

POLICING FAMILY VIOLENCE IN CHRISTCHURCH

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Abstract

Up until the 1980s, the police often reluctantly intervened in domestic disputes. However, from the mid 1980s onwards, the introduction of pro-arrest family violence policies throughout the U.S., the U.K., and New Zealand, signalled a significant shift in police practices. It was hoped that the adoption of these policies would help improve the police response to family violence, and it was anticipated that police behaviour would consequently change. Unfortunately, the implementation of these policies has been fraught with difficulties, and they have often not translated easily into practice, or resulted in the intended changes. The current study, which was conducted in Christchurch in 2004, sought to understand how a pro-arrest policy was implemented at the local level. Drawing on a symbolic interactionist approach, and utilising Lipksy's (1980) street-level bureaucracy theory, this research focuses on a number of issues, including the application of the pro-arrest policy at the street-level, and its associated problems, and the legitimate/illegitimate exercise of discretion. This study has found evidence of significant practical problems with the implementation of the pro-arrest policy, which are similar to those that have been reported overseas.

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GLOSSARY

Pro-arrest policy: This type of family violence policy strongly encourages officers to arrest whenever there is sufficient evidence of an offence to proceed to court. However, officers can still exercise some discretion, since they are not mandated to arrest in every case.

Mandatory arrest policy: Unlike a pro-arrest policy, where officers have some discretion, a mandatory arrest policy requires officers to always arrest whenever there is sufficient evidence of an offence. Mandatory arrest policies are not operating within New Zealand, but can be found in a number of U.S. jurisdictions.

Domestic incident: An incident that occurs between intimate partners, which may or may not involve an offence.

1D: This is the code used for all domestic incidents where no offences have been disclosed.

Family violence: Family violence, as defined in the 1998 Canterbury family violence policy, draws on the definition utilised by the Domestic Violence Act 1995. Accordingly, family violence includes abuse which is physical, psychological or sexual, and includes intimidation or threats of violence (1998:1.1). It covers a wide range of intimate relationships, including parents, children, extended family, same-sex relationships, heterosexual relationships etc. (also referred to as domestic violence).

POL 400: A POL 400 form is an incident report form that all officers are required to complete after attending any incident with family violence overtones. This requirement applies irrespective of whether an offence has been committed.

Result: This refers to how the police resolve an incident. Under the current Canterbury Family Violence Policy (1998/10), officers can only result domestic-related events as K6 or K9. However, events that police attend can be resulted as K1 if the incident turns out not to be domestic-related.

K1: Not family violence related, no offence committed, police presence sufficient. Event is not formally recorded on POL 400 or family violence database.

K6: Domestic-related event, but no offence committed, or insufficient evidence of an offence. No arrest made. Incident is formally recorded on POL 400 and family violence database.

K9: Domestic-related event, sufficient evidence of an offence. Arrest made. Incident formally recorded on POL 400 and family violence database.

CARD system: CARD is the 'Computer-Assisted Resource Deployment' system, which is used to record all the information about the domestic incident from the Communications Centre. This data includes information relating to the time/day of the incident, which police unit responded, and how the incident is resulted.

Family violence database: The information from POL 400s is transferred to the family violence database, which stores information from all domestic-incidents attended by police. The data includes offender/victim histories, and past police response etc.

Chapter one: Introduction

Although family violence¹ is a problem faced by most, if not all societies, it has only been since the 1970s that it has been recognised as a fundamental political and social problem in western nations. Prior to this, domestic violence was largely considered an individual “marital” problem, relegated to the confines of private households. In fact, there was little recognition of the social costs of domestic violence up until the late 1970s and early 1980s, when it became an issue of political debate. As a result of the growing awareness of domestic violence and its impact on wider society (and thus its acceptance as a social, rather than individual problem), there has been increasing concern directed towards resolving the problem. In response, a considerable body of research has emerged, examining the causes and consequences of family violence, as well as potential solutions for combating it. However, it has only been in the last two decades that researchers have shifted their focus to the role the state plays in reducing its incidence.

One of the major areas of controversy has been how the police respond to family violence. Prior to international developments in the 1980s, the police tended to intervene minimally in ‘domestic disputes’. However, during the late 1970s and early 1980s, various lobby groups (particularly feminist groups) began criticising this police approach. It was argued that (male) police officers showed little concern for the welfare of women who were subjected to their husbands’ ongoing violence, and it became clear that the police needed to change their approach to family violence. This in turn, led to important developments in policy, and theoretically, the way that police treated domestic

¹ Family violence, as defined in the 1998 Canterbury family violence policy, draws on the definition utilised by the Domestic Violence Act 1995. Accordingly, family violence includes abuse that is physical, psychological, or sexual abuse, as well as intimidation or threats of violence (1998:1.1). It covers a wide range of intimate relationships, including parents, children, extended family members, same-sex relationships, heterosexual relationships etc... Throughout this thesis, family violence and domestic violence will be used interchangeably.

violence. Consequently, during the 1980s, most police departments in the United States, the United Kingdom, and New Zealand, adopted pro-arrest (and sometimes mandatory arrest) family violence policies, ultimately signalling a significant shift in philosophy and practice.

Since the adoption of these pro-arrest policies, numerous studies (e.g. Feder, 1997; Binder & Meeker, 1988) have examined their effectiveness. In particular, there has been increasing emphasis on problems associated with implementing these policies at the street-level. While some studies have reported the police response improving dramatically since the introduction of a pro-arrest policy, and thus concluded that the policy has been successfully implemented, others have shown that there have been significant barriers impeding its application at the ground-level. These studies have often pointed out that the introduction of such policies has not had the desired effect of changing police culture, and consequently, little has actually changed in terms of how the police respond to family violence.

Similar research (e.g. Schollum, 1996; Ford, 1986) in New Zealand, following the introduction of a pro-arrest policy in 1987, has shown that there have also been ongoing problems relating to implementation at the street-level. Not only has there been convincing evidence that little has changed in practice since 1987, but there are also suggestions that the family violence policy has never been successfully implemented, at either the national or district level. Despite such research being available to the police, many of the problems identified over a decade ago still appear unresolved, and the extent to which the pro-arrest policy has been implemented is disparate at best. Although some studies have taken place in other areas of New Zealand, similar research in Canterbury has been absent.

The implementation of pro-arrest policies obviously raises a number of important issues, including the effectiveness of training, and more importantly,

whether the philosophy of arresting offenders actually reduces recidivist rates (e.g. Gelles, 1993; Schmidt & Sherman, 1993). Furthermore, there has also been considerable emphasis on victim satisfaction with the police response, and victim perceptions of police behaviour (e.g. Stephens and Sinden, 2000; Hoyle and Sanders, 2000). While these issues are certainly important in understanding how effective the policy's philosophy is, and whether policy changes have helped increase victim satisfaction with the police, this thesis takes a different approach. Rather than focusing on how these policies are initially implemented and accepted, and the implications of these policies for victims, this study concentrates on how the policy is applied out on the streets, by those responsible for implementing them – frontline officers. The concern therefore, is not for how offenders and victims perceive the police, but the practical dilemmas faced by frontline officers.

Like a number of recent studies internationally, this thesis focuses on issues relating to frontline officers' implementation of pro-arrest policies (and policies in general), as well as addressing problems relating to the exercise of discretion. Thus, in addition to contributing to the current body of literature on the police response to family violence, and the implementation of pro-arrest policies, this thesis critically examines a number of issues relating to the policing of family violence, including: 1) how do the police respond to family violence?; 2) how well is the current family violence policy being implemented?; 3) in what areas is policy compliance most problematic?; 4) why is the implementation of the policy fraught with difficulties? Like most research into the police, this study takes a symbolic interactionist² approach to understanding how the police respond to family violence. Additionally, this research also utilises Michael Lipsky's (1980) theory of street-level bureaucracy, which is commonly used to study and understand problems relating to the implementation of policies, particularly in organisations such as the police. Lipsky's theory is also useful for

² Essentially, symbolic interactionism is a social psychological theory, "which focuses upon the ways in which meanings emerge through interaction" (Marshall, 1998: 657). In particular, symbolic interactionism is primarily concerned with analysing the meaning of everyday life (Marshall, 1998).

exploring the role discretion plays in the implementation process, as well as for comprehending how policies are practically applied at the street-level. By drawing on these approaches, this study hopes to establish how the pro-arrest family violence policy is supposed to work in theory, and how it actually works in practice. In order to address these questions, a number of methods are utilised, including participant observation and semi-formal interviews.

This thesis is divided into four major sections. Chapter two outlines the methods used in the research, as well as discussing some of the methodological problems associated with studying the police. Chapter three maps the development of police family violence policies in three countries: the United States, the United Kingdom, and New Zealand, examining how the pro-arrest philosophy has been developed, and how successfully these pro-arrest policies have been implemented. Consequently, this chapter provides a historical background in which the pro-arrest family violence policy has been developed and implemented, allowing for the current research to be placed into a broader context.

Chapter four examines the discretionary capacity of frontline officers, and how officer discretion may lead to what appears to be policy non-compliance. More specifically, this chapter addresses how discretion is exercised 'legitimately' in the context of family violence. This not only entails a discussion of why discretion is needed, but also how it is exercised out on the streets. Legitimate variables that influence the arrest decision, as well as the situational contingencies faced by frontline officers, are examined in detail. The purpose of chapter four is to show that although there appears to be problems with policy compliance, in many respects, often these problems can be justifiably explained.

In contrast, chapter five explores the problematic nature of discretion, and in particular, how discretion may be exercised in a discriminatory fashion, leading

to the selective enforcement of the law. Emphasis here is placed on the way that discretion may be used 'illegitimately' by frontline officers, and the implications this may have for the organisation and the citizens it serves. Furthermore, this chapter addresses issues around officer resistance, and how this may contribute to implementation problems. In short, chapter five discusses how problems with the implementation of the pro-arrest family violence policy may not always be justified.

Family violence is a particularly difficult area to police, and also one of the most dangerous, for both officers and citizens alike. While problems relating to how it is policed are inevitable, unlike previous research, the thesis explores some of the reasons why these issues exist in the first place. By doing so, this study will hopefully extend our understanding of how and why the police respond to family violence the way they do.

Chapter two: Methodology

Introduction

Initially, the current study focused on how the police respond to family violence, and more specifically, female domestic violence. Consequently, most of the original data were collected for these purposes. However, it became clear after the interviews and the fieldwork were conducted, that female domestic violence was not the issue frontline officers were primarily concerned about. During the collection of the POL 400s in particular, it was obvious that there were a number of problems with the police response in general, and subsequently, the focus of the research shifted quite dramatically. Instead of the study being concerned with issues relating to female domestic violence, the focus shifted to problems with procedure, and more specifically, policy compliance.

Consequently, the original methods used –policy analysis, participant observation, and semi-formal interviews with police managers and frontline officers, had to be supplemented by other methods – i.e. document analysis. Despite the various methods being discussed in greater detail later in this chapter, it is important to briefly outline what the research entailed.

Initially the research involved analysing current and past family violence policies, which facilitated the development of the interview questions.

Furthermore, understanding policy requirements was also fundamental for the fieldwork component, since this was primarily concerned with how the policy is implemented at the street-level, and its associated problems. Secondly, this research utilised semi-formal interviews, with both police managers and frontline officers. In total, nine police managers were interviewed before the fieldwork took place, and this was for a number of reasons. Firstly, although I had familiarised myself with the current family violence policy, I wanted to understand the expectations that management had of frontline officers. This was particularly important since the current policy was already six years old at

this stage, and interviewing the managers meant that I was able to ascertain what management's current expectations were, and whether these corresponded with the actual policy requirements. Secondly, by interviewing the managers before the frontline officers, I was able to familiarise myself with police terminology, which inevitably increased the rapport with frontline officers during the fieldwork, and helped further develop the questioning for the frontline officer interviews.

The frontline officer interviews were conducted at the same time that the fieldwork took place, and in total, 14 frontline officers were interviewed, and 13 officers were observed out in the field. While the other methods were valuable for contextualising the conditions from which officers are meant to frame their response, observing how they actually resolve domestic incidents, and thus, how the family violence policy is actually applied at the ground-level was invaluable. Utilising document analysis (i.e. analysis of the POL 400 forms) allowed an even greater understanding of police process, and more importantly, how officers frame their responses via paperwork. This was particularly important, since, as previous studies have highlighted, frontline officers are a significant source of implementation problems.

Overall, this chapter is divided into two main sections. Firstly, in order to contextualise the current research, methodological issues associated with researching the police, and problems encountered are discussed. Following this, the various methods used in this research are discussed at greater length.

Methodological issues

A number of methodological issues arose during the course of this research, and the following is a discussion of some of the problems associated with researching the police. More specifically, issues around access, risk, and informed consent are examined.

Access

Access in any formal organisation can be difficult to obtain, but securing access to the police is particularly problematic, especially given the closed nature of its organisation. Not only is initial access impossible to achieve at times, but as many police researchers stress, it requires ongoing negotiation (e.g. see Fox and Lundman, 1974; Reiner, 2000).

Gaining access into the police-world is largely a matter of having good contacts, and without these, it appears that access is much harder to obtain. As McCall (1978) comments:

Development of prior informal relations with department administrative personnel through proper sponsorship contributes greatly to the likelihood of negotiating department access (1978:86).

In their quest to gain access into five police departments (but only successfully in three), Fox and Lundman (1974) found that researchers with previous contact with police officials, or those with personal/business contacts who had established relationships with the police, found it easier to gain access. These informal contacts provided the researchers with initial entry into the organisation, but when such contacts were absent, access was harder to achieve. Similarly, van Maanen (1978) also struggled to gain access to American police departments. He spent six months trying to gain admission, and during this time, he was denied entry to 14 departments in total. Fortunately, van Maanen (1988) discovered a faculty member in his school, who had previous contact with police management in Union City, and through this medium, he was able to meet the Chief of Police, and access was subsequently granted (1988:84-85).

Those who have never been officers themselves face a particularly discernible barrier to access. These people Reiner (2000) terms 'outsiders outsiders', and these are people "...who are not employed or commissioned by the police or other governmental bodies with responsibility for policing (2000:222). As Reiner points out, 'outsiders outsiders':

...clearly face the greatest barriers in gaining formal access to police forces for research. They have no official status that mandates formal police co-operation and may (often rightly) be perceived as having critical concerns about police malpractice or failure (2000:222).

This last point in particular is worth further mention. Outsiders' motives are often questioned more rigorously than those from within the organisation. As van Maanen comments:

...the most important explanation for the police reluctance to open their doors to a curious social scientist adheres in the nature of any relatively closed system. Outsiders to such systems are troublesome and even dangerous. Police fears on this score are not groundless, since there are many illegal and potentially embarrassing activities that go on within their boundaries (1978:317-318).

Another reason why outsiders conducting research with the police may experience trouble accessing the organisation, is the secrecy³ that surrounds police matters in general. As van Maanen comments:

...secrecy is important to the police because of the potential embarrassment a disclosure about mistakes, misguided policies, cover-ups, and so on might bring the institution, organization, division, or other collective units in a department (1978:319).

Ultimately, however, the decision to grant access to researchers lies with the police chief (in my case, the District Commander) or whoever is responsible for particular districts/departments. As van Maanen points out:

...it is usually the Chief of Police whom the researcher must initially convince of the worth of his [sic] study if he expects to gain access. The chief is thought to be the crucial contact, the final authority...the chief takes formal responsibility for virtually all decisions taking place in the organization and often takes a very personal interest in even the most petty of matters bearing on his command (1978:328).

Luckily with this research, my supervisor had contacts within the Christchurch Police department, and more importantly, he had established informal relations

³ While secrecy is an important issue, at times, too much information can be supplied, particularly with regards to operational matters in a general sense, but not enough of it to provide information about how police culture influences behaviour. Some officers/divisions (e.g. Youth Aid) are more open than others.

with the District Commander. Contact was initially made by my supervisor, and fortunately the District Commander had a particular interest in family violence and appeared receptive to the research taking place. However, I was still required to go through the formal channels, and a research proposal and covering letter was subsequently sent to the District Commander. Shortly afterwards, I was contacted via email by the Canterbury policing development manager, who was responsible for dealing with my application for access, and a meeting was arranged. Following this meeting, I received confirmation that access had been granted at the district level, and a police supervisor was appointed to help facilitate the carrying out of the research. After a similar process was followed, access was also granted at the national level by the Research Steering Committee, situated within the Office of the Commissioner in Wellington.

Problems with access

Once access has been initially granted, other issues also come into play. While some of these relate to technical concerns, such as confidentiality agreements or indemnity forms⁴, other problems relate to access to the 'second gate': those who are actually being studied (Fox and Lundman, 1974:53). Sometimes access to these organisational actors can be more complicated than securing access to the organisation itself, and whether officers grant similar admittance into their worlds is a significant issue. For example, some of the managers I tried to contact for interviews successfully avoided my attempts at contact. Similarly, at the frontline level, entrée can be problematic if the trust of the officers is not gained. Not only can frontline officers refuse to answer questions or avoid answering them, they can also restrict access out in the field in terms of what can and cannot be observed. Furthermore, the researcher may face reluctance on the part of less senior police officers in carrying out research because of a perceived collaboration with management. As Reiner points out:

⁴ An indemnity form is essentially an agreement between the police organisation and the researcher, which states that the researcher accepts any potential risk to their personal safety, and that the police organisation will not be liable for any damage caused, either to the person, or their property.

The less visible but more important access problem is securing the trust and genuine cooperation of the people in the research site itself, after formal access has been given...In general the very fact of having official approval for the research can be a difficulty when it comes to being trusted by the research subjects themselves, who may regard the researcher with suspicion as a tool of management (2000:218).

However, once trust has been established, and the officers understand that the researcher is not an internal spy, most officers are often comfortable talking about their work experiences to outsiders. As Reiner explains:

Although gaining entry is always a problem, and trust needs to be continuously cultivated, many police officers are only too glad to tell you of their views and experiences once initial barriers have been overcome (2000:224).

Similarly, Punch (1989) comments:

Policemen in general delight in talking and gossiping and even enjoy revealing glimpses of their underculture to outsiders. A number of researchers have remarked on the surprising openness of policemen when discussing their work and even in not disguising their deviance in front of observers (1989:182).

Related to issues of access, is that of researcher liability. As Fox and Lundman point out, an important issue for police management is the desire:

...to protect the liability of their personnel from possible damages to observers. Typically, public organizations have dealt with problems of legal liability by requiring observers to waive the right to possible damage suits (1974:57).

The current research required signing an indemnity form against liability. This form essentially stated that as a non-member of the New Zealand Police, I accompanied officers at my own risk, and that the New Zealand Police was not liable for any injury (physical or psychological), loss of, or damage to, any property. Furthermore, I was also required to sign a deed of confidentiality agreement, which essentially stated that I would follow the instructions of police officers at all times while accompanying them.

Officers also had the power to prohibit me from being present in particular situations where unacceptable risks were present (e.g. firearms) and as Fox and Lundman (1974) point out, this is another way officers can protect themselves:

In situations which were deemed too dangerous or serious for an observer, the ultimate decision remained with the patrolmen who were being observed. Thus, patrolmen could prohibit observers from being present in such situations, to further protect their liability (1974:58).

Even though I had signed an indemnity form accepting total responsibility for my own personal safety, I still did not have unrestricted access to specific locations/crime scenes, particularly when firearms were potentially involved.

Clearly access can be a complicated affair, particularly with the lack of any informal relations with the police. Furthermore, whether access is granted to researchers is largely contingent on the nature of the organisation in question. When access is granted, it obviously says something positive about police management:

Management that permits research to be conducted generally reveals that something is different about their organization when compared to those which refuse research access. Thus, it has been observed, that organization members have higher morale, that the organization may be less rigid bureaucratically, or that the organization's members may have greater confidence in ongoing processes (Fox and Lundman, 1974:55).

However, carrying out research with the police is not only problematic in relation to access, as a number of other methodological issues also emerged.

Risk to participants: confidentiality and anonymity

Risk in social research is often assumed to relate to the potential danger to participants. Carrying out research with the police poses a number of potential risks, such as the threat of sanction/punishment for inappropriate behaviour that comes to light, or the hazard of public disclosure of what occurs behind closed doors. While officers are rarely subjected to increased physical danger when

accompanied by researchers, the risk of exposure is an important issue to consider.

Such risks are often counteracted with promises of anonymity and confidentiality, but to what extent can such promises be fulfilled? In this research, for example, nine managers from the Christchurch district, most of whom knew each other, were interviewed. The fact they also came from the top echelon made the issue of anonymity even more problematic, and the only way I found to overcome this, was to omit any identifying information. Identifying managers, even by their sex or age was inappropriate, since such details, once again, could expose the individual concerned. As Punch (1989:186) points out, anonymity is much harder to assure when carrying out research with more senior members of the police, since senior officers are less anonymous, more easily identifiable, and more cautious with what they are prepared to reveal.

Anonymity was less problematic with the frontline officers. While my police supervisor knew what shifts I had attended, he was not aware (to my knowledge) of the specific officers I accompanied. However, to ensure their identities were further protected, I decided to only include information relating to the officer's sex and age, omitting which station they were situated in. Confidentiality was not only a core concern for myself as the researcher, but also for the officers involved. Officers were notified right from the start that their identities would be protected, and this was the justification for asking personal information such as their age. As Reiner (2000) notes, observing the police and their practices poses problems with confidentiality because:

Much policing is dangerous, 'dirty' work: getting people to do what they do not want to do. The tactics for accomplishing this are almost inevitably going to be controversial even if they are legal, and they are frequently of dubious legality or clearly illegal...Such work is clearly seeking to uncover information which the subjects studied might wish to keep secret. At any rate the police studied will inevitably be anxious about how they are going to be represented to other audiences such as the managers or agencies to whom they are accountable (2000:218).

Similarly, as McCall (1978) points out, trust and confidentiality are particularly vital for frontline officers because:

Policemen are highly suspicious, even of other policemen in their own department or unit...Each policeman must assure himself that the researcher can indeed be trusted not to report to police administrators any questionable discretionary judgments, violations of departmental regulations, or police offenders against the law (1978:89).

However, trust and confidentiality can at times be tested. As Everett Hughes once remarked, “the fieldworker is inevitably a spy, a double agent, who will, in the end, betray his subjects” (cited in van Maanen et al, 1982:147). One incident that I brought to the attention of my police supervisor tested my commitment to protecting the frontline officer’s identity, but at the same time it also challenged the trust and rapport I had established with my supervisor. The incident, which was reported on in very general terms, highlighted some inappropriate officer behaviour, committed not by the officers I accompanied, but by a senior officer who had also attended the scene. Although anonymity/confidentiality to this officer had never been promised, by virtue of being in the presence of *any* frontline officer, confidentiality/anonymity was automatically extended in my mind. By refusing to supply specific details of the incident and the officers involved, in order for the supervisor (who is also a manager) to follow-up, I endeavoured to protect my respondents’ identity, but also at the risk of destroying the rapport and trust I had established with my supervisor in the process. However, I found out at a later date that management had tracked down information regarding the incident and officer through other means.

During the course of their research, other researchers have also found the issue of confidentiality problematic. As McCall (1978:89) stresses, anonymity and confidentiality of data cannot be simply promised, but must be demonstrated in some way. Issues of confidentiality are even more pronounced when the study involves observing police deviance. As Punch (1989) points out, academic researchers can often find themselves:

...in the same moral predicament as policemen and may even employ the same imagery of muddy boots and grubby hands ('in getting at the dirt one may get dirty oneself', according to Marx) (1989:193).

Punch (1989) goes on to say that knowledge of, or participation in deviant practices can be particularly dangerous for fieldworkers, since they may be subject to sanction from senior members of the organisation (i.e. access revoked) if caught. Although the incident I attended escaped the attention of police management until the fieldwork had been completed, and thus the fieldwork was not at risk of being terminated at that stage, I also wanted to keep open the possibility of returning to the field at a later date, should the need arise. Clearly issues around anonymity and confidentiality are significant methodological problems when researching the police, but other issues are equally problematic.

Risk to researcher

Because of the volatile nature of their work, officers are often confronted with on-the-job dangers, such as injuries and even death, and risk is an everyday calculation they must consider. However, when individuals train to become officers, they implicitly accept the dangers they may subsequently face. Researchers on the other hand, particularly those with minimal prior contact with the police, often enter the police-world with romantic notions of police work. The lack of understanding around the risks and dangers faced by those operating within this working environment, means that while researchers are at pains to minimise the risk to their participants, they often fail to acknowledge the risk they put themselves in (see Westmarland, 2000). Consequently, considerations for researchers' own personal safety often becomes a secondary issue to the risk imposed on officers. As McCall (1978) comments:

...field study of police work entails certain personal risks for the observer. Physical danger is a constant theme of police work – not only the danger of assault by offenders but the dangers posed by high speed auto chases, running down dark alleys, investigating dark and decrepit structures, and constant driving under all conditions (1978:88).

Similarly, as van Maanen (1988) argues:

Danger, whether real or imagined, is a constant companion to the police. And fear is consequently an emotion every researcher who spends time in the field with the police must face. Fear, to an observer of the police, stems from several sources. Certainly, by associating closely with the police, it may come from the ever present danger existing in city streets. I can recall feeling as if I had a bull's eye painted on the side of my head the first few times I rode in the front seat of a patrol car (1988:86).

There were admittedly, a few occasions where I felt (however unfounded) my personal safety was in jeopardy. At one domestic incident I attended, one of the officers I accompanied took me aside and warned me that if the alleged offender turned up, to watch my back and stay close to the officers, because he was known to be violent and anti-police. Upon hearing that, my anxiety increased, and as it happened, the offender's older brother (who was also known to be violent and anti-police) turned up, increasing my apprehension further. Interestingly, however, had the officer not warned me, I would never have perceived any risk in being there. There were, however, other incidents where the potential risk precluded me from observing particular incidents, namely those where a firearm was thought to be present.

Informed consent

Another important ethical issue which arose during this research was informed consent. A principal tenet of good ethical research is that participants are informed of the research, and that they give written consent, where practical, to participate. While there were no issues around informed consent for the police managers, who were provided with an information sheet and in turn provided written consent, it was a different matter for the frontline officers involved in the fieldwork.

As Tolich and Davidson (1999:72) explain, informed consent involves the exchange of information, whereby the researcher communicates what the research is about, and what involvement would entail, and the participants

agree to participate in light of these conditions, before the research is carried out. But as Tolich and Davidson (1999) point out, it is not always possible to provide informants with an information sheet and consent form, which was the case with this research. While information sheets were given to the senior sergeant/shift commander well beforehand, and they were meant to be distributed to frontline officers prior to my arrival, this never appeared to happen. This may be due, in part, to the fact that officers have to deal with a considerable amount of paperwork, and also because of the likelihood that officers would not read it anyway. Consequently, only the senior staff knew beforehand about my research, and only one shift commander explained to the group at roll call, who I was and what my research involved.

Consequently, most of the frontline officers I accompanied had no prior knowledge of my research, or what their participation entailed, and it could be argued that officers could not therefore give informed consent beforehand. However, I briefly outlined my research and what my presence entailed to the officers I accompanied once in the patrol car. I explained that I would be interviewing them during the course of the shift, and that I wanted to attend domestic incidents to observe their response. While officers were not explicitly asked for their consent to participate, they were not required to answer my questions, and they could also restrict my access if they did not want me accompanying them. At times, some of the officers employed one or both of these strategies.

While the nature of this research meant accompanying officers into private residences, informed consent was never gained from the citizens present for a number of reasons. Firstly, this research was not about the individuals who are involved in domestic incidents. The participants in this study were the frontline officers themselves, and the research was designed to gain an understanding into how the police respond to domestic violence. It was therefore pertinent that I was able to accompany the officers when they attended domestic related jobs.

The citizens present were never considered participants, and have not been treated as such within this research. Furthermore, informed consent was not sought because domestic incidents are often highly emotional, and asking for permission to discuss the incident in a thesis at such a time, would not only be highly insensitive, but would have interfered with the work officers were carrying out. Gaining informed consent at a later date was also not an option, since it would have been impractical going back to the scene of domestic incidents, and asking the victim/offender if their dispute could be reported on. This would have been not only highly insensitive, but also intrusive. While there may be good arguments for gaining informed consent from the citizens involved in the interactions with frontline officers, confidentiality is nevertheless assured, as these citizens are not identified in any way, and those incidents that are reported on are only discussed in very general terms. Furthermore, it is worth reiterating that this research focused specifically on frontline officers and their response to domestic incidents, and not on the citizens involved in the encounter.

