim would have left. A sane person would leave... Jurors just don't understand the risk of the victim.

This problem was seen to be exacerbated by judges who did not understand the complexities of domestic violence and made judgmental comments about the complainant's behaviour in their summing up to the jury. Prosecutors thought reforms that enabled the complainant's 'counter-intuitive' behaviour to be explained could help overcome this lack of understanding and outlined a variety of ways this could be done. In addition to educating judges about victim retraction, introducing a standard direction about retraction for a judge to read out could reduce the inconsistency between judges in how they convey the complainant's statement retraction to the jury. Many prosecutors suggested calling an expert to explain the reasons why the complainant's return to the relationship was helpful and some were already using this strategy. Some prosecutors were themselves addressing the jury on this issue in their opening addresses and closing arguments. Finally, prosecutors could introduce why the complainant stayed in the relationship as evidence by asking the complainant

herself either in the police interview or in the stand. Prosecutors highlighted the importance of addressing this issue in a way that would ensure that the complainant did not feel judged.

I ask the victim in my meeting beforehand, “Whatever you say and answer to this question, I don’t care what you say, you’re answer will be right, it’s your answer.” Why did you go back each time? I don’t care what your answer is.” And all they say, every single time is I was scared, the children were there, I thought he’d stop doing it, I loved him, he said he was sorry”. There’ll always be an answer and whatever the answer is it doesn’t matter, but she’s got a reason and then you introduce your other counter-intuitive evidence. But they’ve got to be ready to answer that.

Making the court process more ‘complainant friendly’

Prosecutors perceived delays in the court process and a lack of support for the complainant when giving evidence as factors that increased the likelihood that he or she would retract. They thought the court process could be more complainant friendly and made a number of suggestions of how to do this. Fast-tracking domestic violence prosecutions to reduce the delays between investigation and trial was perceived as one way to increase the likelihood the complainant would remain in the prosecution process. Alternative means of giving evidence, such as the using video evidence (as previously discussed), the use of screens and providing support persons in the courtroom were also seen as a benefit, although some prosecutors were concerned that these measures may diminish the complainant’s credibility.

Early trial. Oh, my God, that would make a difference. Imagine if you could get in there within a month... If she is on our side, but she’s fragile, she needs a friend.

DISCUSSION

We found that prosecutors expressed strong views that the criminal justice system could improve the quality of evidence in domestic violence cases and with it the likelihood of successful prosecutions. Our analysis identified three main strategies criminal justice professionals could adopt to improve how evidence was collected, preserved and presented. First, ensuring initial police responders conduct a quality investigation and collect the highest quality evidence. Second, police leading a networked response to ensure the complainant was supported through the duration of an often drawn out criminal justice process. Third, tailoring the court process to meet the context of domestic violence cases so that fact-finders can receive the best evidence about the events in question.

A common theme to these strategies was the desire to introduce evidence that could help fact-finders understand why a complainant would retract in the courtroom and/or remain in a violent relationship. Some jurisdictions had already implemented some of the prosecutors' ideas about how to address this issue. These included providing the court with evidence about counter-intuitive behaviour through the complainant, experts, lawyers or judges. Research suggests these initiatives are sometimes effective, but many jurors will still rely on their own common understanding of human relationships when making decisions (Brekke & Borgida, 1988; Ellison & Munro, 2009; Ellison & Munro, 2014). Other strategies include attempting to reduce the likelihood that the complainant will retract by reducing trial delays, supporting the complainant before and during the courtroom process (Burton, 2011; Ellison, 2002; Gwinn et al., 2007). Yet, the most discussed reform has received little attention in the research: bringing fact-finders closer to the alleged crime by showing them a video recording of the initial account made by the complainant.

Prosecutors in the current study were more positive about the benefits of video-evidence than legal professionals in previous studies and did not mention the common concern that playing a video instead of having a witness present in the courtroom reduces the impact of the evidence (Criminal Justice Joint Inspection, 2009; Stern, 2010; Vallely et al., 2005). This may be due to the unique benefit of using video-evidence in domestic violence cases, as this initial account can form a critical part of the evidence if a complainant retracts—a video interview is better than no witness at all. An alternative explanation is that prosecutors have become more familiar with video-evidence and are better able to see the potential benefits.

Similar to previous studies, prosecutors also perceived that video-evidence could provide a more reliable and complete account from the complainant (Nield, Milne, Bull, & Marlow, 2003; Powell & Wright, 2009; Westera, Kebbell, & Milne, 2013). Prosecutors indicated that the interview may also capture a more credible account from the complainant due to heightened emotional distress nearer to the alleged crime and the visible presence of injuries (Westera et al., 2013; see also experimental studies that validate this view e.g. Dahl et al., 2007; Wessel, Drevland, Eilersten, & Magnussen, 2006). This may address Epstein's (1999) concerns that a flat emotional affect in the courtroom makes many domestic violence complainants less believable. But it may also result in false expectations from jurors or judges that there will be visible signs of injuries in the police interview, when often the abuse will leave none (Ellsberg et al., 2008).