The current research

The research setting

The current research took place in 2004, and was carried out with the Christchurch Police, which is the metropolitan centre of the Canterbury Police District. Christchurch is one of five main cities in New Zealand and is situated on the east coast of the South Island. In 2001, Christchurch had a population of 316,224 (www.stats.govt.nz).

The Canterbury Police District is the largest police district in New Zealand by area, and its territory extends from south of Kaikoura to south of Timaru (www.police.govt.nz). The district is divided into four areas - northern, southern, central and south/mid Canterbury, with the main police headquarters located in Christchurch City. In 2004 there were 817 sworn members and 120.3 non-sworn members in the Canterbury District, with a female staff of 15.6%

(including sworn and non-sworn) and 7.3% of staff identifying themselves as Maori (internal document, 2004).

The current research was carried out with the Christchurch metropolitan police department, which consists of four main stations - Sydenham, Papanui, Hornby, and Central. The decision to carry out the research within Christchurch City, rather than across the Canterbury District as a whole, was based on a number of factors. Firstly, this research was conducted for a Master's thesis, and extending the research to the whole district would have meant extra travel time (e.g. two hours drive to Timaru), as well as a data overload. The decision was also based on financial constraints, and it was decided that confining the research area to the Christchurch district, where I was based, would be more economical. Furthermore, there was enough variation and diversity within the four stations previously mentioned, that extending the geographical boundaries of my research was unnecessary. In hindsight, it may have been worthwhile, however, to have examined some of the more rural departments surrounding Christchurch city (e.g. Rangiora and Kaiapoi), in order to identify any differences between semi-rural and urban police officers.

Policy analysis

Before any practical research was undertaken, it was essential to understand and familiarise myself with the relevant family violence policies, since this research was largely concerned with how the family violence policy is implemented at the street-level, and the difficulties faced in achieving this. Consequently, policy analysis has been invaluable for understanding how the family violence policy has evolved since 1987, and for ascertaining current policy requirements.

This analysis basically involved looking at the family violence policies since 1987, and noting any changes in language, practice or provisions. With the exception of the 1987 policy (which could not be located), all family violence

policies were located and examined. These policies were primarily analysed in order to identify areas where policy compliance may be questionable.

Furthermore, because of the initial focus of this study, the policies were also analysed to ascertain whether or not they adequately address female domestic violence (as well as other forms of family violence). Familiarising myself with the policy was therefore essential for carrying out participant observation, as well as for formulating the interview questions.

Interviews

While participant observation is an invaluable method for researching the police, the importance of using other methods should not be overlooked.

Interviewing in particular, is a useful method for getting information the researcher wants, in a direct and open manner, and is a more economical means of obtaining data. As McCall (1978) comments, interviewing:

...is more flexible than observation, allowing the researcher to circumvent the barriers of time, space, closed doors, and the curtain of subjectivity. Moreover, interviewing is usually more economical since any number of topics can be covered in a short span of time, whereas the observer can only wait and watch through many irrelevant events in hopes that those pertinent to his [sic] interests will soon transpire (1978:5).

Although it was important to observe the frontline officers, I also wanted to utilise any 'down' time between 'jobs', to interview officers and obtain their views on family violence, the police policy, as well as a range of other topics previously discussed with the managers. This meant that even if I did not attend any domestic incidents during a shift, useful data would still be collected. As Haralambos and Holborn (1990) point out, interviews are sometimes used by participant observers to supplement the data collected through observations, since this:

...has the advantage of allowing the researcher to request the precise information required, without waiting for it to crop up in normal conversation (1990:845).

In contrast, I was not able to observe the managers out in the field, and therefore interviews were carried out.

Semi-formal interviews were carried out with police managers during August 2004. The management interviews were conducted before the fieldwork for numerous reasons. Although I had analysed the policies myself, I wanted to ascertain management's expectations of how the family violence policy would be implemented at the frontline, whether they anticipated any problems with policy compliance, and their professional views on female domestic violence. Secondly, by interviewing the managers first, I was also able to familiarise myself with not only the police language, but also issues management identified as being important. This inevitably helped facilitate more precise questioning for the subsequent interviews with the frontline officers.

In total, nine managers⁵ were interviewed, and they were situated throughout the four main stations in Christchurch: Papanui, Sydenham, Central and Hornby. While the managers included both males and females, the majority were men, which undoubtedly reflects the fact that the police organisation is still largely dominated by males. The managers also varied in age and years in the organisation, with some having over twenty years of policing experience.

The managers were initially selected by my police supervisor, who worked on the criteria that they were somehow involved with either the development or implementation of the family violence policy. Initial contact with the potential participants was made by my police supervisor, and this was subsequently followed up by an email I sent to all potential participants. An electronic copy of the information sheet outlining what their participation would involve, was also attached. A week later, potential participants were telephoned; however, some managers could not be initially contacted (due to being on annual leave), while

⁵ Although the term "managers" is used, not all of these participants were actually managers, but for the purpose of maintaining confidentiality, they are referred to as such.

others never returned phone calls. One manager also declined to participate. In the end, seven interviews were organised, and subsequently another two interviews were organised through two of the participants. Most of the interviews were conducted in the managers' offices, and the interviews lasted between 30 to 60 minutes, and all were tape-recorded and transcribed in full afterwards. Both the management and frontline officer interviews were subsequently coded according to the relevant themes/issues. As previously mentioned, the interview questions were initially designed to predominantly address issues relating to female domestic. Consequently, although some of the data generated within these interviews were applicable to the final focus of the thesis, a lot of the information gathered could not be used. Obviously if this research was replicated, the interview questions would need to be modified accordingly.

While interviewing managers was important, it was especially important to interview frontline officers. Firstly, frontline officers are the ones who attend domestic incidents on a daily basis, therefore making them somewhat "experts" on the matter. Not only could these officers explain the organisational stance on family violence and its corresponding procedures, but they could also highlight some of the problems associated with its policing. This was especially crucial with respect to policy implementation, and issues of policy non-compliance. Secondly, in many respects, frontline officers speak from a different perspective than management, and therefore ascertaining their opinions proved invaluable. As van Maanen (1988) points out, the hierarchical nature of the police organisation makes interviewing and observing the "lower caste" (e.g. patrolmen) more worthwhile since often there is conflict and tension residing at the lower levels. For the researcher, this:

... means that the members of the lower caste will make better informants (reveal more). Not only do they have less to lose objectively, but they are under less strain to appear faultless to either their internal or external audiences...(van Maanen, 1988:88).

Furthermore, as others (e.g. McCall, 1978) have pointed out, frontline officers often demonstrate a significant willingness to discuss their work with outsiders. Interviews provide a forum for frontline officers to communicate to management the difficulties (and other issues) related to carrying out their work.

Interviews were carried out with 14 frontline officers in total, which included both male and females from the three main stations: Papanui, Central and Sydenham. Ultimately these individuals were asked similar questions to management (see appendix 1), although minor modifications had been made either to the question structure or the language used. All of the interviews took place in the patrol car, either during 'down time' or on the way to 'jobs.' Often questions were asked whenever the opportunity presented itself, which meant at times there was a considerable lag between questions. Unfortunately, these interviews could not be tape-recorded because of heavy and constant background noises, such as the police CB. Their responses were, however, recorded in a notebook, and while at times I could not record exactly what was said, word for word, as Taylor and Bogdan comment:

It is not necessary to have a flawless reproduction of what was said. What is important is capturing the meaning and approximate wording of remarks (1998:72).

Furthermore, as Haralambos and Holborn (1990:845) point out, using tape recorders often "inhibit the natural behaviour of those being studied", and the knowledge that their conversations are being recorded may have the negative effect of officers answering in a manner not entirely honest or forthcoming.

Participant observation

While a number of methods were used, the research drew primarily on participant observation, and the fieldwork involved accompanying officers from Sydenham, Papanui and Central police stations. While I had control over what stations I went to, what shifts I went on and how long I stayed, I had no control over which officers I accompanied. This decision appeared to be made by their

senior sergeants, and consequently, I was unaware of who I would be assigned to until I turned up at the station. As a result, I accompanied some officers more than once, and while it would have been beneficial to have interviewed different officers, it also served to increase the rapport I had initially established with the officers the night before. It also provided an opportunity to ask additional questions.

In total, fifty hours of fieldwork were completed over a four-week period in 2004, on a total of 11 nights. Two weekends were spent with officers at Central, and a weekend each at the Papanui and Sydenham stations. For six of these nights I accompanied the officers on the night shift (10.30pm - 8am on the weekends), and five nights on the late shift (4pm to 11pm and til 2am on Thursday, Friday and Saturday). However, I did not accompany the officers for the full duration of their shifts for a number of reasons. Firstly, there was a reduced likelihood of a domestic taking place beyond 2am, and secondly, I also had commitments the next day which precluded me from staying for the whole shift. Consequently, on the night shifts I turned up at roll-call (10.30pm), and stayed with the officers until 2.00-2.30 in the morning. On the late shifts, I usually turned up part way through the shift (around 8pm on Fridays and Saturdays, and 4pm on Sundays), and stayed until the end (when it finished at 11pm) or until the early hours of the next morning. All observations were subsequently coded according to policy provisions, in order to establish whether policy was followed. Furthermore, the fieldwork observations were also analysed in light of the paperwork subsequently produced by frontline officers to see whether there were discrepancies between what actually happened, and what was officially reported.

Advantages and disadvantages of participant observation

Since the 1960s, a considerable number of ethnographic studies on the police have been conducted (e.g. van Maanen, 1988; Holdaway, 1983). Most of these studies have relied on participant observation as the primary means of data

collection, since this method has proved to be an important means of understanding the reality of police work. Participant observation is particularly suited to studying organisations such as the police, because it enables the researcher to observe and understand how things actually work in the day-to-day running of things. While participant observation has numerous advantages, it has also been heavily criticised.

Participant observation, sometimes referred to simply as fieldwork, is an ethnographic tool used to understand specific social worlds and the individuals who operate within them. According to McCall (1978), field research that includes direct observation involves the:

...collection of empirical data concerning behavior, interaction, or social organization through more or less disciplined processes of looking at and listening to the conduct of relevant organisms within the context of their indigenous settings (1978:2).

Participant observation is a particularly useful method for those wishing to understand cultural norms, the use of language, the examination of certain behaviour and practices, social interaction, roles and relationships, and the study of organisations in general (Tolich and Davidson, 1999:8). As Reiner (2000) points out, participant observation is a particularly good method for researching the police because the work of frontline officers:

...take[s] place outside the organization, away from immediate oversight by managers, with officers generally working alone or in pairs. This gives the rank and file considerable scope for making their accounts of incidents the authoritative ones as there is usually no challenging version other than those of the people who are being policed, who are normally low in 'the politics of discredibility.' The wish to penetrate this low visibility is why participant observation has been the main technique adopted by researchers wishing to analyse the practices and culture of policing (2000:219).

Because this research involved looking at how officers respond to domestic incidents, participant observation, in conjunction with the analysis of official documents, allowed me to see whether or not officer accounts matched what I

had observed. Furthermore, since the research was looking in part at how the family violence policy is implemented at the street-level, observing the police carrying out their duties meant I was able to appreciate how officers go about their work, in terms of their interactions with citizens, and also how their behaviour is structured by organisational norms and rules. As van Maanen (1982) points out, often "...the rule like understandings that underlie social practices are unseen and unquestioned" (1982:145) by the members of the organisation. For an outsider (the researcher), it is much easier to see how rules actually shape the behaviour of officers, and to notice when rules are not followed.

Perhaps the greatest advantage in conducting participant observation is the access to what Goffman (1963) refers to as 'backstage' behaviour. As Meyrowitz (1985) points out, 'front region' or 'onstage behaviour' is when:

...the performers are in the presence of their "audience" for a particular role, and they play a relatively ideal conception of a social role (1985:29).

Thus, when police officers are out in public, performing their duties and interacting with citizens, they are carrying out front region behaviour. Here they generally speak, dress and act in a way deemed appropriate and representative of the organisation. However, when officers are alone in their patrol car they tend to display backstage behaviour. As Meyrowitz (1985) states, a backstage area where back region behaviour is performed, is an:

...area that is hidden from the audience and they share this area with others who perform the same or similar roles vis-à-vis the audience (1985:29).

In many ways, front region and backstage behaviours are not entirely situational – as in physical context, but rather contingent on who is present in their social space at that time. There are a number of benefits with observing both front and back stage behaviour. As Punch (1989) comments on his research experience:

The primary insight that I gained...was that there exists a wide disparity between the public presentation of police work – as sober, legal,

competent, professional and even “sacred” – and the backstage reality. Out of sight, there is another world of largely instrumental concerns, of simply getting through the day, of manipulation, violence, incompetence, humor and tomfoolery, and also of informal norms, rewards, and sanctions (1989:179).

Observing back region performances by the police is critical for understanding the reality of police work, since often the organisation can be better understood through the informal and back region performances displayed by officers. It is here, in the back region, where the realities of frontline officers’ work can be understood more fully than if observation was based solely on front region performances. Participant observation is also particularly useful for understanding the language employed by those being researched (e.g. see Taylor and Bogdan, 1998; McCall, 1978).

While participant observation has definite advantages for those conducting research on the police, there are also some practical problems to consider. Perhaps one of the most problematic aspects of participant observation is the hit-and-miss nature of it. Time limits have to be imposed, since studying an organisation for years on end is not applicable for many. Thus, at some stage there needs to be a cut-off point for the researcher to exit the field, even if they have not managed to observe a particular phenomenon to the degree they may have liked. This seems to be particularly problematic when studying the police, as van Maanen (1978) points out, since:

...so much policework (at least at the patrol level) is patently unpredictable, there is no guarantee that one’s time in the field will be even roughly commensurate with the naturalistic observation of what the researcher might consider critical events. As many others have pointed out, the first-hand observation of the police in action can often be a boring and frustrating affair, since there is no assurance that one will see what one came to see (1978:320).

This was an obvious problem for my own research, since I was primarily concerned with observing domestic incidents, and unfortunately, with domestics, there is no pattern of when and where they will occur. This meant

that sometimes I was driving around with the officers for hours on end without attending an incident, and in the end I attended only six incidents in total. Although everyday police work was somewhat interesting and exciting initially, it soon became very clear that the work at times can be quite mundane and boring. By the end of the fifty hours in the field, I felt I was no longer adding to my knowledge, and the tedium of not going to domestics, and spending hours in the car, quickly hit home.

A common criticism levelled against participant observation as a research method is its spatial and temporal limitation. Often such research is limited to a particular group(s) and specific time periods and geographical locations, meaning that any findings only apply in that context. This means that generalisations about the organisation are often difficult to make, particularly if it is the only method employed. As Haralambos and Holborn (1990) comment:

...to quantitative researchers the samples used in participant observation are too small and untypical for generalizations to be made on the basis of the findings. Any conclusions can only apply to the specific group studied (1990:847)...The data from participant observation rely upon the particular interpretation of a single individual, and is specific to a particular place and time (1990:847).

The impact of the researcher's presence on the participant's behaviour is another common criticism (e.g. see Haralambos and Holborn, 1990). The presence of a member of the public observing how officers behave may result in officers modifying their behaviour. Others, however, disagree with this evaluation. As Skolnick points out:

First, the more time the observer spends with subjects, the more used to his [sic] presence they become. Second, participant-observation offers the subject less time to dissimulate than he would have in answering a questionnaire...Third, in many situations involving police, they are hardly free to alter behaviour (1966:36).

While it is very difficult to assure that the researcher's presence has no impact on the data collected, as Skolnick (1966) comments, if officer behaviour is

modified at all, it only happens in one direction. Officers are hardly likely to behave more harshly towards citizens if a researcher is present.

Document analysis

The data from the fieldwork and interviews were also supplemented by the analysis of official documents, most importantly, POL 400 forms. A POL 400 form is a family violence incident report form that all officers are required to complete after attending any incident with family violence overtones, and this requirement is irrespective of whether an offence has been committed. As McCall (1978) points out, the analysis of public documents such as official reports and statistics are often superior to informants, because:

...official reports and statistics cover matters beyond the awareness of a particular informant, are based on regularized procedures often under external audit, are more precise than an informant's memory...Typically, of course, the views conveyed by such documents are partisan or merely official views, but these are often important data in themselves, and, in any case those imparted by informants may be no less partisan or official (1978:7).

More importantly however, the analysis of these POL 400 forms has been particularly vital for understanding how officers officially present the 'facts' of the incidents they have attended. For example, I was able to correlate the POL 400s to the events I observed, and ascertain whether or not the details were compatible. At times, such data did not always neatly correspond with one another, which raised important issues discussed within this thesis.

POL 400s were collected from the Christchurch district for the period of 2 August to the 29th August, 2004, as this was the time frame in which the fieldwork took place. These POL 400s are stored primarily at the Central, Papanui and Sydenham stations, but also at stations situated outside of Christchurch city. I did not collect these latter POL 400s because it would have been time consuming and expensive travelling to the outside stations. Furthermore, a sufficient number of POL 400s were collected in the Christchurch City area. In retrospect however, it may have been beneficial

collecting these POL 400s. In total, 313 POL 400s were collected, although 149 could not be located. These, I was told, were either located at an outside station, or were with the prosecutions office (i.e active files that were not readily available). The 313 POL 400s collected thus represent 67.7% of all POL 400s completed during this period.

The POL 400s were analysed according to a number of variables, including: 1) sex of offender and victim; 2) action taken by officers; 3) variables relating to the nature of the incident – i.e. violence used or threatened against person or property; 4) whether protection orders existed and whether they were breached; 5) relationship between victim and offender; 6) physical injury to victim; and 7) initial support provided to victims.

Data from the CARD system were also analysed. CARD is the 'Computer-Assisted Resource Deployment' system, which is used to record all the information about the domestic incident from the Communications Centre. This data includes information relating to the time/day of the incident, which police unit responded, and how the incident is resulted. CARD data were analysed according to the number of incidents attended, and how they were resulted.

The exclusion of other methods

Initially, the research was also going to involve distributing questionnaires to all frontline officers in the Canterbury Police District. However, it was clear from very early on that sufficient information would be collected from both the management interviews and the fieldwork. There were also other factors that influenced this decision not to use questionnaires, such as financial considerations. Distributing over 200 questionnaires would have been a costly exercise, not only in making copies of the questionnaires, but also in postage and packaging costs. In contrast, the research that was carried out cost very little financially. Secondly, I had to take into account the possible high non-response rate. Other researchers who have carried out questionnaires with the

New Zealand Police have had disappointing response rates (e.g. Marsh, 1989 – response rate of 37%). In part, the high level of paperwork involved in police work must go to some way to explaining this. As McCall (1978) comments:

Perhaps because of their ambivalence toward “book learning” and their antipathy toward paperwork, questionnaires and paper-and-pencil tests are not well received by many of the less professionalized officers (1978:87).

Furthermore, questionnaires would have been time consuming for the officers, since they would have had little time during their work hours to complete it. This would have meant having to answer the questionnaire during their personal time, which I felt would have contributed to a high non-response rate. Carrying out the interviews and fieldwork during the course of the officers’ shifts meant that I was not taking up any of their personal time. Another factor was validity, and this was something that my police supervisor also identified as being a potential problem. There is a greater likelihood with questionnaires that officers will answer questions according to what they consider the right answer. Conversely, officers may fill out the questionnaire deceptively, thus affecting the validity of the data. For these very reasons, it was decided that questionnaires would not be used in this research.

Summary

Although this research was initially concerned with how the police respond to family violence incidents (domestic incidents), and more specifically, incidents involving female offenders (female domestic violence), it became clear very early on during the research process, that the family violence policy was not being followed consistently. Initially, I assumed that family violence in general, was being policed effectively, and knowledge that it was not, required a shift in focus. Subsequently, the study became primarily focused on police process, policy implementation, and officer subversion and discretion.

Although the change in focus did not require abandoning the initial methods chosen, the nature of the questioning was inevitably modified in order to

address the shifting focus. While participant observation and semi-formal interviews certainly provided some valuable data for the current study, it was also clear that other methods, in particular document analysis, had to be utilised in order to gain a greater understanding of the police organisation, the world of the frontline officer, and to examine how and why the implementation of the family violence policy in Christchurch has been problematic. However, given that the shift in focus obviously affected the type of data generated by the study, it is clear that a broader approach to investigating the police response to family violence may have uncovered some valuable information.

Researching the police can be a difficult task, and much like the nature of police work itself, is rarely straight-forward. The task is further complicated when the research involves examining and highlighting police deviance. Obviously there are a number of methodological issues which arise from conducting police research, including problems with gaining and maintaining access, confidentiality and anonymity, and risk to participants and researcher alike. While a number of difficulties were encountered during the research process, such problems should not detract from the fact that researching a relatively closed system such as the police, also has numerous rewards.

Chapter three: Historical background

Introduction

Police family violence policy in the United States, the United Kingdom, and New Zealand underwent significant change in the 1980s. Up until the early 1980s, the police adopted a predominantly minimalist interventionist role in 'domestic disputes'. However, during the 1980s, largely in response to pressure from various lobby groups, it became evident that the police had to take a more proactive stance towards domestic violence, particularly if they wanted to safeguard their police agencies from criticism (and sometimes legal action). After the findings of the Minneapolis Experiment were made public in 1984, most police departments across the U.S., the U.K., and New Zealand, adopted the pro-arrest philosophy favoured by the study, and to this day, most police policies still favour the pro-arrest approach.

Given that the current research focuses on issues relating to the implementation of a pro-arrest family violence policy, it is important to place it within the context of a wider body of research. Furthermore, since developments in police family violence policy in New Zealand have often occurred in step with developments overseas, it is important to understand how pro-arrest policies were adopted and implemented in overseas police jurisdictions. Consequently, this chapter foreshadows many of the issues discussed within the current research and as such, provides a comprehensive foundation for understanding how and why these problems exist. In sum, this chapter maps the development of police policy in the U.S., the U.K., and New Zealand, and highlights some of the difficulties faced in implementing pro-arrest policies. The purpose of this chapter is to show that even though pro-arrest policies have been a fundamental development within police organisations, implementation has often been fraught with difficulties. Indeed, it appears that few, (if any) police departments have been able to successfully implement the policies at the street level.

The United States

In the United States up to the 1970s, police tended to intervene minimally in domestic incidents. Although for decades this was not viewed as problematic, lobby groups (some of which emerged from the women's movement) began pressuring the police to change their practices, and at the same time, a number of groundbreaking lawsuits were lodged against various police departments. These lawsuits argued that the police "...had denied women equal protection of the law by failing to arrest offenders of domestic violence" (Melton, 1999:4), and they signalled to police administrators the risk of not taking action against such offenders. The politicisation of domestic violence brought the issue of minimal police intervention into the public forum, and it was within this context, that the so-called Minneapolis Experiment originated.

Minneapolis Experiment

Funded by the National Institute of Justice, the Minneapolis Experiment, as its name suggests, was conducted in the city of Minneapolis, Minnesota in the early 1980s. Situated in two of the four precincts in the Minneapolis Police Department, the experiment was designed to test the theory that arrest would deter domestic violence offenders from committing future crimes. Working on this premise, the experiment assessed a number of different police responses to minor incidents of domestic violence: arrest, separation or mediation. A colour-coded pad was distributed amongst the officers, and if the colour of the form indicated an arrest should be made, officers had to respond accordingly (i.e. arrest). The deterrent effect of each was subsequently examined through the analysis of official police reports, as well as victim interviews at various intervals during the study period (for greater detail, see Sherman and Berk, 1984). The experiment officially commenced in March 1981, and included an initial sample of 33 officers, which, by November 1981, had increased to 51 officers (Sherman and Berk, 1984). By August 1982, 314 case reports had been collected, and the experiment officially came to a close.

By 1984, the initial findings of the Minneapolis Experiment were released, and it was concluded that arresting offenders appeared to result in lower recidivist rates. According to official police records, during the six month period following arrest, only 10% of arrested offenders were apprehended for repeat violence (Sherman and Berk, 1984:6). However, according to the victim interviews, the recidivist rate was higher, with victims reporting that 19% of those arrested had re-offended during this time period. Nevertheless, as Sherman and Berk (1984) point out, notwithstanding the victim interviews, arrest still appeared to be the most effective response. In contrast, the separation and mediation responses fared less well, with police reports and victim interviews indicating higher rates of recidivism (see Sherman and Berk, 1984 for more detail). In short, the experiment concluded, and advocated, that intervention in the form of arrest was a more effective police response than the traditional responses taken (i.e. mediation and separation).

However, not long after the official findings were released, a number of issues relating to the external and internal validity of the experiment arose (see Zorza, 1994; Binder and Meeker, 1988, for greater detail). In particular, there was convincing evidence that officers were still exercising considerable discretion during the experiment, although the experiment was designed to effectively remove officer discretion. Even though the police action was supposedly dictated by the specific colour of a randomly-assigned form (i.e. pink = make an arrest), it was clear that officers did not always respond accordingly. As Sherman and Berk (1984:4) note, while 99% of offenders targeted for arrest were actually arrested, only 78% of those who were meant to be advised actually received advice, and only 73% of those supposed to be separated, were actually separated. While Sherman and Berk (1984:4) attribute this discrepancy to the fact that officers may have resorted to arresting the offender, there appears to be no evidence to support this. As Binder and Meeker (1988) comment:

...many officers failed to follow experimental procedure for various reasons, and the plan to monitor the process of random assignment could not be maintained, which made it impossible to ascertain the degree to which officers intentionally subverted experimental purposes (1988:350).

The fact that most officers failed to turn in cases within the study period, tends to support the view that officers exercised considerable discretion during the experiment. As Sherman and Berk (1984:3) note, most officers turned in only one or two cases in total, while three of the initial 33 officers were responsible for handing in 28% of the total cases (n=314).

Furthermore, there was evidence that the officers in the study had advanced knowledge of which response they would be using. As Zorza (1994) comments:

Officers may have violated the study's assumptions that cases were randomly allocated by failing to respond to domestic disturbance calls or by reporting incidences of misdemeanor domestic abuse cases as "felony assaults" or "nonmisdemeanors". For example, an officer might misclassify a misdemeanour as an incident involving an acquaintance or friend, or fail to make an arrest near the end of his or her shift or before a vacation to avoid spending extra time on duty (1994:935).

Although the Minneapolis Experiment was supposed to control officer discretion, as is evident, officers actually exercised considerable discretionary power during the study period. In short, although the experiment concluded that arrest had the greatest deterrent effect, it was equally clear that mandating particular responses did not result in the intended effects. Indeed, officers appeared to readily subvert the experiment, and it was clear that they controlled their own decision-making, deciding for themselves what type of intervention the situation warranted. However, despite these criticisms, the early results of the Minneapolis Experiment were accepted, and in turn, were incorporated into police policy

Impact of the Minneapolis Experiment

While the Minneapolis Experiment had a profound effect on police domestic violence policy, mandatory arrest policies were already being introduced in the

U.S. before the experiment had even been conducted. For instance, by mid 1983, 33 states had already enacted statutes which permitted arrest, and six states already had a mandatory arrest policy (Zorza, 1994:936). In essence, the Minneapolis Experiment effectively assisted the widespread adoption of pro-arrest or mandatory arrest policies throughout the United States. For example, as Buzawa and Buzawa point out:

In 1984, only 15 out of the 140 cities surveyed by the Crime Control Institute had policies encouraging arrests. After the original... (Minneapolis) study received mass attention, this tripled by 1985 to 44 out of the 140 cities surveyed (1990:95-96).

By January 1987, 176 cities throughout the U.S. had adopted some form of pro-arrest policy (Gelles, 1993:576). The experiment's impact was further facilitated by the release of the final report from the U.S Attorney General's Task Force on Family Violence⁶, made public the same year, and also an important lawsuit, *Thurman vs City of Torrington*⁷ (see Gelles, 1993).

As is evident from the widespread adoption of pro-arrest and mandatory arrest policies, the Minneapolis Experiment had a considerable impact on police department policies throughout the U.S., and the Minneapolis Police Department itself changed its official domestic violence policy, adopting a pro-arrest approach. Although arrest was not mandatory, officers were required to file a written report, explaining why they failed to make an arrest when it was legally possible to do so (Sherman and Berk, 1984:8). However, whether the introduction of pro-arrest policies actually translated comfortably into practice was another matter.

⁶ This report drew heavily on the results of the Minneapolis Experiment in framing its final report. The report called for police departments and criminal justice agencies to recognise and treat family violence as a criminal activity, and to respond accordingly. The report also recommended that arrest should be the preferred response to family violence (Gelles, 1993:577).

⁷ In June 1983, Tracy Thurman filed a civil suit against the City of Torrington and 29 police officers, claiming that the police had failed to protect her from the violent attacks of her estranged husband. Thurman was subsequently awarded \$2.3 million, which was later settled outside of court for \$1.9 million. This case was particularly important for the police, since the minimalist approach to the policing of family violence left them vulnerable to similar lawsuits (Gelles, 1993).

Effects of changes on police practice

Where pro-arrest or mandatory arrest policies are implemented well, and have the support of police management, increases in arrest rates have generally followed. As Buzawa and Buzawa (1990:99) point out, after a mandatory arrest law was introduced in the state of Washington, the arrest rate increased fourfold. Likewise, Lawrenz et.al (1988), who conducted research on a south western city police department, found that after a mandatory arrest directive was issued⁸the:

... average number of arrests per month increased from nine before the July directive to forty-six after July, an increase of over 500 percent (1988:495).

Similarly, in the Minneapolis Police Department, following the experiment and the subsequent introduction of a mandatory arrest policy, the arrest of domestic violence offenders increased considerably. As Sherman and Berk (1984) comment:

The initial impact of the policy was to double the number of domestic assault arrests, from 13 the weekend before the policy took effect to 28 the first weekend after (1984:8).

However, despite the arrest rate more than doubling within a week of the mandatory arrest policy being introduced, the arrest rate dropped considerably in the long term. In 1986, the Minneapolis Police Department acknowledged that:

...despite a mandatory arrest policy, out of 24,948 domestic assault calls, only 3,645 arrests were reported, or less than 20%....Instead, according to police reports, in 60% of these incidents, the officer disposed of the case through "talk" or "mediation" with suspects arrested only about 22% of the time...In still other cases, an officer responded but failed to file the report required by policy (cited in Buzawa & Buzawa, 1990:99).

⁸ In brief, this directive instructed officers to make an arrest for a domestic violence related crime if probable cause existed; to arrest irrespective of whether the victim wanted this; a written report was to be made on all cases involving domestic violence calls, irrespective of if an arrest was made; and if an arrest was not made and probable cause existed, officers were required to justify their action.

The Minneapolis Police Department has not been the only police department to experience difficulties in exacting real-world change through the implementation of pro-arrest or mandatory arrest policies. Indeed, while most jurisdictions recorded initial increases in arrests made, the arrest rate quickly returned to normal. In Phoenix, Arizona, for example, in the three weeks following the adoption of a pro-arrest policy:

...the arrest rate of 18% was less than the prearrest⁹ rate of 33%. That rate went up to 67% only after the chief intervened and personally instructed officers that he was in fact committed to the policy. Officer behavior then changed with a subsequent increase in arrests (Buzawa & Buzawa, 1990:101).

However, as Buzawa and Buzawa (1990) note, the arrest rate quickly dropped back to 42%, which was close to the pre-policy arrest rate, and in part, this was a result of judicial criticism of “the wave of ridiculous arrests” (1990:101). This suggests that even when management communicate their ‘commitment’ to a policy, the actual implementation of that policy also has to be negotiated among the patrol officers. Furthermore, as was the case with the Minneapolis Experiment, officers still exercised considerable discretion, and continued to rely on other traditional responses, such as mediating and separating. For example, in her study of the Phoenix, Arizona Police Department, Ferraro (1989) found that the introduction of a pro-arrest policy did not uniformly transform the practices of police officers, and even when arrests could be legally justified, officers often took other action. While the official arrest figures provided by the police department indicated that the arrest rate for ‘family fights’ (domestic incidents) had doubled within the first two months of the presumptive arrest policy being implemented, field observations told a different story¹⁰. As Ferraro (1989) comments:

Of the 69 cases of domestic violence, only 9 (13%) resulted in arrest. This is a marked reduction from the 53[%] to 72% rate reflected in the official police statistics (1989:171).

⁹ Pre-arrest refers to the arrest rate before a pro-arrest policy was introduced.

¹⁰ Ferraro (1989) does not specifically state why this discrepancy existed – i.e. why the official arrest rate did not correspond with the arrest rate produced through fieldwork observations. It may suggest however, that the official source of arrest rates was not entirely accurate.

Ferraro (1989) found that while there were often legal justifications for not making arrests, at the same time, other incidents should have resulted in arrest, based on the same circumstance. As Ferraro (1989) points out:

Officers did not blatantly subvert the policy and tell women who pleaded for arrest that there was nothing they could do. Neither did they uniformly arrest in every case that legally met the criteria of the presumptive arrest policy (1989:176).

Jones and Belknap (1999), in their study of Boulder County, Colorado (which had had a pro-arrest policy in place since 1986), concluded that in jurisdictions where pro-arrest policies have been in place for a number of years, a serious police response is more likely. Jones and Belknap (1999: 9) found that although 20% of offenders had no action taken against them, almost 60% of offenders were jailed. However, Jones and Belknap (1999) also found that there was reduced officer compliance with informal policies, such as contacting the shelter and charging offenders with child abuse offences when children were present. A number of illegitimate factors also appeared to influence the arrest decision. For example, officers were less likely to take any action if the offender and victim had been married at some point, but were more likely to jail offenders if the couple were still together (Jones and Belknap, 1999:10; see also Feder, 1997). In sum, while pro-arrest policies signalled a significant shift in the way police family violence policy was framed in the U.S., this did not always correspond to a change in police practice. Indeed, the implementation of such policies has often been fraught with difficulties, and has not always resulted in the intended outcomes. However, commitment to pro-arrest family violence policies in the U.S. is still particularly strong, as is evident in the Grants to Encourage Arrest Policies Program¹¹, which promotes the implementation of

¹¹ The Grants to Encourage Arrest Policies Program is funded under the Violence Against Women Act of 1994, and is designed for the purpose of establishing or enforcing policies favouring arrest and prosecution of persons committing domestic violence (Archer et.al, 2002). With respect to law enforcement agencies, the program directs funds to be used for implementing pro-arrest programs and policies in police departments, the development of policies and training programmes etc. (Archer et.al, 2002).

pro-arrest and mandatory arrest policies in police departments across the country (see Archer et.al. 2002 for more detail).

The United Kingdom

The 1980s

Prior to developments within the U.S., a number of important studies on the police were being conducted in the United Kingdom during the 1980s. This research identified a number of areas where the police could improve their responses, not only to domestic violence incidents, but other areas of policing as well (e.g. Edwards, 1989; Smith & Gray, 1983). Smith and Gray (1983) for example, completed a series of projects with the London police in the early 1980s, and found that officers often regarded domestic disturbances as “rubbish.” Many officers did not consider domestic disturbances as “proper” police work, principally because the people involved often did not want or require assistance from the police. Even when there were indications that disputes could easily escalate, officers appeared to show little concern.

Following the study of Smith and Gray (1983), Edwards (1989) carried out two studies with the Metropolitan Police of London between 1984 and 1985. Her initial research specifically focused on two London police stations - Holloway and Hounslow, as well as a police department in Kent. Edwards’ (1989) research concluded that arrest was the least used and preferred police response in most cases. In part, officers were often reluctant to arrest domestic violence offenders because of a presumption that the victim would later withdraw the complaint, thereby negating their work in preparing the case for prosecution. Edwards (1989) found that officers would rarely arrest offenders without complainant commitment for prosecution, and arrest usually only occurred if the injuries were exceptionally severe, if the violence continued after the police had arrived, or if the offender threatened the police. As Edwards (1989) comments:

In the latter case the object of the arrest was not to ensure protection of the complainant, but to enforce public subordination and compliance with police authority (1989:102).

This exercise of discretion often led to the under-enforcement of the law, and the police frequently seemed unwilling to make arrests, even with the knowledge that the situation could easily escalate once the police left the scene (c.f. Smith and Gray, 1983; Edwards, 1989). Officers appeared primarily concerned with calming the situation down and leaving as soon as possible. It was therefore clear from these studies that the police needed to modify their approach to domestic violence.

The same year that the Minneapolis Experiment's findings were released in the United States in 1984, similar developments were under way in the U.K. For example, in 1984 the Metropolitan Police set up their own internal working party to address domestic violence, and in its first report, released in 1986, the party indicated a serious need for changes to police statistics, policy, training, victim support, and information disseminated throughout the community. With respect to the changes to police policy, the working party recommended officers taking victims of domestic violence to places of safety, developing guidelines based on the implementation of new legislation, considering conducting prosecutions irrespective of victims' commitment, improved training for all levels of the police, and the adoption of a multi-agency approach¹² (Edwards, 1989: 198). Following this, in June 1987, the Metropolitan Police issued new guidelines (encompassed in a circulated force order) to London police, on how to respond to domestic disputes. These guidelines emphasised the criminal nature of domestic violence, and stressed the importance of treating domestic assaults as seriously as other assaults. The order also highlighted the need for improved training and reporting procedures, and providing support to victims of domestic violence. The order also required officers to write up incidents either in a crime

¹² A multi-agency approach basically involves the police working with other statutory and non-statutory agencies in an effort to improve victim/offender support services.

report or incident book, irrespective of whether an arrest was made, and it also encouraged officers to use their powers of arrest more frequently (Edwards, 1989:198). Consequently, a number of police stations throughout London committed themselves to improving the police response.

In 1988, Edwards conducted a follow-up study to ascertain whether the force order had been successfully implemented. Police records were examined for the six month period between March and August 1988 for the Holloway and Hounslow (original) stations. While the records suggested that there had been a considerable number of arrests made after the order was issued, there also appeared to be a high number of cases that were either initially or subsequently classified as 'no-crime'. 'No-criming' is a significant clear-up category¹³, used for incidents where no identifiable offence has been committed, or when the complainant is reluctant to support the prosecution of the offender. In her study, Edwards (1989) found that a high number of incidents reported at both Hounslow and Holloway stations were initially or subsequently no-crime. For example, during the six-month period of her study, 91.3% of incidents attended by Holloway Police were initially or subsequently no-crime, whereas at Hounslow, 94% of all incidents attended were no-crime, either initially or at a later date (Edwards, 1989:201-202). As is evident, the majority of incidents attended by police at both stations during this six month period *were not crimed*. While the downgrading of crimed cases to the no-crime classification was primarily due to complainant unwillingness to press charges, the considerable number of incidents initially and subsequently no-crime may also indicate officer resistance to the arrest policy. For example, it has been argued that call-downgrading can be used as a form of work avoidance (see Crime and Misconduct Commission, 2005:31). As Morley and Mullender (1994) comment, 'crime-downgrading' is part of a broader subversion of recording practices:

¹³ No-criming is the U.K. equivalent of the N.Z. 1D result code – meaning that an offence has not been committed, and no further police resources are required – As Ford (1993) found in his New Zealand study, officers often used the coding 1D (cleared K1 – no action required), even when offences were identified.

Police disregard for domestics was reflected in their recording practices. Some calls were not recorded in station message books. Some were written up as 'no call for police action', even when considerable time had been spent at the scene. Some were recorded in categories which precluded their identification as domestic violence. Some were recorded as incident reports rather than crimes even with clear evidence of a criminal offence, one aspect of a more general tendency to 'crime down' domestic offences. A high proportion of incidents initially crimed were subsequently 'no-crimed', disappearing from the statistics altogether (1994:13-14).

Thus, while no-criming may be an appropriate clear-up category when offences are not committed, it is also problematic given that it may be used for resolving incidents where offences *are committed*. Consequently, these no-criming rates may be reflective of officer resistance to the pro-arrest policy, and may indicate a general reluctance to treat domestic violence incidents as criminal offences.

As a result of the large number of incidents no-crimed, Edwards (1989) found that the number of arrests made during this six month period was relatively low. For example, only 23% of the 180 cases initially crimed at Holloway actually resulted in an arrest. Likewise, at Hounslow Station, only 22% of the 103 crimed cases recorded an arrest being made. Despite the differences evident between both stations, and the problems relating to no-criming, Edwards (1989) concluded that the new policing policy in London was having a significant impact on service delivery, police recording, and support for victims. This was further supported by an increase in the number of domestic disputes recorded by the Metropolitan Police. For example, 354 cases of domestic violence were officially recorded in 1986, and this increased to 1,194 by 1987 (Edwards, 1989: 207). In sum, Edwards' (1989) study suggested that street-level changes *were* occurring as a result of the introduction of pro-arrest policies, despite a number of problems impeding its full implementation.

60/1990 Home Office circular

In 1990, the Home Office issued a circular (60/1990) on domestic violence, encouraging police departments across England and Wales to develop and publicise force policy statements and strategies to deal with domestic violence (Home Office Circular, 60/1990:1). More precisely, it recommended that pro-arrest policies and operational interventions be developed in order to deal effectively with domestic violence (Hamner and Griffiths, 2000). Not only did the circular emphasise the importance of treating domestic violence as a crime, but it also stressed that the police should “play an active and positive role in protecting the victim and that their response to calls for help is speedy and effective” (Home Office Circular, 60/1990:2 for more detail).

The circular made a number of other recommendations to Chief Officers, including the overriding priority being the protection of the victim and the apprehension of the offender; establishing multi-agency links; considerations around establishing dedicated domestic violence units; emphasising the need for officers to respond positively to incidents; and reviewing recording policy to ensure all offences are properly recorded and not ‘no-crimed’ (Home Office circular, 60/1990).

The 60/1990 circular strongly recommended that force policy statements (which essentially represent the position of Chief Officers on specific issues) should be issued. As the circular states:

The Home Secretary recommends that Chief Officers should consider issuing a force policy statement about their response to domestic violence, to provide guidance to their officers and ensure that they are fully aware of their force’s priorities, the response that is expected of them in assisting victims and the powers which are available to them. The use of force policy statements can play a helpful role in influencing the attitudes and behaviour of officers who are called on to deal with cases of domestic violence (Home Office Circular, 60/1990:4).

The circular stated that the central features of the force policy statement should include 1) the overriding duty to protect victims and children from further attack;

2) the need to treat domestic violence as seriously as other forms of violence; 3) the use and value of arrest powers; 4) the dangers of seeking conciliation between assailant and victim; and 5) the importance of comprehensive record-keeping to allow the chief officer to monitor the effectiveness of the policy in practice (Home Office Circular, 60/1990).

Home Office circulars make policy recommendations to Chief Officers of the 43 police forces in England and Wales, but they do not have the power to compel Chief Officers to implement policies they recommend (Morley and Mullender, 1992: 269). However, despite this, numerous forces (and divisions within them) adopted policies encouraging arrest, and a number of divisions also established specialised domestic violence units, instituted computerised domestic violence registers, and developed inter-agency links (Morley and Mullender, 1992:269). While the issuing of the 1990 Home Office Circular appeared to have a positive impact on some police forces within England and Wales, it was also evident that some forces were opting to ignore some or all of the 60/1990 circular's recommendations.

Implementation of the 60/1990 Home Office Circular

A number of police stations throughout England and Wales were committed to changing their domestic violence policies prior to the issuing of the 60/1990 Home Office Circular; but this number significantly increased after 1990. However, despite police adopting the recommendations in their local force policies, various studies conducted after the issuing of the circular, indicated that the policy's' translation into practice was often more complicated (e.g. see Hoyle and Sanders, 2000; Grace, 1995). While there was evidence that multi-agency links were being successfully established, other aspects of the 60/1990 circular were not implemented as effectively. For example, even though the 60/1990 circular recommended forces adopt pro-arrest strategies for dealing with domestic violence, it appeared that the number of persons arrested for such crimes had not uniformly increased. For instance, Hoyle and Sanders'

(2000) study of victims within three Thames Valley Police areas during 1996-1997, found that despite the Thames Valley Police introducing domestic violence officers and pro-arrest policies in an attempt to increase victim cooperation, the arrest rate between 1993 and 1996 remained stable. Similarly, Kelly et.al's (1999) evaluation of the New Islington Division (NI) and Holloway police division (NH), found that even when offences were recorded by the police, arrest and/or charges only occurred in the minority of incidents. For example, of all incidents recorded for the six months prior to the Domestic Violence Matters¹⁴ project being implemented, only 13% resulted in arrest. However, of all incidents recorded as crimes ('crimed') 38% resulted in an arrest. During the same time period, of all incidents reported at the NH division, 15% resulted in arrest, but of all incidents recorded as crimes, 36% resulted in arrest (Kelly et.al, 1999:40). Whilst these figures may appear relatively high, the large number of arrests resulting from incidents crimed detracts from the fact that a considerable proportion of incidents were never crimed. For example, at the NI division, only 34% of incidents were crimed, whereas for the NH division, only 41% of incidents reported were crimed (1999:40). This means that 66% and 59% of incidents respectively, were not. While as previously discussed, not all incidents involve offences committed, no-criming can also be used as a tool of officer resistance to the pro-arrest policy. Thus, figures relating to no-criming should be approached with caution (see Ford, 1993, and Marsh, 1989 for a comparative discussion of the New Zealand situation).

However, when we compare the situation at Holloway with the earlier study of Edwards (1989), there appears to have been some changes in arresting and recording practices. For example, in 1988, during the six month period Edwards (1989) carried out her research, Holloway station records established that only 23% of crimed cases actually resulted in an arrest. In contrast, Kelly et.al's

¹⁴ Domestic Violence Matters is an adaptation of a Canadian project, which involves locating a team of skilled civilian crisis interveners within the police service, to follow up on police responses to domestic violence. The pilot project was established at both the Islington and Holloway police divisions (Kelly et.al, 1999).

(1999) study recorded 36% of all crimed cases resulting in arrest. This suggests that the 60/1990 Home Office circular did have a measure of success in changing police arrest practices at some stations. Other researchers (e.g. Plotnikoff and Woolfson, 1998) however, have shown that recording practices were not significantly improved since the issuing of the 60/1990 Home Office circular. Plotnikoff and Woolfson (1998), for instance, found a number of problems with domestic violence recording practices. Not only did they conclude that the police forces they evaluated did not have a systematic approach to the management of information relating to domestic violence incidents, they also found that patrol officers did not always hand in reports to domestic violence officers.

Impact on officer attitudes/practices

While the Home Office Circular appears to have had some impact on the number of incidents no-crimed or resulting in arrest, the day-to-day implementation of the circular appears to have been more problematic. Such problems have been primarily attributed to the fact that officers continued to intervene reluctantly in domestic incidents.

For example, while 1992 survey data collected from 100 women's refuges reported that in some areas police officers were giving a higher priority to domestic violence, providing more information to women, and generally becoming more sympathetic and understanding of women's situations, a number of problems were also identified. A major issue highlighted by the survey was the inconsistency among different police stations and divisions, which meant the police response was often very uneven, and in some areas in particular, police attitudes seemed largely unchanged (cited in Morley and Mullender, 1994:25). These survey findings were further supported by the Home Affairs Committee Report (1993), which stated:

It was clear that the picture varied both between different police forces and within individual forces, and a recurrent description of the police response was that it was "patchy" (cited in Morley and Mullender, 1994:25).

Similarly, surveys carried out by Kelly et.al (1999) in 1993, 1994 and 1995¹⁵, also identified a number of areas where police attitudes (and consequently practices) had not dramatically changed after the issuing of the Home Office Circular 60/1990. For example, in the 1993, 1994 and 1995 surveys, 43%, 49% and 56% of police respondents respectively, believed that mediation was the best response. Overall support for arrest as the best response decreased over the three surveys. For instance, in 1993, 40% of respondents agreed with this evaluation, whereas this decreases to 35% in 1994 and to 33% in 1995 (Kelly et.al, 1999:60). It appears that the Home Office circular did not change officers' entrenched belief that mediation was the best response, and it appears that support for arrest decreased over time as well. Inevitably, this would have affected officers' willingness to arrest offenders, and increased their reliance on less formal means of intervention (i.e. mediation and separation).

There were also similar fluctuations in support with respect to officers' perceptions of positive arrest policies. In the 1993, 1994 and 1995 surveys, 60%, 43% and 44% of respondents respectively, believed that positive arrest policies protected victims of abuse, although over time, fewer officers supported this belief (Kelly et.al, 1999:60). As Kelly et.al (1999) point out, over time, there was less agreement amongst the officers about whether arrest would act as a deterrent, and there was uncertainty about whether these policies would affect the willingness of victims to call the police, or increase the dangerousness of perpetrators (Kelly et.al, 1999:63). There were, however, indications that the Home Office circular did have some impact in terms of officers treating domestic violence more seriously, but even this was prone to variation. For example, 63% of respondents in the 1993 survey, 57% in the 1994 survey, and 61% in the 1995 survey, believed that domestic violence should be handled like any other assault (Kelly et.al, 1999:60).

¹⁵ The 1993 questionnaire included 106 respondents, the 1994 questionnaire 181 respondents, and the 1995 questionnaire, 157 respondents.

However, such figures should be treated with caution, given that officers distinguished between what they termed 'domestic violence' and 'domestic disputes'. Seventy percent of officers surveyed regarded domestic violence as a crime, involving the use or threat of violence. In contrast, domestic disputes were considered to involve only verbal interchanges and arguments, and were therefore not considered as constituting crimes (Kelly et.al, 1999:58).

Nevertheless, there was no consensus amongst officers as to what differentiated the two categories. Some officers utilised an inclusive definition of domestic violence, while others drew on a more exclusive definition. For instance, a third of the officers surveyed by Kelly et.al (1999:58) incorporated emotional and verbal abuse, disputes and arguments into their classification of domestic violence. In contrast, other officers drew on much more limited definitions, which specified injury and partner relationships. This lack of consensus among officers over what distinguished the two categories is, as Kelly et.al (1999) point out,

... nonetheless disturbing, suggesting that police discretion is informed by differing perceptions of (or ways of investigating) domestic violence, which will inevitably produce variable and inconsistent practice (1999:59).

Whether incidents are considered domestic violence (and therefore crimes), is therefore largely dependent on the officer responding to it, and whether the incident fits their definition of what constitutes domestic violence. As Kelly et.al (1999) point out, this has the effect of creating a lottery system for victims:

...in which one officer will define her [sic] experience as violence, and respond to it as a crime, whilst another will not (1999:115).

Furthermore, this differentiation also has consequences for recording practices. If an officer attends an incident that does not fit with his/her perception of what constitutes domestic violence, then he/she will not fill out a crime sheet, since no crime, according to the officer, has been committed. As Bourlet (1990) points out, the incident has to be identified as a crime before being recorded as such:

This may seem to be an over-simplified statement, but the identification of the crime is a subjective matter and open to the views, opinions and even the prejudices of individual police officers (1990:4).

In sum, as Kelly et.al's (1999) study showed, the implementation of the 60/1990 Home Office circular did not have the desired effect on police attitudes and responses that was expected. Not only did Kelly et.al (1999) conclude that neither divisional nor force policy had become routine aspects of daily practice, but that neither were being consistently enforced. Furthermore, as Kelly et.al (1999) comment:

A number of key elements of what are considered current best practice (such as providing information about refuges and the officers' name and contact number) are still not integrated into daily practice. Of particular concern are the officers who say they 'never' act in ways which force and division guidelines recommend...(1999:65).

While it is inevitable that officers will not be able to follow policy at all times, the fact that some officers stated that they never followed force and division guidelines illustrates that they still exercised considerable discretion when responding to domestic incidents. Officers not only exercised discretion in relation to whether the incident was considered to constitute domestic violence, or whether the incident was crime or no-crime, but also in determining whether or not, and to what degree, they followed policy. Thus, irrespective of what policy says officers should do, the fact that officers exercise discretion means that, in practice, they will largely respond according to their own individual preferences.

19/2000 Home Office Circular

Partly in response to the evidence that the pro-arrest policy had not been successfully implemented, the Home Office issued a revised circular on domestic violence in 2000, which was subsequently distributed to Chief Officers throughout England and Wales. While the 19/2000 circular contained a number of new and revised provisions, perhaps the most significant feature was its increased emphasis on the pro-arrest approach.

Although the 60/1990 Home Office Circular did not specifically mandate arresting offenders, the 19/2000 Home Office Circular uses stronger language to convey arrest as the primary means of responding to violent domestic incidents:

The duty of police officers when attending a [violent] domestic incident is to protect the victim and children (if applicable) from any further violence. *Where a power of arrest exists*, the alleged offender should normally be arrested. An officer should be prepared to justify a decision not to arrest in the above circumstances. The second duty is to hold the offender accountable (Home Office Circular, 19/2000: section 4, emphasis added).

As the research by Edwards (1989), Kelly et.al (1999), and others suggested, arrest rates following the introduction of the 60/1990 circular did not increase significantly. By recommending that officers should have to justify the decision not to arrest (c.f. U.S. situation), it allows police management to evaluate the appropriateness of responses to domestic violence incidents. Indeed, if officers do not arrest an offender, and do not provide the necessary justification, management have recourse to sanction the officer for his/her inaction. Another important feature of the 19/2000 circular is the emphasis placed on strong and effective leadership. As some researchers (e.g. Plotnikoff and Woolfson, 1998) concluded, problems with the implementation of pro-arrest policies (and similar initiatives), resulted from poor management practices, and in particular, the lack of effective leadership. Consequently, the Home Office circular addresses this by stating:

Chief Officers and managers must show strong leadership. They must also be committed to dealing effectively with domestic violence incidents, giving appropriate support to their staff. Research has shown that an apparent lack of direction or oversight of domestic violence matters on the part of headquarters can communicate itself down through the command structure resulting in domestic violence work receiving low priority (19/2000:4).

Clearly the 19/2000 Home Office circular re-emphasises the need for Chief Officers and police departments in England and Wales to continue treating

domestic violence seriously. Whether this has actually helped facilitate the implementation of these recommendations, or indeed, pro-arrest policies in general, is unknown. However, given that the 19/2000 circular did not propose restricting officer discretion, it would seem that such problems are unlikely to be resolved, since problems with the implementation of pro-arrest policies often stem from the exercise of discretion in the first place (see also Jones et.al 1994, for a discussion of changes in the U.K.; Jones, 1995, for a summary of similar changes in the Netherlands, and Horton, 1995 for changes in France).

Discussion

The introduction of pro-arrest family violence policies in the U.S. and U.K. has been a significant development in policing practice, and despite a number of issues relating to its implementation, change has occurred, however, not necessarily for the better. As Buzawa and Buzawa (1990) point out, since the introduction of pro-arrest (and mandatory arrest) police policies, there is now even less consistency and predictability of officer actions, and the “primary characteristic of the police response to domestic violence today is its inherent unpredictability...which is in contrast to the past, when inaction or apathy was the norm” (1990:99). Buzawa and Buzawa (1990) attribute this to a number of factors. Firstly, there was no effective plan to implement these pro-arrest policies, particularly in the United States. While there was definitely widespread support among national and feminist groups, as Buzawa and Buzawa (1990) point out, there was only sporadic support among local and state organisations, such as the police. Secondly, Buzawa and Buzawa (1990) note that there appeared to be little appreciation of the “desires, frustrations or organizational reality confronting line managers and the rank and file police” when considering such policies (1990:100). Thirdly, as Buzawa and Buzawa state:

Although nominally constrained by rigid rules, officers have become adept at circumventing rules, laws, and policies that are not in conformance with their underlying beliefs. During the course of responding to accelerated requests for change, this extends to ignoring or subverting recognized rules of criminal procedure, or explicit organizational goals and directives. The result is that the officers may merely become more careful with their

paperwork to simply ensure the report “covers” them while they continue with their desired response (1990:100).

Furthermore, Buzawa and Buzawa (1993) argue that the discretionary capacity of frontline officers must, to some extent, explain the problems relating to implementing these pro-arrest (and mandatory arrest) policies:

...substantial discretion is placed with the line officer. As such, line officers may be critical obstructions to implementing any new policy if they do not agree with new rules and policies....Unless the values of the policy are shared by those *who are affected*, the “implementation game” is likely to be difficult and the outcome uncertain (1993:570).