Despite the potential benefits, our findings suggest the utility of police interviews as evidence depends on the quality of those interviews. This finding is supported by previous studies, which have found legal professionals are often highly critical of the utility of police interviews as evidence (Powell & Wright, 2009; Stern,

2010; Westera et al., 2013). For example, in a review of criminal justice responses to sexual assault, Stern (2010) suggested poor police interviewing meant playing these interviews as evidence was counter-productive to successful prosecutions. As a result, Stern recommended a review of police practice. This problem has the potential to be even more pronounced in domestic violence interviews because they are generally conducted by officers who are not specially trained in interviewing or investigations, unlike officers who conduct interviews with sexual assault complainants.

Implications for criminal justice policy and practice

In many of the jurisdictions studied, the ability to use video-evidence would require legal reform. In the United States, there have been intense legal discussions about using hearsay evidence in domestic violence cases (Beloof & Shapiro, 2002; Friedman & McCormack, 2005; Hudders, 2000; King-Ries, 2004). Another consideration is whether playing the complainant's interview would put him or her in increased danger of retaliation. Prosecutors in the current study perceived an increase in guilty pleas due to certainty around the evidence the complainant would give and how she or he would present. Research on the effect of video recorded victim interviews on case outcomes is required to examine whether these views are valid.

To video record complainant interviews police would need to have the appropriate infrastructure—recording equipment, data storage facilities, policy and training. Recording equipment could involve many options such as using electronic smart devices or body-worn cameras that are already being increasingly used by police. A pilot of body-worn cameras suggests this method is promising for evidence capture (not just of the complainant but the scene and the suspect), yet the usability of the equipment is an important issue that will need thorough scoping e.g. cameras on helmets are heavy, causing nausea in some officers after prolonged use (Police and

Crime Directorate, 2007). One of the few empirical studies on the use of body cameras is a randomised control study examining the impact of body cameras on the use of force by police officers (Ariel, Farrar & Sutherland, 2014). This study found that fewer incidents of use of force occurred, and less complaints were made against those wearing body cameras than those not, supporting the hypothesis that this more transparent process may moderate the behaviour of police officers and the people with whom they interact. Using body cameras may also have the additional incentive of moderating the negative attitudes of some officers towards domestic violence found in this study and prior research (Gwinn et al., 2007; HMIC, 2014; Nelson, 2013).

Another important area for reform is to ensure that frontline officers conduct interviews of domestic violence complainants that have evidential utility. Four main steps are essential to this process. First, police will need to work with prosecutors and scholars to define the type of information that is important in these cases. The findings of the current study have started to answer this question and suggest that effective evidence collection requires a 'victim-centred' approach to investigations that can form the basis for 'victimless' prosecutions. The ability of the investigating officer to link the relevant detail given by the complainant to corroborating evidence is of central relevance. Exploring other features common to domestic violence is also likely to be important. For example, the complainant may be able to describe strategies the alleged offender uses so that the complainant has no obvious injuries, or describe why the suspect was not acting in self-defence (HMIC, 2014).

Second, to address concerns about the utility of police interviews as evidence, it is imperative that police work with scholars to devise appropriate interview methods. These methods need to be as simple to use as possible, and enable frontline officers to obtain investigatively and evidentially relevant information with speed.

The method used in many countries for interviewing witnesses, the cognitive interview, was not designed for this purpose (Fisher & Geiselman, 1992). Further, it is difficult to learn and has been criticised by police for taking too long to administer (Kebbell, Milne, & Wagstaff, 1999; Memon, Meissner, & Fraser, 2010). Examining ways to make interviewing methods fit for purpose for frontline interviewers is vital (e.g. Dando et al., 2009).

Third, police need to embed these interviewing and other investigative skills in a learning program that incorporates the features required to learn skills: key principles that underpin the skills, clear instruction about the application of skills, effective on-going practice, expert feedback and regular evaluation of practice (Ericsson, Krampe, & Tesch-Römer, 1993; Powell, 2008; Powell, Fisher, & Wright, 2005). We are unaware of any documented learning programmes for domestic violence investigators that have these features. Finally, evaluating the effectiveness of new practices is particularly important, as programs that fail to deliver are costly for police. Making these changes is not only likely to benefit police investigations, but may also help address the long-standing problem of achieving just outcomes in domestic violence cases.

CONCLUSION

The ready availability of video technology to police and the public can bring fact-finders closer to the crime. These advances create the ability to improve the completeness and reliability of evidence, and the transparency of the evidence gathering process. The unique context of domestic violence cases means they are particularly likely to benefit from this technology, but many of these benefits are likely to apply to other types of crime. Police, legal professionals, policy makers and

scholars need to work together to make the most these opportunities through reforms to policy and practice that support fact-finders to reach just outcomes.

Acknowledgements

The authors wish to acknowledge the prosecuting agencies that enabled this research to happen and the prosecutors from those agencies who gave their valuable time to participate in this study

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FOOTNOTES

¹These countries both have a common law system based on the British system. There are, however, minor differences in criminal justice policy and legislation in each of these countries and across the six States and two Territories of Australia.

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