Even despite adequate training, officers can revert to their preconceived attitudes and practices, and it is very difficult to enforce official rules/policies when decisions to arrest are often dependent on an officer’s judgement, according to whether there is proof of injury, self-defence and so on (Buzawa and Buzawa, 1993:571). Similarly, as Kelly et.al (1999) point out, attitudinal barriers, and the routine trivialisation of domestic violence, impedes the successful implementation of the pro-arrest policy, and consequently, may explain the discrepancies between what was expected to happen, and what actually happened in practice (see also Chan, 1997, for a discussion of the difficulties of changing police culture). In sum, irrespective of who is responsible for introducing pro-arrest family violence policies, the success or failure of the policy is largely contingent on those responsible for implementing it – i.e. the frontline officers, and the degree to which they exercise their discretion in applying it, and to whom.

New Zealand

1980s

Prior to the introduction of a pro-arrest policy in New Zealand in 1987, there were two general approaches to policing domestic violence. Up until 1970, the police tended not to intervene in domestic disputes, unless a person was seriously injured or killed (Ford, 1993). However, around 1970 the police

increased their involvement in domestic disputes, mainly due to increased feminist pressure. The resulting “crisis intervention” training course developed for recruits in 1979 (based on an American system):

...adopted a low key policing method to avoid any confrontation in the domestic dispute situations. It was recommended that the arrest of aggressors would be used as a last resort (Marsh, 1989:9).

Consequently, when called to a “domestic”, police began mediating between the two parties, to stop the violence and resolve the conflict, albeit temporarily (Ford, 1993). The police response, therefore, was not focused on identifying possible offences that may have been committed, but on calming the situation down before leaving. In other words, domestic violence continued to be treated as a non-criminal activity. However, as Ford (1993) points out, there was dissatisfaction with these two approaches in the late 1970s, and there were claims that the police were not being effective in the way they handled domestic disputes. Such complaints included a lack of consistency, a lack of investigation, misadvice, and a lack of concern for the safety of victims. For example, in 1979, Inglis (cited in Ford, 1985:16) reported that despite officers attending domestic disputes and providing immediate protection to victims, the latter were dissatisfied overall with the service given, and officers appeared to have little knowledge of what to do once the violence stopped.

This minimalist approach to policing domestic violence was increasingly criticised, particularly in the early 1980s (e.g. Ford, 1985). For example, in the “Socio-Economic Assessment of Women’s Refuges” (1983), claims were made that the police (as well as the courts), were “unwilling, unable or ineffectual in assisting and protecting victims of domestic violence” (cited in Ford, 1985:17). Similarly, in a *Broadsheet*¹⁶ interview with Doris Church, coordinator of the Christchurch Battered Women’s Support Group in the early 1980s, it was reported that:

¹⁶ *Broadsheet* was a New Zealand feminist magazine

...domestic violence is not treated seriously by either the police or the courts; frequently both police and courts have been involved in the case before the murder has been committed. When recently seeking police help to prevent a possible murder attempt, Doris Church was informed by the police that they were “not into the business of protecting people before an offence was committed” (Crossley, 1983:15).

The weakness of this minimalist intervention approach was well illustrated by the murder of Julia Martin in 1982. Despite the police being notified several weeks before Martin’s murder that her husband had possession of a shotgun, and was likely to commit violence against her, no preventive action was taken. As Crossley (1983) points out, this evidence was not presented at the subsequent murder trial, and consequently, Martin’s husband was acquitted on the grounds of temporary insanity. Crossley argues that the police were not interested in revealing that they had not taken this information seriously (1983:16), yet it was partly because of the police inaction that Martin had died.

While mediating and separating provided a short term solution to the violence, it did not bring the offender into the criminal justice system, and consequently, offenders were usually not held accountable for their violence. In the long term, this police response did little to stop the violence, and the police inaction in domestic disputes was being increasingly criticised. It soon became clear that the New Zealand Police, like overseas police agencies, needed to change their approach to domestic violence, with particular emphasis placed on positive intervention, primarily through arresting offenders.

The Domestic Protection Act 1982

An important precursor to changing the police response to domestic violence was the introduction of the Domestic Protection Act 1982. A significant development in this Act was the introduction of non-molestation and non-violence orders issued by the Court. Non-molestation orders prohibited respondents from *harassing* the applicant at home, place of business/employment, or in public (1982:16), whereas non-violence orders

prohibited respondents *from using violence* against the protected person. Both orders could only be made by men and women in heterosexual married or de facto relationships. A major downfall of the Act, however, was the lack of a legal definition as to what constituted domestic violence.

Another important feature of the 1982 Domestic Protection Act was the power granted to police to arrest, without warrant, offenders who had breached non-violence orders. As the Act stated:

Where a non-violence order is in force, any member of the Police may, subject to section 10 of this Act, arrest without warrant any person whom the member of the Police has good cause to suspect of having committed a breach of the order (Domestic Protection Act, 1982:9).

Perhaps the most fundamental feature of this legislation, however, was the provision (section 12) relating to the detention of the person arrested. As the Act stated:

Where a person is arrested under section 9 of this Act, he [sic] shall be subject to subsection (2) of this section, be detained in Police custody for a period of 24 hours (1982:12.1)

This provision allowed officers to take offenders into custody without formally charging them, thereby providing a cooling down period. At the end of the 24 hours, the offender had to be released, and would not appear in court unless charges were laid. As a Department of Justice report (1993) commented, "...the ability to arrest and detain without charge was one of the most important and revolutionary aspects of the 1982 Act" (1993:26). However, at the end of the day, this provision did little to resolving the violence, as offenders were able to continue their violence once released from police custody.

The Act also allowed officers considerable scope for discretion. Section 10 of the Domestic Protection Act stated that:

No member of the Police shall arrest any person under section 9 of this Act unless that member of the Police believes that the arrest of that person is reasonably necessary for the protection of the person for whose protection the order was made (Domestic Protection Act, 1982:10:1).

Thus, despite officers being empowered to arrest persons breaching non-violence orders, they also had to evaluate the necessity of such action. In considering whether or not to arrest for breach of a non-violence order, officers had to consider a number of factors: (1) the seriousness of the act that constituted the alleged breach; (2) the time that had elapsed since the alleged breach was committed; (3) the restraining effect on the person liable to be arrested of other persons or circumstances; and (4) the need for a cooling-off period (Domestic Protection Act, 1982:10:2). Even though officers were legally empowered to arrest those who breached such orders, they were equally authorised to use their discretion not to arrest.

Not long after the Minneapolis findings were released, the New Zealand Police began to consider adopting a pro-arrest policy, which was further facilitated by the research of Ford (1985). Although Ford (1985) did not believe the New Zealand Police should adopt a mandatory arrest policy¹⁷ (primarily because it would remove officer discretion), he did maintain that a pro-arrest policy was worth further investigation. In 1985 Ford recommended:

That the Police Department review their intervention policies in regard to domestic violence. A feasibility study should be carried out on the “arrest” policy and a pilot scheme implemented. This pilot scheme should be thoroughly evaluated before a decision is made on whether or not to officially implement the policy nationwide (1985:83).

Subsequently, Ford (1986) conducted a pilot project on pro-interventionist strategies in Hamilton during March/April and August/September 1986. Largely modelled on the interventions used in the Minneapolis Experiment, the pilot project attempted to replicate the findings of the experiment in New Zealand, to ascertain whether pro-arrest policies should be adopted. Four key areas of change were implemented including: 1) officially recording all domestic dispute

¹⁷ Mandatory arrest policies, unlike pro-arrest policies, do not allow officers to use their discretion. If there is sufficient evidence that an individual has committed a criminal offence, officers **must** arrest the offender. In contrast, pro-arrest policies allow officers to use their discretion. Although management presume an arrest will be made if there is sufficient evidence that an offence has been committed, officers are not required to arrest every offender. Other mitigating circumstances may result in the officer using his/her discretion, and warning the offender, and/or separating the respective parties.

complaints; 2) recording all domestic incidents involving identifiable crimes as offences where applicable¹⁸; 3) referring victims to social service agencies; and 4) making more arrests in cases where a prima facie offence is established, even without an official complaint (Ford, 1986:vii). Primarily officers participating in the pilot project were required to change their mindset, from arresting as a last resort, to arresting unless there were very good reasons for not doing so. Furthermore, the project mandated that the decision to arrest was not to be based on whether the victim was prepared to make an official complaint, or follow through with the subsequent prosecution. When there was evidence of an assault or other criminal offence, but insufficient evidence to proceed to court, officers were required to officially warn the offender, and even if there was no evidence of an offence having been committed, officers were required to assist the victim to leave the premises, and/or give advice to victims (Ford, 1986:37).

The pilot project appeared to have a measure of success, with an increasing number of domestic violence offenders arrested during the study period. For instance, from April to September 1986, the arrest rate increased each month (with the exception of July), with 24% of offenders arrested in April, 36% arrested in August, increasing to an arrest rate of 42% in September (Ford, 1986:38). Furthermore, although officers in the study were initially sceptical about the deterrent effects of arrest and hesitant about the potential fall-out for victims, the project appeared to alter officer attitudes towards domestic violence (Ford, 1986). For example, of the 94% of officers (n=54) who responded to Ford's (1986) survey, 72% were satisfied with the new police policy, and 87.5% of officers thought the new arrest procedures had helped standardise the response to domestic violence (Ford, 1986:59). Additionally, 92.5% of the responding officers supported the changes being implemented throughout the department (1986:60), and overall officers perceived the new approach as much better for both themselves and for victims (Ford, 1986).

¹⁸ Rather than the previous minor incident code – e.g. ID

As a result of the pilot project's success, Ford (1986) made a number of recommendations including: 1) that only non-offence domestic disputes should be coded under the incident coding of 1D (domestic incident), while all other complaints (i.e. those involving offences) coded¹⁹ under the appropriate offence coding and dealt with accordingly; 2) police should arrest more frequently; 3) an arrest should be the first option considered, not the last, and if there is sufficient evidence of an offence, an arrest should be made unless there are good reasons for not doing so; 4) victims should not be required to make official complaints as a precondition of arrest or testify at court; and 5) the police should take more responsibility to link the complainant with a support agency or group that is able to offer long-term support and assistance.

1987 policy change

Thus, by 1987, there was convincing evidence that the New Zealand Police should change their approach to domestic violence, and in 1987, a pro-arrest policy was introduced to all police departments by the Police Commissioner, Mal Churches, in the form of a Commissioner's Circular 1987/11. While the actual 1987 policy cannot now be located²⁰, the policy is referred to in some studies (e.g. Ford, 1993).

The Commissioner's Circular 1987/11, by all accounts, stated that the minimal interventionist approach to domestic violence was inappropriate, and a strong pro-arrest philosophy was clearly emphasised. As Schollum (1996) comments:

The policy directed that arrest action must be taken where sufficient evidence of an offence existed, and that action be taken to assist victims of such offences (1996:12).

¹⁹ Every offence has its own specific code – e.g. male assaults female has an offence code of 1553

²⁰ A number of efforts were made to locate the 1987 policy, including searching the Police library, and making contact with the national family violence coordinator. However, such efforts proved futile, and the original policy could not be located.

The 1987 policy changes were based on four key areas: 1) referring victims to social service agencies; 2) referring offenders to social service agencies; 3) coding offences appropriately; and 4) arresting offenders when an assault, danger to victim, or breach of court order is disclosed, and there is sufficient evidence to arrest (Marsh, 1989). In sum, two underlying principles constituted the backbone of the 1987 policy: 1) ensuring protection for victims and 2) holding offenders accountable via arrest.

In essence, the 1987 family violence policy aimed to change the police response to domestic incidents. Like the overseas attempts, the New Zealand policy emphasised the need for officers to treat ‘domestics’ as serious incidents, which often involve identifiable crimes. Rather than approaching domestics with a view to calming the situation down and mediating between the parties, the new policy stressed that officers had to attend domestics with the mindset that a criminal offence might have been committed and their duty, therefore, was to establish if there was sufficient evidence to make an arrest. As some of the managers in the current study pointed out, the pro-arrest policy signalled a *significant change* in the way police responded to domestic incidents, with strong emphasis on positive intervention based on holding offenders accountable²¹. While arrest was certainly encouraged, the 1987 policy also allowed officers to retain some degree of discretion, with the circular stating:

Common sense should prevail where incidents are extremely minor or police intervention is clearly inappropriate (cited in Schollum, 1996:12).

In short, the pro-arrest policy certainly encouraged officers to arrest offenders, but officers were not required to arrest on every occasion.

Implementation of the new policy

Similar to the international experience, the New Zealand Police encountered a number of difficulties in implementing the 1987 family violence policy at the

²¹ c.f. Edwards (1989:200), who argued that “In theory, the new (pro-arrest) policing policy holds out a promise of radically changing the police response to domestic violence.”

ground level. In 1989, Marsh (1989) conducted the first evaluation of the 1987 policy's implementation, and on the whole, concluded that the policy had not been successfully implemented on a nation-wide basis. While Marsh (1989) identified a number of barriers impeding its application at the ground-level, he partly attributed such problems to the nature of the training programmes which had been developed to facilitate the necessary changes. The training package, which was developed to assist the introduction of the new policy, had not been employed by all police departments, meaning some officers were never exposed to the new training. However, despite not all officers being exposed to the training programme, Marsh (1989) found that there were no discernible differences between those who *had* attended training programmes on the new policy changes, and those who *had not*. Subsequent problems with policy compliance were partly attributed to this haphazard application of the training package. As Ford (1993) comments:

As a result of the mess up with the initial training package there was not only inconsistent training but also very inconsistent application of policy. In 1988 this fact was brought to the attention of District Commanders and the policy was given a further push. However, rather than accepting that the new policy had not been implemented as planned, most districts became very defensive and claimed that implementation had been thorough and successful in their particular districts (1993: no page number).

Additionally, Marsh (1989) found a number of problems with the coding of domestic incidents. Like the U.K. experience, Marsh (1989) found that some officers were still treating violent domestic incidents as non-criminal offences, despite there being clear evidence of offences. For example, during one month there had been offences clearly defined, yet they were still being cleared as 1D (domestic dispute, no offences committed). These offences included 15.3% breach of court orders, 11.3% assaults, 22.5% disorderly type offences, and 14.3% of threatening behaviour, all of which had been cleared under the 1D coding (c.f. no-criming), rather than the appropriate offence codes (Marsh, 1989:30). In short, rather than coding them as criminal offences, under their respective offence codes, officers recorded them under the category 1D –

which is used to record incidents that do not involve criminal offences. As Marsh (1989:30) points out, despite the fact that 74.7% of police respondents accepted coding domestic dispute complaints appropriately, in practice, it appeared that they still regarded the domestic dispute complaint in the “traditional” police sense. In other words, rather than treating these incidents as *criminal offences*, the officers recorded them as non-criminal events.

However, problems with policy compliance were not only restricted to issues around training and recording practices, since a key area of non-compliance related to victim referrals to social service agencies. Even though the policy required officers to refer victims to the appropriate support agencies, this was not consistently happening. For example, 42% of social service agencies surveyed stated that within a three-month period, the police did not refer any victims, either to their agency or any other agency known to them. Indeed, 40.5% of officers²² surveyed indicated that during October, 1989, they did not refer any victims to social service agencies (Marsh, 1989:29). Furthermore, 83.3% of officers acknowledged that they had not provided victims with a list of agencies who could provide support, while 81.8% of officers did not contact any agencies with referrals of victims (Marsh, 1989:29). Referrals of offenders to social service agencies also failed to take place consistently (see Marsh, 1989 for discussion).

While Marsh (1989) found that there were high levels of support for specific provisions within the 1987 policy – for example, 86.1% of officers supported using arrest as the first response for assaults, breaches of court orders, or when victims were in danger, this support did not easily translate into practice. Not only were victims and offenders not being consistently referred to social service agencies, but correct recording was also not taking place. Furthermore, a number of officers (32.3%) stated that they never used arrest as a first priority (Marsh, 1989:31). As Marsh commented:

²² N=225 officers

When the practical application of the new arresting system was carried out, the police showed a reluctance to implement it as laid down in the Commissioner's policy change (1989:31).

Following Marsh's evaluation of the 1987 policy's implementation, the first report of the Hamilton Abuse Intervention Pilot Project (HAIPP) was released. Launched in Hamilton in July 1991, HAIPP was modelled on the Duluth Domestic Abuse Intervention Project (DAIP), which was formally established in Minnesota, U.S. in 1981. A community-based organisation, DAIP had established a coordinated approach to domestic violence, with primary focus centred on protecting victims from future violence, by combining legal and non-legal sanctions on offenders (www.duluth-model.org/). Like DAIP, HAIPP piloted an integrated approach to family violence, involving the police, the courts, and victim support agencies. With respect to the police, HAIPP advocated an active policy of arresting abusers.

HAIPP's first year report, released in 1992, indicated that the project was being successfully implemented, with officers arresting offenders more frequently. For example, the first report showed that there was an increase in arrests made, with 311 arrests recorded, an average arrest rate of 25.9% per month.²³ At the same time, however, a number of problems relating to monitoring police compliance with the arrest policy were identified. While there was evidence that officers, on the whole, were arresting more regularly, it was also clear that a high number of cases involving non-arrests had escaped the attention of HAIPP (Robertson & Busch, 1993:37). In other words, HAIPP's initial success was negated by the fact that they did not always hear about cases involving non-arrests. As Robertson et.al (1992) comment:

...a further analysis suggests that the percentage of arrests is lower than it should be under the policy...comparison between five sections in Hamilton indicated that one section is arresting in 22% of incidents attended while the others rate between 9-13%. This finding...supports the contention that

²³ The arrest rate prior to the implementation of HAIPP is unknown, since HAIPP only started recording arrest rates from the beginning of the project, not beforehand.

some police at least should be arresting more frequently than they are (cited in Ford, 1993: no page number).

Problems with the policy's implementation were also identified by a study commissioned by the Victims' Task Force. Released the same year (1992), the report studied the policing of court orders under the Domestic Protection Act 1982 (among other things), and concluded that the 1987 police policy had been poorly implemented. As Busch et.al (1992) comment:

Some (officers) supported the arrest policy: some were critical of it. All agreed that it was being unevenly implemented with significant regional and individual differences (1992:156).

For example, a large number of incidents at three selected police districts (large city, small city, and rural town) were resulted as K1 – police presence sufficient, no further action, which indicated that the majority of domestic incidents did not result in an arrest. Of all the districts examined, 61.8% of all incidents were K1ed, meaning that arrests *were not made* in a large majority of incidents the police attended, offences were not identified, and details of these incidents not formally recorded (Busch et.al, 1992:157). While not all incidents involved criminal offences, the study concluded that, in contravention of the 1987 policy, the arrest decision was highly contingent on whether the victim wanted an arrest made. Although the study acknowledged that there were obvious barriers to arrest facing rural police officers (e.g. help too far away, inadequate facilities for holding prisoners overnight and considerable distance to suitable holding cells), which may deter officers from apprehending offenders, such problems should not have theoretically existed in the city. In short, while the study accepted that rural officers were likely to arrest fewer offenders because of time and resource constraints, the high number of non-arrests in the city could not be easily explained. As Busch et.al (1992) comment:

While the police response to domestic violence may sometimes be constrained by a lack of resources, our data suggests [sic] that there are other, more significant problems with the implementation of the arrest policy. We conclude that there persists, among many police officers, an informal policy of minimal intervention in 'domestic disputes.' According to

their informal policy, the aim of intervention is to restore order and leave (1992:159).

Additionally, in most districts Busch et.al (1992) visited, there appeared to be a negative view towards repeated calls. As Busch et.al (1992) comment:

...some officers tend to discount repeated calls. In most districts we visited, we were told that there were certain addresses to which police were frequently called. In such circumstances, the calls tended to be taken less seriously as police come to see victims as at least partly responsible for their victimisation and unwilling to take decisive action (1992:161).

In short, although the 1987 policy signalled the need for officers to move beyond the minimal interventionist stance, which characterised police practice prior to 1987, there was convincing evidence that little had changed in practice. Indeed, as Busch et.al (1992) found in most districts they visited, officers still appeared reluctant to intervene in domestic disputes, particularly if they had visited the address before.

1992 policy change

In response to these studies, which all concluded that the implementation of the 1987 policy had not been as successful as anticipated, the New Zealand Police amended the family violence policy in 1992:

The first survey into the effectiveness of the change of policy was carried out in 1989/90. Results indicated there were inconsistencies throughout the country in terms of implementation...It is time that Police policy was re-stated and re-enforced (*Ten-One*, 22 May, 1992:11).

While it is difficult to establish what amendments were made to the 1987 policy (since this could not be located), it is clear that the 1992 policy re-emphasised arrest provisions, including the following: 1) when an offence has been *disclosed* involving assault or danger to a victim from an offender, and there is sufficient evidence to arrest the offender, he/she should be arrested and charged; 2) the aggressor should be arrested without an official complaint; 3) if the complainant does not give evidence, evidence from police staff and the use

of photographs will clearly be sufficient to take the case to court; and 4) arrest is the standard procedure where physical force or the threat of physical force has occurred (*Ten-One*, 22 May, 1992:11).

1993 policy update

Following the 1992 policy update, new research indicated that despite police management's commitment to the pro-arrest policy, many of the implementation issues identified by previous research had still not been resolved. For instance, Ford (1993) found that the pro-arrest policy was still being applied inconsistently, not only across districts, but also between various departments in the same city. Although, as discussed earlier, problems with the training packages may partially explain such problems, Ford (1993) contends:

...it must be accepted that the main reason for failure of the police to be able to implement this policy uniformly over all sectors of the police probably rests with individual officers and particular sections of the police in various parts of the country (1993: no page number).

Although Ford (1993) certainly found a number of problems with the policy's implementation, he did not, however, conclude that the policy change had failed. As Ford (1993) pointed out, there was a noticeable increase in the number of offenders arrested after the policy's introduction, which suggested the policy had been partially successful in bringing about change. There was also evidence that the pro-arrest approach was working elsewhere. For example, the second report of HAIPP, released in 1993, concluded that there were a number of improvements in the police response to domestic violence in the project. For instance, the study found that there had been a 67% increase in the number of offenders arrested compared to the first year, with an average of 43.2% of arrests recorded per month, compared with 25.9% per month during the first year (Robertson and Busch, 1993).

While HAIPP's first report identified problems with monitoring systems, the second report discussed how an enhanced system for monitoring non-arrest

incidents had been subsequently developed. This in turn, resulted in a considerable number of non-arrest incidents coming to the attention of HAIPP – almost twice as many non-arrests as arrests (Robertson and Busch, 1993:3). Although the monitoring systems were improved, the report also highlighted the fact that officers were still predominantly using non-legal interventions (i.e. mediation and separation), and that a considerable number of incidents involving identifiable offences were still being coded as 1D (domestic incident, no offence committed).

Partly in response to these studies, the policy was once again updated in 1993. The influence of the second HAIPP report in particular, should not be overlooked, since the 1993 policy emphasised the multi-agency approach to domestic violence for what appears to be the first time. Accordingly, the 1993 policy states:

These policy guidelines reaffirm the 1987 policy and based on the Hamilton Abuse Intervention Pilot Project, amplify the desired intervention approach. Preliminary reports show the Hamilton project is having a measure of success based around (3) key objectives...including the protection of the victim; consistent policies and practices amongst multi-agency groups, holding assailants accountable (*Ten-One*, 27 August, 1993:11).

The multi-agency approach was an important development in police policy, since it acknowledged that social service agencies were better equipped to address the underlying causes of family violence. Furthermore, by creating networks amongst other service agencies, such as the courts, Women's Refuge and Victim Support, this would provide greater support for victims, and enhance the ability to develop suitable programmes for offenders as well (*Ten-One*, 27 August, 1993:11). The 1993 policy also introduced local victim support coordinators who became responsible for referring victim details to the local Women's Refuge or other support agencies, and district/area liaison officers who coordinated with these agencies, and were responsible for any family violence related problems.

The 1993 policy also signalled a change in terminology, from domestic incidents to 'family violence complaints' (*Ten-One*, 27 August, 1993:11). In part, this may have stemmed from Ford's (1993) recommendation that using the term 'domestics' tended to trivialise the problem, and that 'family violence' more appropriately reflected the seriousness of such incidents. The change in language suggests that police management were further attempting to alter officers' perceptions of domestic violence, emphasising once again, the seriousness of such incidents. Coupled with the change in language, the 1993 policy also introduced a working legal definition for family violence, and placed considerable emphasis on firearms provisions. This was largely the result of the Arms Amendment Act 1992, which enabled police to confiscate firearms from offenders if they were respondents of non-molestation or non-violence orders, or if an officer could establish grounds for making an offender a respondent of any such order (section 27A; see Newbold, 1997). Consequently, the 1993 policy states that officers should always "endeavour to establish if any firearms are available at the premises or under the control of the offender" (*Ten-One*, 27 August, 1993:11).

Also, possibly as a result of previous research, the 1993 policy emphasised the importance of good training. The policy identified a number of features such training should cover, including: 1) a definition of family violence; 2) the need to police family violence; 3) family violence statistics for the district or area; 4) the police family violence policy and local policies and practices; 5) details of the multi-agency group; 6) the possible dangers when attending incidents; and 7) court orders and firearms legislation. The policy further stated that such training should also involve prosecution staff, investigators, and the district or area liaison officer, to outline the local policies and practices (*Ten-One*, 27 August, 1993:11). The importance of this training is underlined by the following comment:

It is essential police receive appropriate training to ensure high levels of skill are maintained to deal with situations involving family violence (1993/19).

Lastly, the evaluation provision in the 1993 policy is worth commenting on. As the policy stated:

To achieve and maintain a service to deal effectively with family violence it will need to be monitored, evaluated and modified as a matter of course with the principle objective being the protection of victims. In districts this may include the assistance of the multi-agency group (*Ten-One*, 27 August, 1993:13)

This provision highlighted not only management's commitment to dealing with family violence appropriately, but also recognised the need for the policy to be monitored for compliance, evaluated for effectiveness, and modified in light of developments in legislation, as well as in response to international developments.

1994 policy update

In 1994, the family violence policy was again updated to address new procedures, and more specifically, the introduction of a family violence database and new 'POL 400' forms. A POL 400 is a form officers *must* complete every time a domestic incident is attended and resulted as K6 (reported) or K9 (arrest made), and it records such information as victim/offender details, who reported the incident, the presence of protection orders, physical injury, and so on (see appendix 2). Information from POL 400s is then placed on the family violence database, which, according to the 1994 policy, was designed as a pro-active tool in reducing the incidence of family violence (*Ten-One* 60/12). The family violence database records the details of incidents attended to in the past, offender and victim histories, and so on, enabling officers to respond accordingly to any future incidents. Furthermore, the database also improves officer safety by allowing them to query the database on their way to incidents, in order to establish the presence of

firearms, and offenders' history with the police. This in turn allows officers to take the necessary precautions to ensure their personal safety.

The Domestic Violence Act 1995

In 1995, family violence legislation was updated with the introduction of the Domestic Violence Act 1995, which came into effect in July 1996. While the Domestic Protection Act 1982 had ensured protection for married and de facto heterosexual couples (and their children), it did not recognise other intimate relationships. In contrast, the Domestic Violence Act 1995 extended protection to individuals in *any* intimate relationship. Furthermore, while the Domestic Protection Act 1982 did not define domestic violence, the Domestic Violence Act 1995 provided a comprehensive definition, which incorporated physical, sexual or psychological abuse (Adams & Kearns, 1996:1).

The Domestic Violence Act 1995 also introduced “protection orders”, which replaced non-violence orders under the Domestic Protection Act. Anyone over the age of 17 can apply for a protection order, or have a representative (e.g. police) apply for one on their behalf²⁴ (Domestic Violence Act 1995:10). However, a number of criteria must be satisfied before a court can issue a protection order including: a) the respondent is using, or has used, violence against the applicant, a child of the applicant's family, or both; and b) the making of an order is necessary for the protection of the applicant, or child of the applicant's family, or both (Domestic Violence Act 1995: 14:1). Protection orders work by prohibiting respondents from: 1) physically or sexually abusing the protected person; 2) threatening to physically or sexually abuse the protected person; 3) damaging or threatening to damage the property of the protected person; 4) engaging, or threatening to engage in other behaviour, including intimidation or harassment; 5) encouraging any person to engage in behaviour against a protected person, where the behaviour, if engaged in by

²⁴ Protection orders can be made on behalf of a person under the age of 16, however, they can only be issued against respondents over the age of 17, unless the “child” is, or has been, married, or in a civil union or de facto relationship (Domestic Violence Act 1995:10).

the respondent, would be prohibited by the order (Domestic Violence Act 1995:19:1; see Domestic Violence Act for penalties). Perhaps the greatest feature of protection orders was that they extended protection to victims, irrespective of their living arrangements with the offender. Thus, victims could reside with a respondent of an order, and still have legal protection.

The Domestic Violence Act also empowers the police to arrest, without warrant, if a protection order is breached, and police powers relating to firearms are also extended under this legislation, allowing officers to seize any firearms and revoke firearms licenses within a 24 hour period from anyone who has a protection order made against them (Police Mangers' Guild Trust, 2001:6).

1996 policy update

The same year the Domestic Violence Act came into effect, Schollum (1996) released the findings from her survey of New Zealand police officers and the family violence policy. Like previous research (and indeed, the current study), Schollum (1996) identified a number of concerns about the policy's implementation, including the fact that some officers had not changed their attitude toward family violence, nor accepted the new approach. Schollum (1996) also found that officers were not always aware of specific policy provisions. For instance, while nearly 96.4% of officers were aware that an offender should be arrested where there is sufficient evidence of an offence, and 91.3% of officers supported this requirement, officers were not always familiar with all the specific provisions, or did not always adhere to them. For example, while 96.6% of officers were aware that they had to complete a POL 400 form, only 70.5% supported this requirement, with the level of compliance largely dependent on the type of offence or incident. POL 400s completed for assaults by males on females had the highest level of compliance (92.9%), and incidents involving intimidation/threats had the lowest (62.9%). This clearly shows that even when officers are aware of, and support policy requirements, it does not necessarily translate into practice.

Like the concerns of Marsh (1989) and Robertson and Busch (1993), Schollum (1996) also found that officers did not always result incidents appropriately, with many officers still using the K1 code (i.e. not a domestic incident, no POL 400 filled out, and no further police action required) instead of documenting every incident by way of POL 400. Furthermore, Schollum (1996:40) established that despite a considerable number of officers supporting the pro-arrest policy, many still warned or cautioned an offender rather than using more formal means of intervention (i.e. arrest). Schollum (1996:65) found that such problems were often the result of victims' behaviour, and their preferences for police action – i.e. warning or arrest, or both.

Schollum (1996) also concluded that there was a lack of clear and consistent lines of supervision and accountability. As she comments:

Supervision arrangements vary greatly from district to district. In some districts (or perhaps only at certain stations within those districts) it appears that supervisors are monitoring compliance with the policy hardly at all; in others supervision appears reasonably constant; and at still others supervisors seem to be treating the policy as a 'mandatory arrest' policy with 'Male assaults female' as the only acceptable charge. This variation in the supervision of individual decisions must have a negative impact on the overall implementation of the policy, and certainly undermine its effectiveness (1996:72).

Schollum (1996:80) overall identified a number of barriers impeding the full implementation of the policy, including: 1) victims' wishes for non-arrest intervention; 2) a perceived lack of support from the courts; 3) confusion over the appropriate use and extent of discretion; 4) misuse of the 1D (domestic incident, no offences identified) incident code; 5) insufficient supervision; 6) evidence of stereotypical and unhelpful attitudes towards certain victims; 7) non-completion of POL 400s in many instances; 8) continuing use of the K1 clearance for 1D incidents; 9) lack of district monitoring and evaluation mechanisms, as well as a number of other factors. Schollum's (1996) study clearly shows that nearly nine years after the 1987 policy was implemented, a

number of problems had still not been resolved, and full implementation of the policy across New Zealand had still not been achieved.

In response to the introduction of the Domestic Violence Act 1995 and perhaps coupled with the research findings of Schollum (1996), the family violence policy was again updated in 1996, and this constitutes the most recent national policy. Three important developments were made within this policy. Firstly, there was recognition for the first time that children who witness domestic violence inadvertently become victims themselves- albeit indirectly - and the policy emphasised the need to provide support to these children (*Ten-One*, 121/11:2). Secondly, the policy introduced area or district family violence coordinators, who were responsible for “local inter-agency liaison, problem resolution, monitoring staff compliance with local protocols, and family violence-related training” (*Ten-One*, 121/11:6). Additionally, family violence coordinators were responsible for ensuring the POL 400s were completed and resulted appropriately.

A third important development within this policy was the introduction of a provision dealing with supervisors. As the policy states:

In the rare case where action other than arrest is contemplated, the member’s supervisor must be consulted (*Ten-One*, 121/11:19).

The inclusion of this provision is important in many respects. Firstly, it appears to be the first time the provision was included in the arrest section. This tends to suggest that management believed that the increased monitoring of officer performance was important in ensuring the policy was followed. Secondly, stipulating that officers should consult with their supervisors if they decide not to arrest, limits the discretionary capability of frontline officers. Finally, introducing the supervisor provision not only helps to ensure officers treat domestic incidents seriously, but it also provides a degree of accountability.

Subsequent studies

Following the 1996 policy update, the findings from Carbonatto's (1998) study on family violence and the police response in Porirua, Waitakere and Wellington were released. Like previous research, Carbonatto (1998) found there were clear indications that officers were not always complying with policy. Although all the officers spoken to advocated treating incidents of domestic violence seriously, this did not always translate into complete support for the policy. Similar to Schollum's (1996) study, Carbonatto found that officers' awareness of specific provisions of the policy was not always complete:

...while all police spoken to were aware that they had to act in such situations by arresting the offender, most had little knowledge over and above this requirement about specific aspects of the policy – particularly the requirement to remove firearms and fill out the Form 400 (POL 400) for every incident (1998:117).

Furthermore:

One of the main findings of this research was that the police did not always act in accordance with their policy. For example, the policy states that all offenders should be held in custody until their first court appearance; almost a fifth of the total sample of offenders, however, were immediately released following their arrest. In addition, the Form 400 – the form that police are required to fill out every time they attend an incident of 'family violence' – was completed in just over half the cases surveyed (1998:257).

Carbonatto also found a number of problems with police management at the district level, and more importantly, how their attitudes and commitment to policy often filtered down to the frontline officer. Not only did each of the three districts that Carbonatto studied have varying commitments to the policy, but each had different views on how that policy was applied:

...the varying districts adhered to the policy differently, with one district adhering to the policy in its strictest sense through monitoring its cases, supporting victims and focusing on the quick resolution of cases. Police in another district, however, interpreted the policy quite differently with the result that more than half of domestic violence cases surveyed within a three-month period were diverted (1998:257).

Additionally, Carbonatto (1998) found that often those most responsible for policy implementation had varying levels of commitment:

The commitment of senior police in charge of co-ordinating domestic violence policies in each district also varied. My observations confirmed those views expressed by two senior management police officers that, in two of the districts, those officers involved in co-ordinating police domestic violence efforts were involved in a job they had no particular commitment to (1998:117).

Finally, Carbonatto (1998) found that the concerns of police management were often not focused on the victims, but on the way the organisation operated. Some senior managers Carbonatto (1998) spoke to were more concerned about how the police worked as an operational unit, and how officers could improve their performance in this area, with apparently little importance placed on the concerns and needs of victims. Overall, Carbonatto's (1998) study suggested that family violence was still being policed inconsistently across various police districts, and like previous research, there were still a number of problems with the policy's implementation in general.

Current policy in the Canterbury Police District

In 1998, the Canterbury Police District (the district in which the current study is located), updated their family violence district policy, and this constitutes the most recent regional policy. While the policy has not significantly changed from its earlier national counterpart (nor indeed from the original 1987 policy itself, by all accounts), some minor differences are evident. For example, while the 1996 national policy was based on three core principles, the 1998 Canterbury policy is built upon five: 1) correct recording and resulting of events; 2) holding offenders accountable; 3) support and protection of victims; 4) *consistent district practices*; 5) *adequate supervision and accountability for the police response* (1998:3, *emphasis added*).

Other provisions which appear in the 1996 national policy are also re-emphasised, such as the need for officers to treat events with domestic

overtones seriously, and action taken must include: 1) sound response and investigation techniques, including querying the family violence database and “person of interest” sub system to obtain information; 2) dispatching police to the scene; 3) attending police treating events seriously; and 4) correct recording, reporting and resulting of events. The policy also states that all domestic- related events must be resulted K6 (reported) or K9 (arrest made), and a POL 400 completed (1998:5.1); however, officers are still able to use the 1D (domestic incident, no offence committed) coding for incidents where no offence is committed.

Perhaps the most important provision within the 1998 Canterbury policy is the emphasis placed on officers to consult with supervisors and the requirement to record the reason for non-arrest, if they are contemplating action other than arrest whenever there is sufficient evidence of an offence (1998:7.1). With respect to victim support and protection, the 1998 policy emphasises the need for all victims of family violence to have access to appropriate and timely support and information about services and remedies, and for referrals to specific support services to be made as soon as possible after the event (1998:10.2). Following the 1998 policy, a Memorandum of Understand (MOU) has been established between the police and the New Zealand Council of Victim Support Groups. This is a formal recognition of the relationship between the police and victim service agencies, and the agreement sets out the responsibilities of the various parties in providing adequate support for victims of family violence.

Summary

The adoption of pro-arrest (and sometimes mandatory arrest) family violence policies by police departments throughout the U.S., the U.K., and New Zealand in the 1980s, signalled a significant shift in philosophy. Prior to such changes occurring, the police tended to follow a minimalist interventionist approach, which was clearly ineffective. However, largely as a result of the Minneapolis

Experiment, police organisations were provided with the impetus for exacting change, and this resulted in the widespread adoption of pro-arrest policies. While police family violence policies continue to evolve to this day²⁵, the pro-arrest philosophy underpinning most, has remained largely unchanged. However, despite management's commitment to introducing pro-arrest policies, and consequently to changing the attitudes and practices of their officers, a number of implementation issues have emerged. Irrespective of the level of support for the policy, it appears that few police departments in the U.S., the U.K., or NZ, have been particularly successful in fully introducing pro-arrest policies. While some police organisations have had a measure of success in changing some aspects of police practice, exacting change at the street-level is a complex process. Furthermore, while police managers in all three countries appear to be committed to the pro-arrest approach, the fact remains that such support is not always evident out on the streets. While situational contingencies may make it difficult for frontline officers to implement the policy as intended, it is also clear that some officers do not support the pro-arrest approach, and this will inevitably affect their willingness to follow the policy strictly.

Indeed, it appears that many of the problems discussed within this chapter, stem from the fact that frontline officers are still able to exercise considerable

²⁵ For example, since the current research was carried out, there have been a number of developments in the police response to family violence, primarily with respect to the multi-agency approach. For example, in 2005, Family Safety Teams were established in four locations throughout New Zealand: Hamilton/Auckland (May 2005), Wairarapa/Hutt Valley (May 2005), Christchurch (July 2005), and Counties Manakau (July 2005). These teams have been established for the purpose of providing an integrated multi-disciplinary response to family violence and child protection, and they involve representatives from a number of statutory and non-statutory organizations, such as Women's Refuge, Child, Youth and Family and so on. Essentially, these teams are responsible for identifying gaps in service delivery, monitoring and evaluating practice and systems, developing new practices and systemic change, and pro-active advocacy and intervention. In Canterbury, there has also been the establishment of a monthly roundtable, involving police and Women's Refuge representatives. Although these developments have certainly been important for enhancing the multi-agency approach, there appears to have been few developments in terms of how frontline officers respond to family violence, although I am aware that since the introduction of a new family violence coordinator in August 2004, there have been some changes with respect to training. In particular, this coordinator has introduced a new training package for new recruits, where the principal features of the family violence policy are addressed, and what the requirements of the policy are. This appears to be particularly important given that most new recruits have reported little training at the police college with respect to family violence.

discretion under pro-arrest policies. Not only do officers use their discretion in determining how the policy is applied, but how they respond to domestic incidents in general. It should therefore not be overly surprising that pro-arrest policies have not translated into the increased use of arrest. While such policies certainly appear to have influenced officers' willingness to positively intervene in domestic incidents, ultimately, individual officers will decide how to frame their intervention accordingly, and this will not necessarily be contingent on the formal policies of the police organisation. Drawing on the Christchurch experience, as the next two chapters will show, there are a number of reasons (both legitimate and illegitimate) why the pro-arrest policy is difficult to implement in practice.

Chapter four: The pro-arrest family violence policy in practice

Introduction

Although the introduction of a pro-arrest family violence policy in New Zealand in 1987 signalled a more proactive approach to family violence, as the previous chapter has illustrated, implementing pro-arrest policies at the ground level has generally been less successful than anticipated. Whilst the pro-arrest policy has been in force in New Zealand for over 17 years now, its implementation, at both the local and national level, has been incomplete. However, New Zealand is not alone here, as other police jurisdictions in the U.S. and U.K. have also experienced difficulties applying the policy in practice. As the previous chapter highlighted, it is clear that what works in theory, does not always work in practice. Indeed, as a number of implementation theorists (e.g. Heywood, 1997; Lipsky, 1980) have concluded, there is often a gulf between decision and delivery, and implementing policy as intended is often a complex task. Consequently, most of the issues discussed within this chapter (and the next) relate to the disjuncture between the pro-arrest policy in theory, and its actual practical application.

As with previous research, both nationally and internationally, a number of issues relating to the implementation of the current family violence policy in Christchurch have been identified in this study. Many of these issues stem from the emphasis placed on arresting family violence offenders. However, it is important to note that this research is not concerned with whether pro-arrest policies are indeed effective for reducing future violence. Instead, the focus is on whether the Canterbury family violence policy, like pro-arrest family violence policies elsewhere, has been effectively implemented, and particular attention is paid to the difficulties faced by the police in applying the policy at the street-level. Consequently, this chapter addresses some of the reasons why arrest is not used more regularly, and what legitimate variables influence the arrest

decision. Additionally, this chapter discusses how officer discretion may affect the arrest decision, and ultimately, how it might explain the incongruity between the family violence policy in theory and in practice.

What constitutes successful implementation?

It is clear that the adoption of pro-arrest policies was based on the premise that arrest would decrease offender recidivism, and thus reduce the incidence of family violence in general. However, it is also apparent that such policies were expected to result in a more serious police response to family violence. In other words, the adoption of pro-arrest policies was intended to increase officers' willingness to arrest family violence offenders, whereas in the past, emphasis was on minimal intervention.

Although there are a number of national and international studies that have evaluated whether these pro-arrest policies have been successfully implemented (e.g. Ferraro, 1989; Lawrenz et.al, 1988; Jones and Belknap, 1999) these studies have generally failed to define what constitutes successful implementation in the first place. They have, however, tended to point to arrest rates and policy compliance as markers of success. In other words, increased arrest rates have been used to show that family violence has been treated more seriously since the introduction of pro-arrest policies, and that more offenders have been arrested as a consequence. Policy compliance has been gauged to indicate whether, and to what extent, specific aspects of the policy have been effectively implemented at the street-level.

Defining successful implementation is certainly complex business, and as Meyers and Vorsanger (2003) point out, there are a number of difficulties inherent in evaluating whether implementation is successful. Primarily, there are differences in the political, organisational, technical, and other contexts affecting a policy's implementation, which means a single standard of success is not

applicable. Consequently, what constitutes success in one context may be construed as unsuccessful in another. As Meyers and Vorsanger argue:

The same front-line decisions and actions that represent cooperation in one implementation context may reflect shirking or even sabotage in another (2003:252).

When management in the current study was asked what constituted successful implementation for the Christchurch Police, there was no response, which suggests that defining success is indeed difficult, even within a specific context. Given the problems inherent in defining successful implementation, success in the context of the current research is gauged in terms of arrest rates and policy compliance with the arrest provision, which does not mean that other markers of success (e.g. recidivist rates, victim satisfaction) are not used to assess success in other policy areas. Thus, when assessing whether or not the pro-arrest policy has been successfully implemented, we are essentially referring to whether a) the police response to family violence is more serious; b) officers are more willing to arrest offenders; c) whether specific provisions within the family violence policy are being complied with.

Arrest rates

While policymakers and other interest groups expected the adoption of pro-arrest family violence policies to increase the use of arrest, the arrest rate has not increased to the extent anticipated. Some researchers in the United States (e.g. Ferraro, 1989) for instance, have argued that despite police departments introducing pro-arrest or mandatory arrest policies, many officers still appear to frame their intervention²⁶ in domestic incidents by other means (i.e. warning and/or separation). As Lawrenz et.al (1988:498) point out, even when management emphasise the beneficial results of arrest, daily arrest patterns change little. Thus, irrespective of the support demonstrated throughout all

²⁶Drawing on Goffman, Marshall (1998:238) defines a frame as “definitions of the situation [that] are built up in accordance with the principles of organization which govern events...and our subjective involvement in them.” Frame their intervention in this context essentially means officers decide how they will resolve the situation – i.e. through formal means- e.g. arrest, or informal means – e.g. warnings.

levels of the organisation for the policy, arrest rates have not changed considerably since pro-arrest policies were introduced. The situation is by no means different for the Christchurch police.

Two main police sources are drawn on for ascertaining arrest rates for family violence incidents in Christchurch: CARD²⁷ data, and POL 400 forms (see chapter two). As table 1 shows, the breakdown of 462 domestic incidents²⁸ recorded on the CARD data for August 2004 shows that 69 arrests were made, producing an arrest rate of 14.9% for this one-month period. Comparatively, 257 incidents were reported (K6), and 136 recorded as police presence sufficient (K1)²⁹. In contrast, as table 2 shows, according to the POL 400 data (n=313) from the same time period, only 8.9% of incidents reported an arrest (K9). However, it also should be noted that not all of the POL 400s were collected during this period, and there were also a small number (4.5%) where the police action was unknown. Despite this, it is worth noting that most domestic incidents police attended during this period, were only reported (K6)³⁰, and did not result in an arrest (CARD data = 55.6%; POL 400 data = 86.5%). On initial inspection, it appears that most incidents do not result in arrest, but are rather cleared as K6 – i.e. resolved through mediation and separation.

²⁷ As discussed later in chapter two, CARD refers to the Computer-Assisted Resource Deployment system, which is used to record all possible domestic related incidents police attend on a weekly basis. It also includes information such as the time of the incident, which police unit responded etc...

²⁸ These 462 incidents do not refer solely to incidents involving offences, but all incidents coded as 'domestic related' by the Communications Centre.

²⁹ K1= police presence sufficient. This refers to incidents that theoretically do not involve any criminal offence, and the incident is not formally recorded by way of POL 400. However, this does not necessarily mean that all incidents resulted as K1 are non-criminal events. For example, one incident observed in the current study involved a sergeant resulting the event as K1 even though the victim had injuries (i.e. bruising and bleeding), and there was considerable damage to the victim's car. The offender could not be located at the scene, and after the offender's younger brother turned up, the sergeant became frustrated, and the decision was made to withdraw from the scene without resolving the situation, and the incident was subsequently resulted as K1 – not domestic related, and no offence committed. As this incident exemplifies, officers sometimes do result incidents involving criminal offences as K1, despite policy strongly indicating that this is not to happen.

³⁰ Incidents resulted as K6 means that either offences were not committed, or there was insufficient evidence for an arrest to occur, but the incident is formally recorded via POL 400, and the information is subsequently placed on the family violence database. Similarly, incidents resulted as K9 indicate that an arrest is made, and the incident is formally recorded on a POL 400 and on the family violence database.

Table 1 Arrest rates – CARD data August 2004

Result code ³¹	Number	Percentage % *
K1	136	29.0
K6	257	56.0
K9	69	15.0
Total	462	100%

* Percentages rounded to nearest percent

Table 2 Action taken (arrest rates) – POL 400 data August 2004 (n=313)

Action/result	#	% *
K6	271	87.0
K9	28	9.0
Unknown	14	4.0
Total	313	100

* Percentages rounded to nearest percent

While these arrest rates for Christchurch appear relatively low, they closely correspond to those generated by other researchers within New Zealand, and internationally as well. For example, Busch and Robertson (1992), in their 1992 New Zealand-wide study, found an arrest rate of 14.3%. Similarly, Ford (1993), in his survey of three New Zealand districts, also found an arrest rate of 14.3%. In the U.S., Ferraro's (1980), study of the Phoenix, Arizona Police Department, found arrests were only being made in 15% of cases, and even the Minneapolis Police Department (the original site of the Minneapolis Experiment), recorded arrests at a rate of 14.6% in 1986 (cited in Buzawa, 1988:99). Thus, even though the Christchurch arrest rate for the month of August 2004 may seem low, in comparison to other jurisdictions, we can conclude that it is relatively "normal". From this we can also conclude that arrest is the least used police response, not only in Christchurch, but in other localities as well (including

³¹ Although there are 9 possible result codes that can be used, the result codes K1, K6, and K9 are the most commonly used ones. According to the family violence policy however, family violence incidents can only be resulted as K6 or K9. Nevertheless, at times, the result code K3 is sometimes used, which means that the incident is offence free.

overseas). The majority of family violence offenders are not arrested³², but rather warned and temporarily separated from their victims.

The practice of arresting offenders

The 1998 Canterbury family violence policy requires that offenders are held accountable for their violence, and in many respects this accountability occurs when they are arrested and brought into the criminal justice system. Arresting domestic violence offenders not only removes them from the situation, thereby ensuring victims' short-term safety, but charging perpetrators also places them in front of a court (in most circumstances). While the arrest and subsequent detention might punish the offender in the short-term (i.e. by taking away their freedom), the long-term sanctions imposed by the court – i.e. imprisonment or non-custodial sentences (e.g. community service, fine), are likely to ensure offenders are truly held accountable for their violence. The emphasis therefore, does not appear to centre on arresting perpetrators per se, but bringing offenders into the criminal justice system in order to impose sanctions on their behaviour.

The arrest provision in the 1998 Canterbury family violence policy, states:

Providing there is sufficient evidence, offenders who commit Family Violence [sic] assaults or related offences shall, except in *exceptional* circumstances, be arrested as soon as practicable. In the *rare* case where there is sufficient evidence but action other than arrest is contemplated, the member's supervisor *must* be consulted, and the reason for non-arrest recorded (1998 Canterbury family violence policy:7:1, emphasis added).

Therefore, in theory, when an offence is committed, and there is sufficient evidence to support making an arrest, the expectation is that officers *will* arrest, and non-arrests will only occur rarely.

³² Some overseas studies have shown that compared to physical assaults committed by strangers, the arrest rate for family violence assaults is actually considerably higher in most cases (for example, see Dunrose et.al, 2005; Felson and Ackerman, 2001).

Unlike the situation under the Domestic Protection Act 1982³³, where officers had the power to detain offenders without charge, under the Domestic Violence Act 1995, no such provision applies. This means that if officers take an offender into custody, he/she must be charged. The emphasis once again, is not on the short-term removal of the offender from the scene (since this can be achieved through the separation of the parties), but placing the offender into the criminal justice system.

In line with policy, most managers expect that frontline officers will arrest domestic violence offenders whenever offences are identified, and evidence supports such action, as the following comments from managers illustrate:

...within all reason...you know, looking at the circumstances...if there's an offence been committed [offenders] should be arrested.

...the policy is any offence involving family violence you arrest regardless, and that's the general policy we have.

If you attend a family violence incident and there's evidence of family violence, you arrest. If you attend a family violence incident and there's a complaint, either by the spouse or a sibling of the family, that you arrest them, and that's a policy.

...we will arrest if there's evidence of a crime, gather the evidence, and put the person before the court.

As these comments illustrate, whenever there is evidence of an offence, the offender should be arrested. At the same time, however, the type of evidence needed to justify an arrest is often unclear, and may differ from situation to situation. Whether the level required relates to that needed for the case to proceed to court, or merely to justify taking away someone's liberty, is not explicitly stated. However, it appears that management's expectations are that offenders will be arrested, and that the arrest decision will not be dependent on

³³ As the previous chapter discussed, under the Domestic Protection Act 1982, the police had the power to detain offenders without charge for a period of 24 hours. This was viewed as an enforced 'cooling-down' period.

whether officers believe the arrest is necessary, but if the evidence supports this action.

Similarly, most of the frontline officers spoken to agreed with management's expectations:

If we can prove an offence has been committed, then we will arrest.
-M33

If the evidence says arrest is warranted, then you really have to do it.
– M38

You have to look for an offence, and you have to have evidence, otherwise you won't arrest. –M31

If there is evidence of an offence, I will arrest them. –M31

However, while arresting offenders appears relatively straight-forward when the necessary factors are there (i.e. evidence of an offence being committed), the fact remains that domestic incidents are complex, and arrest is not always applicable. Issues relating to the exercise of discretion and its effect on the implementation process will be explored, utilising Lipsky's (1980) theory of street-level bureaucracy

Street-level bureaucracy

Street-level bureaucracies are organisations such as schools, police and welfare departments, "whose workers interact with and have wide discretion over the dispensation of benefits or the allocation of public sanctions (Lipsky, 1980:xi). Street-level bureaucrats, in turn, therefore, are public service workers who interact with citizens directly on a daily basis (Lipsky, 1980), and who are responsible for reducing the citizen's demands, and categorising the individual accordingly. As such, street-level bureaucrats³⁴ such as frontline police officers, first determine what the client's needs are, and then define what treatment the

³⁴ Throughout this thesis, the terms street-level bureaucrat and frontline officer will be used interchangeably.

citizen is to receive from the bureaucracy (Prottas, 1978). In doing so, as Lipsky (1980) points out, street-level bureaucrats exercise considerable discretion over whether the client should receive the service they demand, and the nature of that service. This theory is particularly useful for understanding problems with implementing policies, especially in organisations such as the police, where frontline officers exercise considerable discretion.

Why discretion is important

It has long been recognised that frontline officers exercise considerable discretion during the course of carrying out their work (e.g. Manning and van Maanen, 1978; Goldstein, 1967; Reiss Jr, 1971). Furthermore, it has long been established that officers often employ their discretionary power when it comes to the arrest decision (e.g. Manning, 2003; Kleinig, 1996; Reiss Jr, 1996).

Although there are numerous competing definitions as to what constitutes discretion, at its basic level, discretion refers to the power to make choices among alternative (and often competing) lines of action, which can be justified as being legitimate, and exercised within the effective limits of the individual officer's power (Feldman, 1992; Davis, 1974, cited in Adler and Asquith, 1981). In the context of family violence, we are essentially referring to an officer's decision to arrest an offender. However, in general, officers also have considerable discretion in determining the level and quality of service they provide to their clients – i.e. citizens.

The hierarchical nature of the police organisation means that formal rules and policies are often (if not always) constructed by those in the top echelon, and those at the bottom of the organisational structure, the frontline officers, are responsible for following the rules and applying them out on the streets. However, which rules apply and how they should be applied, is often a complicated process, particularly given the nature of police policies (and policies in general). As Lipsky (1980) points out, discretion is characteristic of street-level bureaucrats' work, because:

The essence of street-level bureaucracies is that they require people to make decisions about other people. Street-level bureaucrats have discretion because the nature of service provision calls for human judgment that cannot be programmed and for which machines cannot substitute. Street-level bureaucrats have responsibility for making unique and fully appropriate responses to individual clients and their situations. It is the nature of what we call human services that the unique aspects of people and their situations will be apprehended by public service workers and translated into courses of action responsive to each case within (more or less broad) limits imposed by their agencies (1980:161).

In other words, street-level bureaucrats, such as frontline officers, need to be flexible to individual clients and individual circumstances, yet police policy, and indeed the law, assumes that citizens will be treated in a similar manner, when clearly this is not realistic. Thus the need for discretion arises largely out of the limitations of policy and the broad and multitudinous nature of organisational rules in the first place. As Prottas (1978) points out, although a few rules are given 'de facto' priority and are therefore obeyed more regularly, the fact remains that the rest are meant to be equally obeyed, yet obviously cannot be (1978:295). Similarly, Allen (1984) contends that discretion (relating to policy), arises because of:

...the unresolvable conflict in our culture between the desire to give authoritative guidelines in the form of clear, specific, coherent, and rational "rules" and the impossibility of doing so... The universe of social interaction is incredibly, indeed unknowably, complex. Each person operates in a web of relationships with enormous numbers of objects, people, and institutions in ever-changing combinations and permutations...What occurs when we write rules to govern social interactions is that the necessary simplicity of the rule clashes with the complexity of human experience...(1984:2-3).

Other researchers (e.g. Lipsky, 1980; Manning and van Maanen, 1978) have pointed out that policy is often incapable of providing adequate instruction to officers on how to deal with every situation:

... street-level bureaucrats often work in situations too complicated to reduce to programmatic formats. Policemen cannot carry around instructions on how to intervene with citizens, particularly in hostile encounters. Indeed, they would probably not go out on the street if such

instructions were promulgated, or they would refuse to intervene in potentially dangerous situations (Lipsky, 1980:15).

Similarly, Manning and van Maanen (1978) contend:

...it would be a mistake to assume that policies can be found that will provide meaningful guides to action in most situations of real or potential disorder. The most feasible rules perhaps are those which tell the patrolman what *not* to do...But relatively few rules can be devised that tell a patrolman what he *should* do with quarrelling lovers, angry neighbors, or disputatious drunks. This is not because the police have had little experience with such matters (on the contrary!) or even because they do know in a given case what to do (they may), but because so much depends on the particular circumstances of time, place, event and personality (1978:67).

In other words, rules cannot dictate officer behaviour, it merely guides it, and even this is limited by the fact that rules cannot always be applied to specific contexts. Thus, while the weaknesses of formal rules and policies certainly provide a foundation for discretion to exist in the first place, it is also clear that the very nature of police work itself also contributes to the development and maintenance of discretionary decision-making.

The nature of police work

Policing is a highly unpredictable activity that is fraught with danger, uncertainty, and complexity. The policing of family violence specifically is by no means a straight-forward activity, particularly since such incidents are often highly volatile. As most frontline officers spoken to in this study continually stressed, domestic incidents are complex, multi-faceted, and consequently, a universal response is often inappropriate for dealing with the specificities of individual incidents. Thus, discretion is fundamental to frontline officers, precisely because it allows them to respond flexibly to individual circumstances. Similarly, as a number of managers pointed out, officers need some level of discretion (albeit closely circumscribed), as the following comments illustrate:

...every incident is different and we *have* to (have discretion), the policy should give us some guidelines on how to deal with things, but I think we've got to rely on the fact that our officers are individuals, and they will

treat things, and see things differently, and you can't have something written down that says, "thou shalt do this every time you attend this." Because it just doesn't work like that. There will always be an exception to the rule, and if you use that exception then are you breaking the rules?

...you can't have policy dictating too much. You've got to sort of have it at a fairly high level with a lot of open doors, because you just can't say you'll do this, because there's a lot of situations in there where you've gotta be flexible depending on the circumstances. You just can't have a hard and fast rule...

...the constable on the street has to make up his own mind, and obviously governed by policy, but he's got to use his own initiative and be satisfied that a clear-cut offence has been committed, to make the arrest....because for the cop on the coalface, he has got to have the initiative and the discretion to make that decision, and there's always two sides to a story, it's never always that clear-cut.

Discretion is also important for frontline officers, not only because of the nature of their work, but the expectations citizens make of them. When officers attend domestic incidents involving a complainant and alleged offender, they must decide not only whether to overlook or sanction the behaviour, but also how they will intervene in a relatively small time frame. In contrast to judicial decision-making, where no such time limits are imposed, officers have to make on-the-spot assessments. Thus, as Reiss Jr (1971:130) points out, although a lawyer or judge may take a long time reviewing officers' decisions, the latter often work under considerable time constraints, and consequently, they must make a quick decision as to what to do, if anything, about the situation. As one manager commented:

...it's a big onus on a constable, to make that decision to arrest. It's got to be a big judgement, and it's going to take months to get dragged through the courts, and the courts can have all the time to make the decisions and all that... while the cop on the street's got a few minutes to make that decision whether to arrest or not arrest, and yeah, he's got to weigh it all up very quickly, and it's a hell of a situation.

Similarly, as George Kirkham once stated:

As a police officer,...I found myself forced to make the most critical choices in a time frame of seconds rather than days: to shoot or not to

shoot, to arrest or not to arrest, to give chase or to let go – always with a nagging certainty that others, those with great amounts of time in which to analyse and think, stood ready to judge and condemn me for whatever action I might take or fail to take...(cited in Lipsky, 1980:32).

As we can see, there are a number of valid reasons why officers must exercise discretion. Thus, while frontline officers have little control over what incidents they are sent to, they have considerable autonomy in deciding how that intervention is framed (Manning, 2003), irrespective of what policy or rules may apply. Discretion may be used to determine the nature of the incident, and what, if any rules, are relevant to it (Kleinig, 1996), whether they should be applied to that particular situation, and what sanctions are most suitable. In short, officers have considerable discretion in determining whose behaviour to sanction, and whose to overlook.

Why discretion is necessary in domestic incidents

While arrest is certainly applicable (and mandated by policy) when offences have been committed, the fact remains that arrest is not always appropriate, and in many cases, not even applicable for a number of reasons. Firstly, not all domestic incidents involve offences. In fact, the majority of incidents police attend *do not* involve the use (or even threat) of violence, only verbal altercations. As one frontline officer commented:

A lot of domestics aren't domestics – just normal arguments that couples have. –M29

Although most frontline officers support arresting family violence offenders if violence has been used, and there is evidence of this, most officers seem unprepared to arrest for verbal arguments alone. As a couple of frontline officers stated:

Most couples have arguments, but they're mainly verbal. If it gets to the point where we're arresting couples for normal couple stuff (i.e. verbal arguments) it's not good. –M29

If it's not serious, and it's just verbal, you don't want to antagonise things by arresting someone. –M31

Additionally, even when an assault may have taken place, discretion is important, since there are varying levels of assault. As one frontline officer commented, discretion is important, because "...a push is considered assault – do you lock them up for that?" (M44).

Secondly, not all 'domestic incidents' are actually domestic-related. As one manager commented, sometimes what is coded as a domestic by the Communications Centre is not actually related to family violence. For example, someone may ring the police, and all the Communications Centre can hear is arguing in the background, but there will be no-one on the phone:

...and it could be a kid playing on the phone, mum and dad shouting, doing something in the background, or the television being turned up, and they (Communications Centre) enter it as family violence. Alternatively, someone will pick up a phone, dial 111, and it will be a party, and they'll enter it as family violence, 'cos they hear a lot of noise. Or someone rings up, and [the Communications Centre] enters it as family violence, but it's a complete stranger on the doorstep who's trespassing...

Thus, even though the Communications Centre initially codes these types of incidents as "family violence incidents", they are not in fact domestic-related, consequently negating the need for an arrest.

Thirdly, domestic incidents, by their very nature, are rarely straight-forward, and the family violence policy can not always be easily applied to specific circumstances. As Worden (1989) points out:

Disputes are complex situations that require for their resolution a consideration of seemingly infinite contingencies including the following: What is the subject of the dispute? What is the relationship of the disputants? Is the dispute rooted in previous and more deeply seated conflicts, or is it a discrete episode? What do the disputants want of the police (e.g., to leave, to make an arrest)? What is the potential for violence? Is one or more of the disputants intoxicated? Because disputes are so complex, police administrators are hard-pressed to specify clearly the courses of action that officers should take in resolving disputes (1989:676).

The arrest decision is further complicated by the fact that establishing whether an offence has taken place, and gathering enough evidence is not always an easy matter. As some frontline officers argued:

The difficulty for us (i.e. the police) is that we go to things like this (i.e. domestic incidents), and they just don't want to talk to you, they don't want to make a complaint – they just don't want to know you. If someone doesn't want to talk to you, then it makes it difficult (to arrest), unless there is obvious evidence. –F31

Domestic violence is not clear-cut, and quite often when we get there we don't get all the information as some people are willing to talk, and others aren't. It's a bit hard to get a full picture of what has been going on when both parties don't talk...Discretion is important based on the fact that one party might be willing to talk and the other might not. –F32

Furthermore, the presence of alcohol (which is usually an aggravating factor, according to a number of frontline officers and managers spoken to), may also make it difficult to determine whether an offence has been committed or not. As one manager commented:

...a lot of [the] time, one or both parties are intoxicated, and it's really hard to get to the bottom or find out what exactly has gone on.

A lack of information and/or a loss of cooperation undoubtedly complicate the job of frontline officers. While officers can gather some information independently of the individuals involved in the encounter – i.e. noting any visible injuries, or disturbances to furniture, it is hard for officers to make appropriate decisions if all the necessary information is unavailable. Furthermore, officers may have difficulty proving in court, that the evidence is actually indicative of a crime having been committed, and not the result of some other circumstance.

Additionally, not all incidents involve a sufficient level of evidence to support the arrest decision, and although arrests are sometimes made without the necessary evidence, this practice leaves the police as an organisation open to external criticism. For example, a newspaper article featured in *The Press*

(Thomas, November 22, 2004:A1) criticised the police for failing to properly investigate violence cases, which subsequently resulted in poor conviction rates. Convictions for violent crimes, such as family violence often sat at around the 49% mark, compared to an average conviction rate of 66% for all other crimes. As Nigel Hampton, QC, a *Just Cause* spokesman cited in the article pointed out:

They (police) send cases to court without thorough investigation which end up falling down (Thomas, *The Press*, November 22, 2004:A1).

Management also appears acutely aware of this, as one manager commented:

...if there's not enough evidence, then there's no point us charging someone, because it would just be a waste of time.

Furthermore, even when it comes to arresting offenders who have breached protection orders, the law allows officers to exercise a degree of discretion. For example, under the Domestic Violence Act 1995, any breach of a protection order³⁵ constitutes a criminal offence, and the police are empowered to arrest, without warrant, any person they reasonably suspect of having committed a breach of the order (Domestic Violence Act 1995:50:1). However, the Act also states that in considering whether a person should be arrested, the police must take into account a number of factors: 1) the risk to the safety of any protected person if the arrest is not made; 2) the seriousness of the alleged breach; 3) the length of time since the alleged breach occurred; and 4) the restraining effect on the person liable to be arrested (Domestic Violence Act 1995:50:2). The police policy with respect to breaches of protection orders reflects this legislation. Thus, while it may be easy to assume that every breach of a protection order will result in the arrest of the offender, officers are clearly allowed, by virtue of the legislation, to decide whether or not the arrest is necessary or justified. Furthermore, if officers do arrest for breaches of protection orders, their decision-making will be evaluated on the basis of some or all of these conditions being met. At the same time, however, breaches which

³⁵ As discussed in the previous chapter, a protection order is a form of court-ordered protection for victims.

do not result in an arrest will not necessarily be subject to the same level of scrutiny (if at all).

Finally, discretion is particularly important if the incident involves mutual abuse. Although domestic incidents usually involve one victim and one offender, incidents involving individuals as both offenders and victims are not uncommon. In fact, some frontline officers believe that incidents of mutual abuse constitute a high proportion of incidents they attend. While officers' decision-making is relatively uncomplicated if one party has clearly committed an offence against another, if both parties have injuries, and/or both are making complaints, officers clearly must use their discretion in determining what, if any, action to take. The level of discretion afforded to responding officers is further facilitated by the fact that the family violence policy does not address issues of mutual abuse. Consequently, there is no official directive as to how officers should respond to mutual assaults (although such issues may be addressed during training sessions).

The blurring of victim and offender roles makes the task of the responding officers particularly difficult, especially if independent evidence is lacking. As some managers pointed out:

It sounds so easy, sitting in here, it sounds so easy that you know you can sort it all out. It's sometimes bloody difficult, and you do get situations where, well a police constable goes along and both lots are making allegations of assault against the other and, very difficult to sort out who's right and who's wrong, who's the cause of it, who hit who first, and whether there are any other particular assaults [that] are more serious than the other and should be dealt with, and shouldn't be.

...it might be that you run ragged all night because you're going from job to job, and you're now at this domestic and you can't work out, well who's the perpetrator, who's not? They've both assaulted each other, should I leave them here to carry on fighting and just walk away from it, or should I lock them both up and get them both out of the scene? You know, you've got to weigh it all up when you go [sic] there.

The situation is further complicated when issues of self defence are considered.

As one manager stated:

...if someone hits someone over the head with a frying pan because she or he was fearful for their lives because the other one was attacking them, that's self-defence. You've got to weight it all up when you're there.

While individuals have the legal right to defend themselves (Crimes Act 1961: section 62), the force used must be considered "reasonable." Thus, as another manager pointed out:

...it's the degree of force too that takes precedence. So if you get someone gently pushing a person, and he [sic] beats you up, they don't cancel. It's difficult.

Although the family violence policy provides no guidance for situations involving mutual abuse, it appears that some managers expect officers to identify the primary perpetrator, and arrest them if circumstances warrant it. As some managers commented:

...if there's an indication that one has provoked it, they will be arrested...Look at who started it, and generally they get arrested.

If there's evidence of a perpetrator, one who started it, they go in for assault, because if they're on private property, you can't lock them up for fighting.

Other managers, however, supported officers taking a pragmatic approach, and expected that officers would separate the parties, rather than dealing with them through more formal means of intervention (i.e. arrest):

...you might have to make a call and just separate them. If it's something more serious, you lock them up because otherwise they'll get back together and something else, more serious, could happen.

I think quite often in those situations we take a pragmatic approach and either arrest nobody or separate people off and try and sort of resolve it in that way, because we just can't know who's the offender and who's not the offender.

Similarly, most of the frontline officers spoken to said that they were less likely to arrest in these types of incidents, preferring instead to deal with the situation

by separating the parties for the night, except of course, if a serious offence was committed:

The short term solution is to mediate and separate the parties for the night if it wasn't serious abuse. If there was an injury or evidence that a crime had been committed, look to arrest. If we didn't arrest, we would be severely criticised by the bosses. -M29

You just split them up basically. It's pretty hard to arrest any of the parties if both have been fighting. Obviously if one has committed a serious assault- e.g. with a bottle, they're going to get locked up. - M44

If it is only verbal, then we will try to separate. Usually it's the male that leaves. If he's not prepared to leave, then we will ask the woman to leave. If both parties have smacked each other, then you have to look at self-defence – whether or not one of the parties has hit back in self-defence... You know that that sort of case won't go to court. You need the compliance of one party. If there is a minor assault, it's not really an offence. But if it's a serious assault, you would look to arrest. - M31

If both have been abusing each other, and there is no clear offence by one against the other, then we would separate rather than arrest. – F32

Although in theory, both parties can be arrested, it appears that this is not the preferred practice for most managers and frontline officers, as the following comments illustrate:

In the end, it's a balance call. We're not going to arrest both parties, because that's an impractical solution. – M33

To be honest, I can't really think why you would arrest both parties to a domestic, because once one party's arrested, the major reason for arresting one party would be to ensure the safety of the other, so...I can't really see why you would need to arrest both... -manager

Other managers and frontline officers however, could see no reason why the family violence policy is not applied equally to both parties, and a dual arrest³⁶ made. As two managers commented:

³⁶ In specific states within the U.S., where police departments work from a mandatory arrest policy, issues of dual arrest have emerged. Concern about the use of dual arrests has largely resulted from the increasing number of women being arrested along with their partners. Some (e.g. Miller, 2001), have argued that women who engage in self-defence are inadvertently arrested, primarily because mandatory arrest policies direct officers to arrest *someone*. Thus, when the situation is not clear-cut, and it is not

...in theory, if there's been crimes committed by both of them, you should be following the policy in respect to both of them, which could mean both of them get locked up.

...I can see no reason why we wouldn't arrest both parties if they've both committed offences, or charge both parties, which may mean they're not both arrested, or one might be arrested at the time.

Of course, arresting both parties also has its problems. Not only would two patrol cars be required to transport the individuals back to the station, but with respect to the prosecution, these individuals are occupying roles of both offender and victim. This can make a successful prosecution difficult to obtain, particularly in the absence of independent evidence, as one frontline officer pointed out:

It makes it difficult in court, because you have an individual who is both an offender and a victim. You need the cooperation of the person as both the victim and offender. -F32

The prosecution of cases involving mutual abuse is further complicated by the fact that under New Zealand law, married couples cannot be compelled to testify against one another.

As we can see, incidents involving mutual abuse clearly call for officers to exercise discretionary judgement, and it is understandable why arrests do not always occur in situations such as these. While domestic incidents in general are complex events, incidents involving mutual abuse are even more difficult to police.

Thus, while arrest may appear to be a relatively simple decision (i.e. arrest if evidence of an offence), the fact remains that such decision-making is often highly contingent on circumstances relating to the context of the incident, and the individuals involved. Furthermore, as Manning (2003) points out, although officers' decisions may appear binary – arrest or not arrest, this is not entirely accurate. As he comments:

obvious who the offender(s)/victim(s) are, both parties are arrested, leaving the decision of guilt/innocence for the courts to decide.

...the question of *how* to act is equally important. Police can choose to do nothing, refer to other agencies, give advice, warn, threaten, formally caution, or arrest (2003:179).

Furthermore, as Reiss Jr (1996) points out, arrest is often regarded as one of a number of possible courses of action that officers can take. Even when officers are contemplating action other than arrest, the possibility of arrest remains a viable option. Thus, if officers are considering warning the offender, but the offender suddenly becomes aggressive, an arrest may subsequently take place. Additionally, as Reiss Jr (1996) argues:

...the less likely it is that any consequences will befall the officer for choosing among these different courses of action, the less likely it is that the officer will enforce the law by arrest (1996:164).

In sum, the arrest decision is by no means straight-forward, and there are often a number of reasons why an arrest does not take place. However, it is equally clear that the decision to arrest may also be influenced by other factors, other than situational contingencies. Despite there being no consensus amongst researchers as to what criteria must be met for an arrest to take place, there is nevertheless considerable agreement that a number of legitimate variables come into play during officers' decision-making process.

Legitimate variables

Most arrests, as previously discussed, occur when there is evidence of an offence. Researchers have shown that there are a number of legitimate variables which impact on the arrest decision, and these include: whether the offender is intoxicated or under the influence of drugs; the presence of injuries and the seriousness of those injuries; whether witnesses are present; damage to property; victim's preference for arrest; and whether the offender is located at the scene (e.g. see Feder, 1998; Jones and Belknap, 1999; Felson and Ackerman, 2001). Unfortunately, there appears to be no research generated in New Zealand, that addresses what variables may affect the arrest decision, so

in many instances, research from the international context is borrowed, in order to discuss these issues in the current context.

Whether the offender is intoxicated

Some researchers have found that arrests are more likely to occur if the offender is intoxicated. As Jones and Belknap (1999) found, the only factor significantly related to whether any formal police action was taken, and whether the defendant was jailed, was the involvement of drugs and alcohol. When offenders are intoxicated, they may be more uncooperative once the police arrive, and consequently, may antagonise the responding officers. Additionally, because intoxicated offenders are generally less controllable, they not only pose a greater risk to victims, but also to the officers at the scene. In Christchurch, it appears that the presence of drugs or alcohol may influence the arrest decision, since POL 400s require officers to record the presence of either (factors present –see appendix 2). Indeed, as many frontline officers contend, alcohol is often an aggravating factor in domestic incidents.

Offender's behaviour

A related variable which can affect the arrest decision (and related to the above factor), is the offender's behaviour towards the police. As Worden (1989) states:

In disputes, officers who believe (correctly or not) that citizens are disrespectful or hostile might be more inclined to rely on their coercive authority rather than on their personal authority, that is, to adopt coercive responses rather than mediating or persuading one of the disputants to leave....Officers who believe that citizens are respectful may be more willing to assume a cooperative rather than an adversarial posture vis-à-vis citizens. They may thus be more likely to mediate or perhaps to counsel...(1989:689).

As Feder (1998) points out, researchers have found that the likelihood of being arrested increases when offenders are disrespectful toward the responding officer. Feder's own study (1998:8) found that offenders who were belligerent to the police were six times more likely to face an arrest, compared to those offenders who were not. Similarly, Jones and Belknap (1999) concluded that:

...aggression directed at a police officer appears to be a stronger predictor of the arrest decision than aggression toward the victim (1999:3).

Likewise, Grosman (1975) points out that the offender's demeanour may affect the arrest decision:

Police hostility and the potential for police violence are increased by their perception of an individual encountered as hostile, dangerous, or even as a "wise guy". A wise guy is an individual who, when approached, displays disrespect for the police and engages in verbal abuse. That person is going to be handled in quite a different way from one who responds politely when being questioned about similar behaviour (1975:89).

Also, as previously discussed, Edwards (1989) found offenders who threaten the police are more likely to be arrested, primarily to enforce "public subordination and compliance with police authority" (1989:102). When offenders actually assault police officers, in most circumstances they will be arrested, irrespective of if any other offence is committed. For example, in one of the incidents recorded via POL 400 that I analysed, no offences were committed in relation to the initial call, but when the officers arrived, an assault was committed against one of the officers, and the offender was subsequently arrested.

The presence of witnesses

The presence of independent witnesses also appears to bear a relationship to the arrest decision. Indeed, as Jones and Belknap (1999) point out, some researchers have concluded that when the violence is witnessed by children or other individuals independent of the victim, the likelihood of arrest increases. As Felson and Ackerman (2001) comment, the presence of witnesses may help the police establish probable cause, and may help officers to understand what actually happened, particularly when different versions of events are given. As one manager in the current study stated:

If you've got an independent witness, fine. If you haven't, sometimes you've got one person's word against the other.

Independent witnesses may not only help in clarifying the incident, but they are also an important evidentiary source when it comes to the prosecution.

However, as one manager in this study commented, the presence of witnesses is not the sole determining factor in the arrest decision, since:

...there's a lot of evidential stuff you can gather when you haven't got witnesses to the actual crimes.

Furthermore, Felson and Ackerman (2001) point out that the presence of independent witnesses is less likely when it comes to family violence incidents, since often the offending occurs in a private context. Additionally, witnesses are not always reliable, and the credibility of their version of events may be affected by their relationship to the victim/offender or both (i.e. they do not want to "nark" on family), and also whether they are under the influence of drugs or alcohol. Finally, children might be the only independent witnesses to the incident, and although officers may speak to the children, as one manager pointed out, this is usually done for ascertaining whether the offending is long-term, rather than for "witness" purposes.

Who contacts the police

Another interrelated factor is who first contacts the police. When the police are contacted by someone other than the victim (i.e. a neighbour), arrest is more likely to occur (Jones and Belknap, 1999). One frontline officer in the current study, who had policing experience in south Auckland, commented that the locals were used to domestics occurring - they were part of the everyday landscape. Thus, when the locals rang the police, officers knew it was serious. Some researchers (e.g. Buzawa and Buzawa, 1990) have also pointed out that third-party involvement in the incident makes the event more criminal and an issue of public order (rather than private order). However, when the police are called by third parties (e.g. neighbours), the police presence is often viewed as an unwelcome intrusion on the affected parties' private lives. Consequently, officers can sometimes face a degree of hostility and anger from both parties on

arrival, meaning securing cooperation may be difficult. This may, in turn, affect the officer's ability to arrest.

Presence of offender at the scene

The likelihood of arrest also increases if offenders are present on the scene once the police arrive. When offenders are not present, and cannot be easily located once the police arrive, the chances of being arrested at a later date are generally small. Indeed, with this knowledge, it appears that some offenders ensure that they cannot be (easily) located. As Ferraro (1989) points out, arrests generally cannot be made unless the offender is on the scene. Although warrants may be issued for the offender's arrest at a later date, it appears that most arrests occur on the scene or not at all. Similarly, Feder (1998) found that an offender's presence at the scene upon an officer's arrival had the largest impact on the police response. For instance, offenders who were present were 19 times more likely to be arrested than those who were not (1998:8).

Victim preference for arrest

Officers' willingness to arrest the offender may also be affected by whether victims support the arrest decision. A number of researchers have concluded that the victim's preference for an arrest was strongly and positively related to officers' decision-making (Feder, 1998). For instance, Feder (1998) found that offenders whose victims preferred an arrest were 12 times more likely to be arrested. Similarly, Schollum's (1996:41) survey of New Zealand police officers found that offenders were more likely to be warned than arrested if the victim did not want the offender charged (4.3% always, 15% most times, and 40.6% sometimes). As Schollum states:

It is clear that some of the reasons for the use of warnings and cautions, and 'no offence disclosed', as clearances rather than arrest, involve the victims...the victim may be unable or unwilling to make a complaint...or the victim may want police protection but not action against the abuser...(1996:65).

Likewise, Edwards (1989) found that if victims were reluctant to prosecute their abusers, the police were unlikely to arrest the offender. As she comments:

...the willingness of the complainer to press charges was regarded as of foremost importance (in officers' decision to make an arrest). In the absence of complainer commitment, the police initiated independent action only when the violence inflicted was unusually severe, or when the aggressor had threatened the police and behaved belligerently" (1989:102).

Other researchers, however, have found that victim preference for arrest has no correlation with the arrest decision. As Jones and Belknap (1999) comment:

A number of researchers found, as expected, that victims' requests for the police to arrest their batterers increase the likelihood of arrest. According to a larger body of research, however, a considerable proportion of victims requesting arrest encounter officers who are unwilling to make an arrest (1999:3).

Furthermore, as Bell (1985) argues:

...although criminal complaints are initiated in 21 percent of the domestic dispute incidents reported to Ohio police jurisdictions, offenders are arrested in only 15 percent of these incidents (1985:51).

This suggests that while victim preference for arrest may have some influence on the arrest decision, arrests do not always occur. For example, Choi (1994:98) found that in very serious cases of domestic violence (i.e. injury and weapon involved), officers were more likely to arrest offenders, even without victim requests for charges to be laid. However, as the seriousness of the incident decreased, victims' requests for arrest increased the likelihood of officers arresting. For example, 37% of the less serious cases resulted in arrest when the victim requested charges, compared to the 17% of cases where the victim did not make such requests (Choi, 1994:98).

Victim willingness to make an official complaint

Related to the victim's preference for arrest, is their willingness to make an official complaint against the victim. There is some evidence to suggest that officers may be more reluctant to arrest if the victims are not prepared to testify

against the offender in court. While some victims may support an arrest, they may not be willing to testify in court, believing that the initial time spent in custody is sufficient punishment. As Schollum (1996:65) found, if victims did not want police action taken against the offender, or if the victim had a history of not following through with their initial complaints (particularly at the court stage), officers were more likely to warn than arrest offenders. Similarly, as Worden (1989) points out:

Officers who believe that citizens do not cooperate with the police, for example, by refusing to press charges or to testify in court, perceive a disincentive in taking legal action; while an arrest may temporarily restore order, prosecution often depends on the cooperation of victims and/or witnesses. Legal action may be a more attractive option to officers who believe that citizens are likely to follow through on an arrest (1989:689).

Consequently, the arrest decision may be influenced by the victim's willingness to testify.

One manager commented that if someone reports that they have been assaulted, then this will usually constitute sufficient evidence for the police to investigate further. However, arresting solely on the basis of the complaint, and in the absence of corroborating evidence, does not appear to be the preferred practice. While the presence of an official complaint may have some bearing on the arrest decision, it is also clear that some frontline officers may consider the lack of one as a valid justification for not arresting. For example, a number of POL 400s had comments such as 'no complaint from victim', 'nil complaint forthcoming', and 'victim...was unsure if he wanted to pursue laying a formal complaint against offender.' Similarly, in the frontline officer interviews, it was clear that some officers based their decision to arrest largely, although not solely, on the presence of a complaint, and the victim's willingness to testify in court, as the following comments illustrate:

Not all domestics warrant arrest. It also depends on whether the person wants to make a complaint as well. – M28

If there's an offence that's been committed, and the victim is willing to make a complaint and go through the court processes, then we would look to arrest. – M28

While the presence of a complaint may be necessary in most cases, as one manager pointed out, sometimes an arrest will be made without a complaint, because:

...sometimes when you turn up, it's serious enough that regardless of what the person says, you're going to arrest anyway.

Although the family violence policy states that officers do not need a complaint in order to make an arrest, there are a number of reasons why it occurs. While the initial verbal complaint (i.e. the reporting of a crime) may be sufficient evidence for the police to proceed with investigations, and to collect corroborating evidence, the fact remains that the case will be stronger in court if there is a formal statement or the victim is prepared to testify. Inevitably, verbal statements taken on the spot are considerably weaker than formal statements, because the former can be contested by the victim in court – i.e. the victim can claim that the police version of events is untrue.

The presence of injuries

The presence of injuries has also been positively related to the arrest decision. Loving and Farmer (cited in Choi, 1994) for instance, found that according to officers they surveyed, serious injury to the victim is the second most important factor for arrest. Similarly, Choi (1994) found that the presence of an injury was positively linked to the arrest decision, with arrests occurring in 57% of incidents where the victim was injured, compared to the 25% of arrests which occurred in cases where there was no injury. Feder (1998:8) also found that offenders who injured their victims were six times as likely to face an arrest. As Feder (1998) argues, the arrest decision was generally not determined by the level of violence used, but the consequence of that violence. As Friday et.al (1991:203) comment, the more serious the injury, the more likely an arrest will occur. They found that two-thirds of offenders who caused "some" injury to their victims

were arrested, whereas cases involving “possible injury” or “no injury” resulted in arrest in only one-third of the cases (see also Jasinski, 2003). Similarly, some of the frontline officers and managers spoken to in this study, stated that if there was evidence of an injury, then arrest was likely to occur, as the following comments illustrate:

If there was an injury or evidence that a crime had been committed, you would look to arrest. –M29

If there was no injury, you may find it [the incident] was reported on, but not an arrest. But if there is evidence of an injury, there generally should always be an arrest. - manager

Other researchers, however, have found that while the presence of injuries may have some bearing on the arrest decision, it is by no means the deciding factor. As Feder (1997) argues:

Even when there is extensive injury to the victim, studies indicate a rate of arrest that rarely falls outside the 11% to 23% range (1997:82).

Similarly, as Jones and Belknap (1999:3) point out, although some studies have shown a relationship between the degree of victims’ injuries and the likelihood of arrest occurring, other researchers have found no correlation.

**Table 3 Violence used, presence of injuries, and arrests
POL 400 data – August 2004 (n=72)**

	Presence of injuries	No injuries	Total
Arrest made	11	3	14
No arrest made	14	44	58
Total	25	47	72

The current study has also found that the presence of an injury may influence the arrest decision (see table 3). According to the POL 400 data, 72 (out of 313) incidents attended during August 2004 involved the use of violence. Of

these 72 incidents, 25 recorded injuries (34.7%). Of these 25 cases aforementioned, 11 resulted in an arrest (44%). However, 14 (56%) of these incidents involving the use of violence and injuries did not result in an arrest. This suggests that the presence of injuries may have some bearing on the arrest decision, but it is not the sole factor. For example, three (21.4%) of the arrests involving violence used, did not record any injuries to the victim.

Additionally, as table 4 shows, of the four arrests made for breaches of protection orders (n=16), only two recorded injuries, yet two of the breaches *which did not result in an arrest*, also recorded injuries. Thus it is clear that the presence of injuries alone is not sufficient evidence to justify an arrest in most cases (56%); however, for some officers, the presence of injuries may be adequate for an arrest to occur, particularly if they are unusually severe.

**Table 4 Breaches of protection orders
August 2004 (n=16)**

	Yes		No	
	#	%	#	%
Arrest made	4	25	12	75
Injuries	2	12.5	2	12.5

Summary

While on first inspection, the low arrest rate for family violence offenders tends to suggest the philosophy of arresting offenders has not translated comfortably into practice, this does not necessarily mean that officers are not following the policy. As this chapter has shown, the situational contingencies faced by frontline officers, often preclude formal intervention in the form of arrest. Furthermore, although policy assumes that the arrest decision will be (relatively) straightforward, the fact remains that a number of legitimate factors influence officers' decision-making. Indeed, it is obvious that officers need to exercise considerable discretion in some cases, particularly those where it is not clear

whether the law has been broken, or those involving mutual abuse. Additionally, there are a considerable number of domestic incidents where the law clearly cannot be applied, thus negating the need for an arrest.

Although some of the legitimate variables which may impact the arrest decision are not necessarily criteria which managers, or indeed the policy itself, consider necessary for an arrest to take place, the reality is that such factors *are* considered important for frontline officers. At the end of the day, the type of intervention they choose is highly dependent on (what they consider) the necessary criteria being met. Thus, for frontline officers, the issue is not necessarily whether to arrest (or not arrest), but whether, in their opinion, such action is justified by the circumstances. As this chapter has highlighted, officers take into consideration a number of legitimate factors during their decision-making process, such as: the presence and seriousness of injuries; whether the offender is intoxicated, the availability of witnesses; and the seriousness of the offence. What variables need to be present, and which are more important than others is not always clear (indeed, there is considerable debate), but it is evident that officers may often work from different sets of criteria in the arrest decision. In sum, there are a number of valid reasons why the family violence policy has not been successfully implemented. However, as the next chapter will show, the arrest decision is not always contingent on legitimate variables alone,, and indeed, problems with the implementation of the pro-arrest family violence policy cannot always be easily justified.

Chapter five: Selective enforcement of the law

Introduction

While the arrest decision is largely contingent on a number of legitimate variables, there is evidence that various illegitimate factors may also come into play during the decision-making process. Unlike the valid criteria discussed in the previous chapter, basing the arrest decision on illegitimate variables can be troubling on a number of levels. As such, this chapter addresses some of these 'other' variables which may influence the arrest decision, while at the same time, discussing the problematic nature of such criteria in determining whether the criminal law (and the policy) is applied. Such factors exemplify the double-edged nature of discretion – that is, although discretion is important and needs to be exercised, the fact remains that it can also be abused.

Although the illegitimate exercise of discretion may partially explain the incongruence between policy and practice, it is apparent that some of these implementation problems also stem from the fact that officers resist managerial attempts to control. Thus, although emphasis is certainly placed on the practice of arresting, and the illegitimate use of discretion, this chapter also explores how frontline officers develop and utilise resisting strategies, particularly how officers control the flow of information into the organisation, and how this 'gatekeeper' status is utilised as an important weapon of resistance. Thus, while the previous chapter discussed how discretion is used legitimately, this chapter focuses on how and why discretion may be used illicitly.

Legitimate vs. illegitimate discretion

As the previous chapter has illustrated, there are a number of circumstances necessitating the need for officers to use their discretion. However, discretion is not always exercised legitimately; that is, sometimes officers use their discretion

in a discriminatory fashion, basing the arrest decision not on legitimate criteria, but on a number of illicit variables. As such, it is important to distinguish between the two.

What distinguishes legitimate discretion from its illegitimate counterpart is often a fine line, but it largely comes down to three factors. Firstly, legitimate discretion is exercised within the regulatory boundaries of the police organisation. In other words, discretion is afforded to frontline officers by virtue of policy provisions, or legislative stipulations. Secondly, legitimate discretion can be easily justified, normally by the situational contingencies of the incident (e.g. insufficient evidence, conflicting stories etc.). Thirdly, discretion is exercised legitimately if it is used to benefit the citizens (especially victims) involved in the encounter.

Discretion is inherently illegitimate if it is exercised in order to make an officer's job less complicated or less time-consuming. Officers do not have the discretion to warn rather than arrest offenders because the incident occurs near the end of their shift, they are frustrated with the situation, or because they are apathetic to the victims' situation. Similarly, officers do not have the discretion to do nothing when responding to domestic incidents, particularly if there is sufficient evidence of an offence. As the family violence policy explicitly states, such incidents *must* be reported (K6), and cannot be resulted as K1 (no further police action required, incident not formally recorded). Furthermore, officers do not have the discretion to base the arrest decision on offender/victim characteristics, which inevitably leads to the selective enforcement of the law. When discretion is exercised on this basis, it is not being used for the benefit of the citizens involved. Illegitimate discretion has a number of implications, but primarily it results in the under-enforcement of the law, or in some instances, an over-enforcement of the law.

Selective enforcement

A major consequence of illegitimate discretion is that it results in the selective enforcement of the law. By virtue of their considerable discretionary powers, frontline officers decide whose behaviour to sanction, and whose to overlook. This means that citizen A might be arrested, yet in similar circumstances, citizen B is not. As Grosman comments:

...unlike other bureaucratic organizations the police force gives to its lowest-ranking members the power to make critical decisions in making or not making arrests. A great deal of the discretion that he [sic] exercises would be considered by many as illegal or, at best, of questionable legality (1975:81).

Grosman (1975) argues that because of their considerable discretionary power, police officers determine who enters the criminal justice system, and who does not. In other words, some individuals are labelled as criminals and treated as such, while others escape this labelling process, and are dealt with informally (i.e. caution). As Worden (1989) states:

Officers who believe that they should be selective in enforcing the law might be expected seldom to invoke the law in resolving disputes and instead to avail themselves of informal methods; officers who are non-selective might be expected to make arrests more frequently and to adopt extra-legal strategies less frequently (1989:689).

When individual policemen decide to apply the law selectively, this means that law enforcement is neither total nor equal. If discretionary decision-making is not fairly exercised, the result, as Davis (1974) points out, is that justice is distributed unequally. Similarly, Smith et.al (1984) state:

...the discretionary nature of police decisionmaking poses a constant challenge to fair and impartial application of law. Indeed, a system of justice which grants broad discretionary power to legal officials invites selective application of law (1984:235).

However, there is convincing evidence that officers are sometimes selective in their law enforcement, and although there are a number of legitimate variables and circumstances which negate the need for arrest, the arrest decision may also be based on illegitimate variables.

Illegitimate variables

While legitimate factors relate predominantly to evidentiary concerns, illegitimate variables, in contrast, are primarily concerned with the characteristics of the individuals involved in the encounter. Such criteria may include the relationship between offender/victim, the sex of the offender/victim, the geographic location of the incident, or the ethnicity and socio-economic class of the offender/victim. When the arrest decision is influenced by such variables, it may lead to discriminatory (and selective) law enforcement. As Gaines et.al (1997) states:

Inappropriate exercise of discretion may be the product of prejudice or discrimination. While discretionary decisions can reflect consideration of factors that are appropriate in a given situation or are based on existing legal requirements, others may be inappropriately made on the basis of prejudice and may represent a discriminatory action (1997:186).

Like one manager in this study commented, as members of society, individual police officers hold the same stereotypes and prejudices as other citizens. The difference however, is that when officers operate on the basis of these assumptions, the implications are greater, given the considerable powers they wield. As this manager pointed out, while officers are entitled to their own beliefs, their professional response must outweigh their personal point of view. However, these personal or occupational prejudices may lead officers to differentiate against victim/offender populations. Indeed, a number of researchers (e.g. Reiner, 1992; Jones and Belknap, 1999) have concluded that there are a number of illicit variables which may affect the arrest decision. Unfortunately, similar research in New Zealand is absent, and relevant statistics pertaining to the independent variables are not readily, or easily available, and in some instances, not even collected.

Relationship between victim and offender

As Jones and Belknap (1999:3) point out, some studies have concluded that the relationship between victim/offender is related to the arrest decision. In their own study, Jones and Belknap (1999:10) found that when the victim and

offender had been previously married, officers were less likely to take “any” action. However, when the offender/victim were involved in a current relationship, the police were more likely to jail defendants. In contrast, Brown (2004:45) found that police were more likely to charge offenders if they were separated from their partner (i.e. victim), whereas charges were “least likely to have been laid if the dispute was between a married couple” (2004:45)³⁷. Other studies (e.g. Buzawa and Austin, 1993), however, have found no correlation between the victim/offender’s relationship and the arrest decision.

Ethnicity and socio-economic class

Some researchers have also found that the arrest decision may be related to ethnic and class status, to the detriment of lower socio-economic classes, and ethnic minorities (Jones and Belknap, 1999:3; see also Robinson and Chandek, 2000). It has long been argued that officers engage in the differential treatment of offender populations. As Reiner (1992:159) points out, young males, particularly those who are black and/or unemployed or economically marginal, are disproportionately subjected to the exercise of police powers. In the United States for example, there has been evidence that police utilise racial profiling, and that African-Americans are subjected to police surveillance and arrest more than any other social group (e.g. see Giddens, 1998:223). Like Edwards (1989) points out, officers’ decisions in cases of domestic assault are affected by:

....class and race stereotypes of both victim and offender, which shape his/her attitude about the likely guilt of the offender and innocence of the victim (1989:92).

³⁷ Whether or not the police may be more reluctant to arrest in incidents involving married couples, may be influenced by the fact that under New Zealand law, married spouses cannot be compelled to testify against their partners in court. This can make it particularly hard to prosecute cases involving married couples. However, the Evidence Bill is currently being reviewed, and it has been proposed that the spousal privilege law will be abolished if the amendment is passed. This means that the victim may be compelled to give evidence against their legal spouse, or their initial complaints made to police may be used if the testimony changes once the case reaches court. Obviously this will also help to reduce the number of complaints withdrawn, and a number of other problems encountered by a number of frontline officers. It may also mean that officers are less reluctant (if at all) to arrest if the incident involves a married couple.

Similarly, as Bennett (1979) comments, some labelling theorists suggest that the police:

...will arrest and process persons from lower-class backgrounds more frequently than those from higher-class backgrounds, and persons of ethnic minority status more frequently than members from the dominant ethnic groups of that society, independent of the relative frequency or gravity of the offences committed (1979:134).

The result of officers arresting some groups more than others, or treating some suspect populations more harshly than others, is that the stereotypes and prejudices held by officers may become self-fulfilling. As Lipsky states:

Greater surveillance of adolescent blacks by the police results in their being arrested at a greater rate than other portions of the population. This tends to confirm that black young adults are the primary delinquency problem (1980:114).

In other words, if the police are more likely to arrest those who are poor, or ethnically marginal, it means that those who are not may be more likely to escape arrest. As Pepinsky (1984) contends, ultimately law enforcement:

...is literally a political exercise – an exercise of power – and in that exercise those who have more power as citizens are odds-on favorites to avoid the force of the law (1984:257).

In short, because citizens from higher socio-economic groups have more 'social' power, they may be less likely to be arrested, whereas citizens with low socio-economic or ethnic standing generally have less social power, and thus, they may be more likely to be arrested.

Geographic location

Tied into class/ethnic variables, is the geographic location of the incident. Herbert (1997) contends that the social space in which the particular incident occurs, appears to impact on the way officers understand the situation, and in turn, how officers respond:

The context of police encounters shapes how officers choose to act. Officers often read situations against their understandings of what is normal or typical for the location; how they interpret action is shaped by

where it occurs...For police officers, the location of a given action shapes how they understand what is happening and how they should respond (1997:21).

Consequently, whether an incident is defined as being criminal may relate to the geographic location of the act. As Grosman (1975) argues:

Activities potentially defined by police as criminal that take place in a high-crime area of the city are more likely to be defined as such (i.e. criminal) than the same activities taking place in an area which does not demand high levels of police resources (1975:89).

The result, Cureton (2000) contends, is that citizens located in 'troubled' neighbourhoods may be more likely to be arrested:

...there is evidence that police operations and services are concentrated in certain criminogenic, low-income, mostly non-White areas because of citizen requests, preference of victims, or public demands for restored social order in troubled neighborhoods. Police concentration in low income, socially disorganized areas may increase the probability of arrests for residents in those areas (2000:705).

In other words, whether the incident is defined and treated as criminal by responding officers, may have less to do with the nature of the incident itself, and more to do with the geographical location where it took place. On this basis, domestic assaults committed in low socio-economic and ethnically diverse neighbourhoods, such as Linwood and Aranui, may be more likely to be treated as criminal offences than those committed in more affluent areas of the city – e.g. Cashmere and Port Hills.

Offender/victim sex

Some studies have also indicated that the offender's sex³⁸ may influence the arrest decision. For instance, Ho (2003:191) found that while male victims' preference for arrest was a strong determinant of female arrests, officers tended to rely on a wider range of arrest factors for male offenders. For

³⁸ Although the police collect raw data relating to the sex of family violence offenders, this data is not readily or publicly made available, and does not differentiate between those offenders who were arrested, and those who were not. Consequently, these statistics, although collected, are left out for these reasons.

example, the arrest of male offenders was often contingent on the presence of a witness and a weapon, whereas in contrast, when the offender was female, the arrest decision was not influenced by these factors.

When offenders are female, legal variables, such as the presence of injuries, do not appear to be as important. For example, Brown (2004:54) found that in 206 cases involving a female offender (and injured male victim), arrests only occurred in 60.2% of these cases. In contrast, of the 1,452 cases involving a male offender (and injured female victim), 91% of offenders were arrested. When the victim suffered a major injury, female offenders were charged in 75% of the cases, whereas male offenders were charged every time. Even when no injuries were sustained, 53.4% of male offenders were arrested, compared to the 2.2% of female offenders. The disparity in arrests between male and female offenders was also evident when the incidents involved mutual abuse. Brown found that in incidents involving mutual abuse, but no injuries, male offenders were 16 times more likely to be charged compared to female offenders (2004:51).

As some managers in the current study (who had considerable policing experience) conceded, offender sex is likely to influence the arrest decision when mutual abuse is involved:

...probably in practice you take the word of the female and arrest the male. But I think that's probably just a fact of...you know, whether it's a culture thing, about whether it's alright for a male to hit a female...but in vice versa, it's alright for a female to hit a male, and if you complain about it, you're wimpy... I mean, it's not sanctioned by policy or anything like that, but it's fair to say that those types of generalisations are almost impossible to take away from people who respond to [domestics].

...if he (the male victim) wanted to make a complaint, and she said, 'yeah, I hit him', I don't think she'd get locked up. And like I said, attitudinal. However, if the roles were reversed, he'd get locked up, even if she didn't want to make a complaint, because that's what we say...so there's still that reluctance there to arrest a woman for a domestic assault on a man, definitely.

Theoretically, if a woman belted her man, she should be arrested. But in reality...it probably doesn't happen [often].

While offender sex may influence the arrest decision, it is also apparent that the victim's sex may have an equally important impact on officers' decision-making.

As Edwards (1989) points out:

In the same way as police officers subscribe to stereotypes about 'real' crime and 'real' criminals, conventional police wisdom similarly accommodates its stereotypes of real and legitimate or false and illegitimate victims. These particular assumptions about victims are sustained and perpetuated in wider social attitudes, medical cultures, police culture, and legal culture, attributing blame to some victims while exonerating others (1989:92).

With respect to domestic incidents, male victimisation has not been as readily acknowledged as female victimisation, and consequently, male victims are potentially subject to discrimination because of this. As Finn and Stalans' (1997) study found, officers often disputed the credibility of male victims of domestic assault. Their survey of 130 police officers established that officers were *less* likely to arrest female offenders than male offenders, primarily because officers believed male victims of domestic assault were more responsible than female victims (1997:157). As one manager in the current study commented, if the male victim was not prepared to make a complaint, the female offender would probably not be arrested because, as this manager commented, "...I think the guy should be able to look after himself."

Brown (2004) also found that when victims were male:

...their account of an incident of partner violence is less likely to be believed, and they are less likely to find sympathy with the authorities even when they are believed (2004:41).

Similarly, one manager in the current study commented that male victims would face considerable barriers throughout the criminal justice system, and they would struggle to be taken seriously:

I think people would....laugh. I mean, you imagine a male victim, I mean (laugh), going through court, 'my wife beat me up'....you imagine it all the way through, you know, from dealing with the police, even though they may be sympathetic, the lawyer would be looking at him sideways, the judge would be looking at him sideways....right through the system they wouldn't be treated equally.

Since the arrest decision is sometimes informed by the victim's credibility (particularly in incidents of mutual abuse), officers may decide not to arrest female offenders if their victims are male. As Finn and Stalans (1997) conclude:

Our results support those of previous research that found that officers' assessments of victims were as important as, or even more important than, their assessments of assailants in affecting police actions. The current findings suggest that gender shapes officers' decisions to arrest through officers' assessments of each disputant's credibility and responsibility. However, gender influences perceptions of credibility only when the man is the assailant and the woman is the victim. In the atypical situation of a male victim, credibility and responsibility are unrelated (1997:171-172).

Likewise, Brown summarises:

When men do report their victimization, or when it is reported for them by third parties, the police are less likely to lay charges against their partners than they would be to lay charges against comparable male suspects. In fact, the police seem reluctant to lay charges against women in partner violence cases unless a relatively serious offense has been committed or other aggravating factors are present...Indeed, gender is often *the most significant factor* in predicting how the law-enforcement system responds to incidents of partner violence (2004:166-167).

In the current study, most frontline officers vigorously denied that the sex of the offender would affect the arrest decision:

It's still the same offence. There is no discrimination against male abuse being worse than female abuse. -F32

...it doesn't matter who has done the assaulting, it's still an assault. -M44

Likewise, one manager stressed that female offenders are not treated differently by frontline officers:

... they'd treat it just like another domestic. They'd treat it just the same as they would if it was a male offender. It would be exactly the same.

However, while most frontline officers in this study maintain that they provide equal treatment to *all* clients, irrespective of their personal characteristics, as Lipsky (1980) contends, this is characteristic of modern street-level bureaucracies such as the police, since:

...patterns of prejudice are more subtle in the modern bureaucracy dedicated officially to equal treatment. Modern bureaucracy promises to eradicate prejudicial behavior through universalistic treatment (1980:108-109).

Although most frontline officers and some managers contend that offenders/victims are not differentiated against on the basis of sex, others acknowledged that in practice, they probably are. Thus, in sum, there is evidence that offender/victim sex may have a direct bearing on the arrest decision. Furthermore, it is clear that discretion that is based primarily (if not solely) on illegitimate factors, is inherently discriminatory in nature. When the decision to arrest (along with other forms of intervention) is based on such factors, it flies in the face of equality. As Bayley and Bittner (1984) comment:

Little imagination is required to foresee what would happen to public confidence in the police if they admitted that age, education, class, race, and sex were considered when they decide what to do. These factors *are* considered, however, and the police believe, on the basis of hard-won experience, that they must be considered (1984:57).

In short, selective enforcement, which is directly the result of officers exercising discretion illegitimately, leads to the unfair application of the law. While arrest decisions may be based on illegitimate factors, it is also clear that officer attitudes in general, may affect the arrest decision, and whether discretionary decision-making occurs.

Officer attitudes towards the pro-arrest policy

Although legitimate and illegitimate variables certainly appear to impact on the arrest decision, it is equally clear that officer attitudes towards family violence

and arrest may also influence decision-making. There is evidence suggesting that the arrest decision may be partly dependent on: a) whether or not officers believe that arresting offenders will deter future offending, and b) whether officers believe the pro-arrest policy works.

If officers do not believe that arresting an offender will have any positive impact on future offending, they may be less likely to arrest offenders. Finn and Stalans (1997:168), for instance, found that officers who believed arrest would reduce future violence were more likely to arrest domestic violence offenders than those who did not. Similarly, some officers in the current study stated that they would like to always arrest family violence offenders, whereas in contrast, other officers appeared more reluctant to arrest family violence offenders unless a number of criteria were met. These latter officers stated that they would not arrest unless the violence was serious, there was enough evidence to prosecute the case, and/or the victim was prepared to testify in court.

However, even when officers do support arresting offenders, this does not mean that they will always arrest, irrespective of whether policy requirements are met. Their main concern appears to revolve around what is best for the victims. If arresting the offender is perceived as being non-beneficial to the victim's situation, they may warn, rather than arrest, since the latter may be more detrimental to that household. If the victim is unemployed and has dependents in their care, arrest is going to result in far more serious consequences for that person, as opposed to someone who has financial independence, and no long-term ties to the offender (e.g. someone with no children in their care). As Grosman (1975) points out, officers may believe that enforcing specific laws against certain people may be unnecessarily harsh. Consequently:

Police discretion may be based on the most humanitarian of considerations. The cold mechanistic enforcement of law may be inappropriate because of a variety of factors which make the enforcement of specific laws against certain individuals unnecessarily harsh. Actions

short of arrest may better achieve the desired goal of restoring order (1975:91).

Officer commitment, therefore, is not necessarily towards the practice of arresting, but the outcome of that arrest, as the following frontline officer comments illustrate:

It's all about circumstances...what are you looking to achieve? I would be hesitant if I was just making a domestic violence arrest for the sake of it. It's not about arresting someone for the sake of arresting someone. It has to be a positive outcome. –M33

There are issues around arrest. Do you arrest for the sake of arresting, or do you arrest to try and stop future violence? –M33

Similarly, as one manager commented:

...we encourage constables to arrest people but they have to have turned their mind to what the other options might be – i.e., you arrest somebody because it's in the interest of the victim, so that she or he can be safe during the next 24 hours...

In sum, officers' commitment is not necessarily to the policy (and its requirements), or to the philosophy of arresting offenders, but to positive intervention framed by individual circumstances. In some cases this will mean arresting the offender, while for others, it may mean that the offender is warned, and steps are taken to make referrals to social service agencies. In other words, if officers believe that the offender/victim may be able to resolve their situation without the need for arrest, officers may resort to warning the offender instead.

Furthermore, if officers are committed to arresting offenders, the arrest decision may be contingent on fewer legal variables being met, than officers who are not. The arrest decision for the latter may be highly dependent on a wide number of variables being present, and officers may rarely arrest because the necessary conditions are infrequently fulfilled. In contrast, the arrest decision for those who believe arrest is a positive intervention, may be based on a more

narrow set of legal criteria being satisfied. As Ferraro (1989:179) summarises, some officers will treat domestic incidents seriously, and will make arrests that are only marginally justifiable on strictly legal grounds, while other officers will not arrest, even when there are legal reasons for doing so.

Likewise, if officers believe the policy is ineffective for reducing and solving the problem of family violence, this may also affect their willingness to follow policy, and arrest offenders. Although some officers in this study believed that the philosophy of arresting offenders was a positive intervention model, others were more sceptical:

It adds to the paperwork, but it doesn't really change anything. If they really want to change things, they would put money into it. –M31

At the moment, it's like the ambulance at the bottom of the cliff – we're there to intervene at the boiling point, and to deal with the situation at that point of time, but we're not actually dealing with the situation at the top of the cliff. –M32

(Domestic violence) It's like capitalism – you have winners and losers. Most people have the social skills to know when a relationship is unhealthy and know when to get out. The police aren't equipped to deal with the underlying causes of domestic violence – the police are there to intervene and defuse the situation. –M32

Officers may be less likely to arrest if they are disillusioned with the policy (and the expectations of management), and they may believe that other, less direct means of intervention are more appropriate and effective than that proposed by policy. Furthermore, if officers do not think the policy can work in practice, they may be less likely (or able) to follow it. The Western Australian Ombudsman, reporting on the police response to domestic assaults, has commented that some officers:

... appear to be attending incidents of Assault [sic] in the family home with the mindset that police policy does not necessarily provide them with the practical support they need, and that it is idealistic and therefore not able to be practically applied in all such cases. In short, to some officers, police policy...does not lend itself to a workable practice. In these cases, it is concerning that some police officers appear to be exercising discretion

about what action to take without regard to the policy and may in fact take action which unfortunately results in offenders not being charged and victims being left feeling vulnerable and unsupported by police (2003:36-37).

Likewise, one frontline officer in the current study argued:

We all know what policy and what guidelines work. I think it's inevitable that you will get a difference between the written and the practical. It's very difficult. You need to get a balance. Our obligation is to do our best for the victims with the restrictions that we've got. – M33

Additionally, the arrest decision may also be influenced by the way individual police officers view their occupational role. As Worden (1989:687) points out, officers generally view the police role in three different ways. Firstly, there are officers who believe the police role is solely to fight crime and enforce the law. These officers view order maintenance and service tasks (i.e. domestic incidents) negatively, since in their view, they fail to fit their narrow conception of the police role. Consequently, they:

...might be expected to deal with disputes either punitively or not at all. Because they draw the boundaries of their jobs around the law enforcement function, minor disputes fall outside of their definition of police responsibilities, and the more serious disputes are police business only insofar as they constitute crimes. Officers with narrow role orientations may thus be more likely to make an arrest or to issue threats; alternatively, they may do virtually nothing, claiming that they have no authority in such circumstances (Worden, 1989:697).

In contrast, other officers view the police role in broader terms, despite according priority to their law enforcement function, while still others believe their law enforcement and order maintenance roles are equally important (Worden, 1989). In short, these officers see their role primarily in terms of helping people, irrespective of what function is required to achieve that.

Consequently, officers who have a broader conception of the police role:

...might be more likely than others to adopt noncoercive (and time-consuming) strategies, resorting to coercive measures only if other approaches fail (Worden, 1989:688).

The proclivity to arrest may also be influenced by officers' perception of whether there is support from other branches of the criminal justice system – particularly the courts. If officers arrest offenders, who are subsequently released without conviction, or handed down minimal sentences, then this too, may affect their willingness to arrest offenders. As Worden (1989) comments, many officers:

...believe that legal institutions are uncooperative and unsupportive. They see the courts as "soft" on offenders and out of touch with the reality of the street. Officers who believe that prosecutors and judges do not support them may thus be less likely to take legal action, since in their eyes an arrest is likely to be of little consequence...One might therefore expect that in disputes, officers' attitudes toward legal institutions are directly related to the likelihood of informal action (1989:689).

Schollum (1996:54) for example, found in her survey of New Zealand officers that a number (20%) of her respondents felt that the courts were "unsupportive" or "very unsupportive" of the police pro-arrest approach to family violence.

Indeed, as one of her respondents stated:

Without greater support from the Justice system any policy imposed by the police is relatively ineffective (1996:54).

In short, if officers believe the courts will be unsupportive of the action they take, or indeed, the pro-arrest policy itself, this may affect their willingness to arrest domestic violence offenders, particularly if there are any concerns about whether the case will be successfully prosecuted.

Furthermore, the type of intervention used in domestic incidents may be affected by whether officers believe victims/offenders are worthy of their services. As Maynard-Moody and Musheno (2003) point out, officers often make normative judgements about who they will extend services to, and who they will withhold services and sanctions from. In other words, officers will go out of their way to help some clients, while going out of their way to sanction others. However, Maynard-Moody and Musheno (2003) argue that distinguishing between the worthy and unworthy is never a simple process, and officers will often initially treat all clients alike, until there is evidence indicating

worthiness/unworthiness. Distinguishing worthy clients from unworthy ones, stems from the idea of 'just desserts' – that clients are treated as their behaviour and (moral) character warrant. As Maynard-Moody and Musheno comment:

Street-level workers make moral judgments about individuals' bad character and then reinforce definitions of good character by punishing the bad guys (2003:144-145).

Similarly, as Lipsky (1980) points out, officers often differentiate between clients based on evaluations of worthiness/unworthiness, and sometimes these judgements are based on whether street-level bureaucrats (i.e. frontline officers) sympathise with the victim or offender. If, for instance, the officer sympathises with an offender, there is a greater likelihood that he/she will not be arrested. For example, Edwards' (1989) study found that the police response was affected by whether officers felt the victim was an innocent party in the incident. She suggests that officers may be less willing to protect poor or black women, "whom they perceive as less deserving and precipitative" (1989:92).

Furthermore, according to Maynard-Moody and Musheno (2003), officers often make normative judgements about citizen worthiness based on their employment status. As they point out:

...work and being a hard worker are a core characteristic of morality. Citizens who work – especially those who work hard just to help their families scratch by are forgiven numerous transgressions that would lead to harsh treatment for people who do not work (2003:146).

In other words, if the offender is employed and a hard worker, they may benefit from officer discretion, whereas those who are unemployed may be less likely to invoke sympathy or leniency for their actions. Thus, in sum, officers may base the decision to arrest from an inherently moralistic perspective, rather than a legalistic one.

In short, this chapter has shown thus far, that officer decision-making is influenced by a number of variables, including illegitimate criteria, and officer attitudes in general. Although on the whole, officers utilise discretionary decision-making legitimately, there is evidence to suggest that discretion is sometimes used illicitly. Whilst the reasons behind such decision-making have been discussed, examining why discretion may be used in this way in the first place is important. Thus, as the next section will show, the arrest decision, and indeed, officer decision-making per se, may be indicative of officer resistance.

Why officers use discretion illicitly

An important reason why frontline officers may use their discretion illicitly, and indeed, why the family violence policy has not been successfully implemented, relates to officer resistance. Frontline officers often resist managerial attempts to control their decision-making process, via policy and/or other formal rules operating within the organisation. Despite their insubordinate and insecure organisational positions, employees such as frontline officers seek to resist, as Collinson (1994) points out, because those:

...at the lower levels of hierarchy often feel particularly vulnerable, unfairly treated and unacknowledged and most excluded from decision-making procedures. Their sense of grievance and insecurity frequently translates into oppositional discursive practices (1994:49).

Indeed, as one frontline officer in this study commented:

The police hierarchy are so narrow-minded. It's quite easy to make policies within the safe and secure walls in Wellington, when you don't know what's happening out on the streets. – M33

Although in theory, because of their insubordinate organisational status, frontline officers are supposed to have the least amount of power, in reality, frontline officers have considerable bottom-up and collective power. While some theorists (e.g. Lipsky) have argued that frontline officers have minimal resources for resisting managerial control, others (e.g. Manning, 1979) have

pointed out that officers have numerous strategies for resisting management, including manipulating their work load, and the speed and quality of their interactions with clients (i.e. citizens). As Manning (1979) comments:

It is the capacity of the lower participants to manipulate the work load, speed and quality of their interactions with given publics which gives them organizational power in the larger context. They salvage from the organization some freedom and autonomy this way... They attempt, by means of this power, to force others into routinized and predictable patterns of behavior, while resisting the imposition of these patterns on their own actions. Through their discretion, they have power, power to resist managerial edicts, policies, and even disciplinary actions (1979:63).

Similarly, Gottfried (1994) contends:

As people 'produce culture' at work, they generate a set of practices and ideas that run counter to hegemonic ones, setting up alternative ways of 'making sense', if only in embryonic form. Alternative ways of making sense inform resistance that occurs as everyday acts rooted in, and directed against, power relations experienced on the shopfloor. Resistance involves actions carried out by subordinate groups that undermine or disrupt the objectives of corresponding dominant groups (1994:118).

In other words, officers may not follow policy, or may modify it, as a means of resisting management. While frontline officers may adopt a number of oppositional discursive practices (Collinson, 1994), perhaps the most important way that frontline officers resist, is through their ability to control the flow of information into the organisation, and the control they have over record-keeping practices.

Record-keeping practices

An important weapon of resistance against management (and thus organisational policy), relates to record-keeping practices. By requiring frontline officers to complete paperwork for incidents they attend, management attempts to control officer behaviour in terms which are conducive to policy provisions. In other words, if the paperwork conflicts with what is expected of frontline officers, then management have recourse to discipline the officer accordingly – and indeed, may consequently attempt to impose stricter controls over the officer's

decision-making process. Furthermore, paperwork enables managers to find out what is happening out on the streets, as Manning comments:

...evaluations and other official paper is taken by senior officers who do not otherwise have contact with men, or do not have other negative disconfirming evidence, to constitute evidence of 'activity' on the ground (1979:56).

In short, most managers are not operational, and therefore do not really know how officers are responding to family violence in practice. Although they may rely in part on feedback from supervising officers, even this is largely restricted, since supervisors themselves can filter what information reaches the top echelons of the organisation. Thus, in many ways, management relies on the paperwork produced by frontline officers, to ascertain how officers are responding to incidents. For instance, if an officer does not arrest an offender, managers can review the paperwork to confirm that that was the appropriate action. Nevertheless, frontline officers are conscious that their actions may be retrospectively reviewed by management, and they often develop their own strategies of resistance. By controlling the flow and quality of information entering the organisation, officers utilise an important strategy of power.

While requiring officers to produce the necessary paperwork is an important way of securing their compliance to organisational rules and policies, these rules and policies can also be utilised by frontline officers to justify the actions they take. As Ericson (2005) comments:

...the police officer has control over the production of 'facts' about a case, and this control of knowledge becomes a very potent form of power. The rules are not only taken into account, but they also form part of the account to legitimate the action taken (2005:224).

It is not just formal rules, however, which aid in the construction of an account, since the informal or "recipe" rules (Manning, 1977) developed at the frontline appear equally important. These recipe rules, Manning (2005) points out, guide officers:

...on how to get the job done in ways that will appear acceptable to the organization, which persons in what situations should be dealt with in particular ways, how to avoid supervisors and various organizational control checks, when it is necessary to produce 'paper' regarding an incident or complaints, and so on (2005:224).

These informal rules are also developed in anticipation of retrospective review, and are designed to:

... reconstruct reality in terms that are favorable to an officer's actions. They prescribe that officers should control the release of information about incidents in their reports...Defensive report writing includes constructing an account that justifies the action an officer reports taking (Reiss Jr, 1996:164).

Because frontline officers are acutely aware that the paperwork they produce may be reviewed by management, reports are unlikely to contain information that may contradict the action/inaction that an officer took. As Prottas (1978) points out:

After all, the street-level bureaucrat writes the record and knows that it is available to his/her superiors. One would not reasonably suppose that he/she would include information contradicting his/her judgments or reporting his/her unsanctioned behavior (1978:289).

The ways in which important information can be omitted in accounts, was witnessed during fieldwork observations. For example, one incident I attended, a citizen had reported to the Police Communications Centre that a woman was being dragged down the street against her will. When we found the woman, she clearly had injuries (albeit minor), and there was physical evidence that she had indeed been dragged. However, despite the presence of injuries, and multiple witnesses to the event, the officer failed to formally record these details. Indeed, the officer actually stated on the POL 400 that there were no injuries, and no witnesses, and despite the officer recording that the victim received initial support from 'family', the only family members present with the woman, were her young children.

Consequently, frontline officers produce accounts of the event, sometimes omitting relevant information. While pre-formatted forms may require particular

fields to be completed, how and when they are filled out may be contingent on if it fits the account produced. Indeed, quite often data about the context of the incident are omitted from written records (Manning, 2003). A number of POL 400s in this study, for instance, were not fully completed. Of the 313 POL 400s collected during August 2004, 18.2% had no support box filled out, and 2.8% had no injury box filled out. Additionally, 2.8% of these POL 400s had no file number, and 7% had no file number or event number, which makes it particularly difficult for auditors to follow up on these cases. Furthermore, most POL 400s did not have sufficient information to determine whether the action/inaction taken was justified. Even though a supplementary text box is available for officers to record the situational contingencies of the incident in greater detail, it appears that most officers do not provide anything more than basic detail.

Since accounts are constructed after the event, they can be retrospectively produced to safeguard officers from disciplinary action. As such, accounts will not necessarily reflect what actually happened, and as Sanders and Young (2003) argue, they can correspond “as much with legal expectations as with the reality of the incidents” (2003:233-234). Similarly, Manning (2003) contends:

All reports are edited and shaped. The written story varies from the actual events in their fullest explication as experienced. The parallel is the analogue between the text (what is written) and the fabula (the story that is being told). The translated, encoded, written record of events may vary from the sense or spirit of the event as seen and responded to on the ground (2003: 222-223).

Additionally, like Chatterton (1979) points out, frontline officers often rely on stock knowledge for providing justifications for inaction. This stock knowledge constitutes well-proven stories, which help to safeguard the officer from future disciplinary action. As Chatterton (1979) comments, officers quickly learn the importance of the ‘good story’ maxim:

Always make sure you have a good story to cover yourself for everything you do, both on and off duty. Unless you have a good story, don’t do it (1979:94).

The control of information is an important resisting strategy, primarily because it allows officers to use their discretion, and determine the intervention accordingly, while still providing a guise that rules/policies are followed, thus legitimating the action taken. Since discretion is not always exercised appropriately, paperwork may be completed defensively by frontline officers in anticipation of future scrutiny by managers, and to “cover their arse”, in case of future complaints. As Lipsky (1980) comments:

Since street-level decisions are made in private it is extremely difficult to second-guess workers, since the second-guessers are not at hand to evaluate the intangible factors that may have contributed to the original judgment. For this reason, the records kept by street-level bureaucrats are almost never complete or adequate to the task of post hoc auditing, and when records are kept, they are written sketchily and defensively to guard against later adverse scrutiny (1980:163).

Likewise, as Sanders and Young (2003) point out:

...officers are aware that the precise way in which forms are completed may either help or hinder a member of the public subsequently making a formal complaint about their actions (2003:233-234).

Holding officers accountable for their actions, and to organisational policy, is difficult since any subsequent action is predominantly (if not solely) based on the officer's original account. This is particularly problematic when incidents do not result in an arrest. When an arrest is made, the ability to “fudge” the truth is restricted by the fact that the case is not only open to review by management, but by the courts as well. However, when incidents are only recorded (i.e. other interventions used) it can be difficult to ascertain whether the officer used his/her discretion legitimately. As Grosman (1975) comments:

It is only if an accused person enters the court system as a result of being charged with a criminal offence that the procedures leading up to that charge and following it are subject to review by the courts. If no arrest is made, whatever action has been taken by the police is not subject to review by the courts or by anyone else (1975:83-84).

In sum, while there are a number of valid reasons necessitating the need for officers to exercise discretion, it is clear that discretion can also be exercised illegitimately. However, distinguishing between the two can sometimes be complex, since even when discretion is exercised illegitimately it may appear to have been used legitimately on the basis of the paperwork produced by the officer. Although official records are used by managers to assess the behaviour of frontline officers, and to ascertain compliance with the policy, it is evident that paperwork is ineffective for controlling officers. Irrespective of whether discretion is used legitimately/illegitimately, officers can construct accounts that justify their intervention.

Invisibility of officer decisions

Frontline officers' ability to resist is increased further by the invisibility of their decision-making. That is, the exercise of discretion often occurs in private contexts, exempt from the surveillance of supervisors. As Reiss Jr (1992) argues:

...discretionary decisions are of low public visibility because often only police officers and those accused of violating the criminal law are present...Because police officers' decisions have low visibility to supervisory and command officers, the misapplication of rules and misuse of authority are particularly problematic (1992:74).

Similarly, as Jones (1980) comments:

Uniformed patrol officers are difficult to supervise because constant observation of their activities is not possible, nor is subsequent inspection of their actions easily achieved. Patrol officers usually work alone on beats outside police stations where the usual organisational controls of hierarchical and peer group supervision are largely ineffective. Difficulty in providing supervision is one of the sources of the patrolman's autonomy and discretion and, therefore, why, from a control point of view, he must be of most important concern to the police organisation (1980:8).

Yet, it is supervisors who are best positioned to ensure compliance with policy and organisational objectives and rules, since, as Engel and Worden (2003) argue, they work most closely with officers, and consequently they:

... have the greatest opportunity to monitor what officers do (and fail to do), and to guide officers' decision making (2003:2).

While shift supervisors are often patrolling the streets alongside frontline officers, the fact remains that they are unable to provide constant support or to continuously monitor every officer. Although frontline officers are supposed to consult with supervisors whenever there is sufficient evidence of an offence, but an arrest is not contemplated, supervisors are not always available. As one manager commented:

...quite often the patrol has got to make that decision straight away, and it's the nature of policing... the constables have got to make on the spot decisions. Sure, if there's supervisors around, and depending on what's happening at the time, but the expectation is they can use their own commonsense and judgement.

Prottas (1978) argues that street-level bureaucrats, such as frontline officers, are particularly difficult to control via supervision, since the ratio between officers and supervisors will always be uneven. Consequently, frontline officers have what Prottas (1978) defines as low "compliance observability". Not only is it difficult and costly to determine how frontline officers (and other street-level bureaucrats) behave, but as Prottas (1978) points out:

... much street-level behavior occurs in places inaccessible to superiors. In some agencies street-level bureaucrats spend a good deal of their time out of the office. This is most true in police departments, and so compliance observability is one of the oldest issues in police organization (1978:299).

While managers can increase the number of supervisors each shift, and thus reduce the invisibility of officer decisions (thereby increasing the compliance observability), the fact remains that this is highly unlikely to occur. As Prottas (1978) comments:

What police department could double the number of sergeants without increasing the number of its patrolmen on the street? In the end, the street-level bureaucrat delivers the service, and to substantially increase supervisory personnel (and so expenditures) without increasing street-level personnel is rarely practical (1978:303).

Furthermore, the more management seeks to control the behaviour of frontline officers through closer supervision, the more frontline officers will resist. As Banton (1964) argues:

...supervision is by its very nature a two-edged weapon. The more closely people are supervised, the more they bend their energies to satisfying the supervisor instead of to doing the job...If the supervisor interferes too much, the worker does nothing unless he [sic] is sure he can justify himself. When superiors try to supervise too closely, their subordinates combine to frustrate them (1964:161).

Increased supervision effectively undermines officers' ability to control their own decision-making. Some of the frontline officers in this study, for example, resisted the requirement of having to consult with supervisors. Indeed, any attempt to reduce the discretionary power of frontline officers is often heavily resisted and resented, as the following comments illustrate:

...they're trying to take away police discretion, and they're basically saying, we don't trust you to make that decision. - M31

In any policy, you basically have to arrest where there is evidence of an offence you're supposed to discuss with the sergeant if you don't arrest, which takes away our discretion. They don't trust us. – M31

As Maynard-Moody and Musheno (2003) point out, street-level workers often believe their decision-making is superior to that of supervisors and clients alike. As they comment:

...street-level workers believe that they know better – better than supervisors, better than policy-makers, better than citizen-clients (2003:128).

Additionally, whether supervisors can actually solve problems with policy implementation is questionable, because supervisors may be the cause of such problems in the first place (Grosman, 1975). Although supervisors are generally afforded greater professional status than frontline officers, they are often confronted with the same situational pressures and realities frontline officers face, which may mean that they may make unofficial adjustments to the policy

themselves. Furthermore, if supervisors do not support the policy in question, then this is likely to filter down to the frontline. As Engel (2002) comments:

Several scholars have reported that past failures of particular strategies and structural changes was due in part to the lack of support among patrol supervisors. Furthermore, others have argued that if supervisors support changes within a department their officers are more likely to implement these changes at the street-level (2002:52-53).

Therefore, it would seem that irrespective of the control mechanisms management puts in place, frontline officers will often develop or utilise existing strategies to overcome these attempts to control. Inevitably, officers want to be able to control their own decision-making process, and even when policies are developed to restrict them, whether the policy is followed out on the street is highly contingent on the support and commitment of frontline officers.

Summary

While there a number of valid reasons why the family violence policy has not been implemented particularly well, as this chapter has shown, such problems cannot always be reasonably explained. Although the arrest decision is largely contingent on legitimate variables, and indeed, on the nature of police work itself, it is equally clear that illegitimate variables may also influence officer decision-making. Indeed, officers have considerable discretion in determining whose behaviour to sanction, and whose to overlook, which inevitably results in the selective enforcement of the law (and the policy). How the policy is applied and to whom, may be contingent on the prejudices and stereotypes that individual officers hold. As such, these decisions do little in the way of ensuring citizens are treated fairly and consistently.

Despite discretion clearly being warranted and exercised legitimately in many cases, discretion can also be abused. When officers use their discretion in ways that discriminate against some, but not others, it calls into question whether discretion should be exercised at all. The potential for discretion being used illicitly is further exacerbated by the ineffectiveness of control mechanisms,

such as record-keeping requirements, and supervision. Undeniably, frontline officers have considerable scope for resisting managerial attempts to control, and ultimately, the organisation is heavily reliant on officers responding appropriately on their own accord. However, it is clear that this does not always happen.

Additionally, irrespective of what policy (and indeed, the organisation) says, officers are individuals, and their own personal attitudes will also affect their willingness to follow policy. It would seem that despite management's dedication to the family violence policy, whether the policy is successfully implemented is highly dependent on whether frontline officers themselves are committed to it. Inevitably, if officers do not believe in the policy, there is little management can actually do to increase their support or commitment to it, although opening up a dialogue with frontline officers, or more training, may help increase these levels.

Chapter six: Discussion and conclusion

Introduction

Like previous research in this field, the current study has taken a symbolic interactionist approach to understanding how the police respond to family violence in Christchurch, and more specifically, how the pro-arrest family violence policy has been implemented at the street-level. The implementation of such policies obviously raises a number of important issues that are not addressed within this thesis, such as the effectiveness of training or the pro-arrest philosophy itself. However, focusing on how the policy is practically applied is important, given that the ultimate success or failure of the policy rests largely with those responsible for implementing it – frontline officers.

Consequently, this study has focused on problems associated with applying the pro-arrest policy in practice. Moreover, particular emphasis has been placed on how officers exercise discretion – both legitimately and illegitimately – and the implications this has for the policy's implementation and the police response in general.

Up until the early 1980s, police involvement in domestic incidents was minimal, and early methods of intervention focused on temporarily resolving the conflict, and leaving as quickly as possible. Attendance at these incidents rarely resulted in arrest, which meant that not only were offenders not held accountable for their violence, but victims were also left vulnerable. However, during the late 1970s and early 1980s, this police response was increasingly criticised for being ineffective and detrimental to the safety of victims. It soon became clear that a new approach to the policing of family violence was needed, and the release of the Minneapolis Experiment's findings in 1984, provided impetus for this change to occur. Moving away from the minimalist intervention approach that characterised the police response until the early 1980s, police departments throughout the U.S., the U.K., and New Zealand, began adopting pro-arrest or

mandatory arrest family violence policies. The assumption was that arrest would hold offenders accountable for their violence, and consequently decrease recidivism. Proponents for change believed that by introducing pro-arrest and mandatory arrest policies, officers would treat family violence more seriously, they would demonstrate a greater willingness to arrest offenders (i.e. arrest considered as the first response, not the last), and that this would ultimately result in the increased use of arrest.

While most police departments introduced pro-arrest policies, some went a step further and introduced mandatory arrest policies. Mandatory arrest policies order officers to arrest whenever there is evidence of an offence, and officers operating under such a policy are theoretically not allowed to exercise discretion in determining their response to the situation. In short, mandatory arrest policies direct action and limit discretion, to the point where it can no longer be exercised as freely as it once was. However, a number of studies have subsequently shown that mandatory arrest policies are not effective for changing police attitudes or behaviour, nor the level of discretion exercised. While theoretically, a mandatory arrest policy presumably removes officer discretion, in practice, officers are still able to employ considerable discretion when responding to domestic incidents (Morley and Mullender, 1994). As Buzawa and Buzawa (1990) note, even mandatory arrest policies are prone to officer resistance, meaning officers may conveniently find reasons for not applying the policy.

In contrast, under pro-arrest policies, officers are permitted to exercise discretion, although it is closely circumscribed. Unlike mandatory arrest policies, pro-arrest policies acknowledge that an *effective* police response means that discretion cannot, and should not, be totally removed. Discretion is important for a number of reasons – most importantly, because policy cannot always provide ‘meaningful guides to action’ (Manning and van Maanen, 1978) to all the situational contingencies officers may face, but also because discretion allows

officers to respond flexibly to individual circumstances. Thus, pro-arrest policies emphasise the preference for officers to arrest offenders whenever there is sufficient evidence of an offence. Although arrest is not mandated, and officers can still exercise some discretion, arrest is the officially favoured method of intervention.

While the introduction of pro-arrest policies certainly signalled a significant shift in the way family violence was policed theoretically, they have not always been implemented as intended, at either the local (Christchurch), national (New Zealand) or international (the United States, and the United Kingdom) level. Indeed, a number of studies conducted after the implementation of pro-arrest policies (both in New Zealand and overseas), have shown that in practice, little has actually changed. Despite the premise and requirements of the policy, family violence offenders are still predominantly dealt with through informal means (i.e. warning and separation), even when arrest is applicable. Consequently, arrest is still the least-used police response to family violence.

Although implementing pro-arrest policies is by no means an easy task, it is clear that most problems associated with their application at the street-level, stem from the discretionary powers of frontline officers. While for the most part, officers appear to exercise it legitimately, discretion, by its very nature, is a double-edged sword – that is, it will at times be exercised illegitimately. Despite the fact that there is often a fine line between legitimate/illegitimate discretion, two main factors distinguish them from one another. Firstly, legitimate discretion is exercised within the regulatory boundaries of the organisation – i.e. by virtue of policy provisions or legislative stipulations. Secondly, legitimate discretion can be easily justified, normally by the situational contingencies surrounding the incident (e.g. insufficient evidence, conflicting stories, lack of cooperation from citizens involved in the encounter etc.).

On the contrary, discretion is illegitimate when it is exercised outside regulatory boundaries, meaning it cannot be easily justified. When discretion is exercised on the basis of offender/victim characteristics (e.g. socio-economic class, ethnicity, sex etc...), officer characteristics (e.g. apathy/frustration towards domestic incidents), or features relating to the incident itself (e.g. geographical location, public/private place), it is inherently illegitimate. However, by fudging the facts behind a decision, even illegitimate discretion can be made to appear legitimate. Given the dual nature of discretion, two fundamental issues arise: 1) how can the implementation of the pro-arrest policy be improved; and 2) how can the illegitimate use of discretion be curbed?

Improving the implementation of the pro-arrest policy

As the previous chapter discussed, one of the main reasons why pro-arrest (and mandatory arrest) policies are not always implemented as intended, is because they are prone to officer resistance. This resistance may take the form of policy non-compliance or the illegitimate use of discretion, just to name two examples. Officers often resist managerial attempts to control their decision-making, partly because management's expectations are not always congruent with the reality of the streets. However, officers may also resist because of their alienation from the policy-making process. As some theorists (e.g. Lipsky, 1980; Maynard-Moody and Musheno, 2003) contend, even though street-level bureaucrats, such as frontline officers, are expected to apply policies as intended, often they are not able to participate in their formulation. One potential solution to facilitating the policy's successful implementation, therefore, according to these theorists, is to allow frontline officers to participate in the policy-making process – what Goldsmith (1996:324) refers to as 'negotiated rule-making.'

Goldsmith's (1996) 'negotiated rule-making' works on a collective bargaining model, which allows for consultation with all the affected parties. As Maynard-Moody et.al (1990:833) point out, because frontline officers are the ones close

to both the problems at hand, and the organisation's clients, they are more likely to know what will work in local environments and for particular groups. Also, frontline officers may be more acutely aware of possible problems that may arise during the policy's implementation. Moreover, if frontline officers have a stake in the formulation of policy, and are able to negotiate its terms, there is a greater chance that they will help facilitate its implementation, rather than impede it.

Another potential solution to implementation problems is through increased and/or improved training. Although officers already receive training from the Police College, and ongoing interdepartmental training once operational, problems with the policy's practical application still persist. This tends to suggest that increased training may not be enough. If there is to be any affect on officers' behaviour and attitudes, traditional, 'formal', classroom training may have to be substituted for other informal methods of learning. A more effective alternative, according to Wenger (1999:249) is an integrative training scheme, where learning is seen as a process of participation. This model places emphasis on the learning opportunities offered by practice – allowing frontline officers to discuss the practical problems relating to the policy with one another, and together, coming up with the necessary solutions. This starkly contrasts with the traditional method of training, whereby instructors tell officers what they have to do and why, sometimes without any real appreciation of, or solutions to, the difficulties encountered in practice.

Nevertheless, what still appears to be the most effective mode of learning occurs through on-the-job training in the field. Most police work is learnt through a process of craft-like apprenticeship, in interaction with more experienced officers. However, it is also apparent that this informal training is not always in harmony with what is being taught in the classroom, and inevitably this disharmony translates into inconsistent practices. However, the importance of this informal training in changing the police culture, (or the beneficial influence

this informal culture can have on training) should not be overlooked, since it is the practices within this culture that appear to have the greatest influence on what officers do out on the streets. In contrast, formal training appears to have a greater impact on what officers say, rather than what they do.

Curbing the illegitimate exercise of discretion

Likewise, increased and/or improved training may also provide a solution to the problem of officers exercising discretion illegitimately. By clearly stipulating how discretion is to be exercised through formal training sessions, and indicating what distinguishes legitimate and illegitimate discretion, officers will have little justification if, and when, discretion is abused. However, that said, mandating change through 'traditional' training programmes, or increased training, is unlikely to curb officers' use of illegitimate discretion. Considering officers already receive formal training, it suggests that traditional classroom teaching has not been entirely effective in changing the attitudes and behaviour of some frontline officers.

Alternatively, the development of informal (written) guidelines may help curb the illegitimate exercise of discretion. However, as with formal policy, if this is to be effective, such guidelines need to be developed in conjunction with frontline officers themselves, which would allow for officers to negotiate the terms with management. Nevertheless, although the development of formal/informal guidelines may go some way to reducing the illegitimate exercise of discretion, whether officers will stay committed to these guidelines out on the streets is another matter. The core issue here appears to be whether officer commitment can be increased through such processes.

Increased supervision may also help solve the problem of illegitimate discretion, particularly since frontline officers with sometimes very little practical experience, exercise it illegitimately. However, as mentioned in chapter five, increased supervision is not only costly, but it is also impractical. Frontline

officers will always outnumber supervisors, which means the latter can only have a limited effect on the way officers exercise their discretion. Moreover, attempts to further tighten supervisory control are likely to cause greater resistance. Finally, given that supervisors themselves sometimes exercise discretion illegitimately, it further calls into question the effectiveness of this solution. Perhaps a more appropriate solution is ensuring that supervisors are setting a good example in their own practices, in the hope that officers will follow suit. This may entail monitoring supervisors to ensure they are responding appropriately themselves, or at the very least, ensuring that supervisors are directly involved in an integrative learning scheme. Alternatively, ongoing, reflexive evaluation of practice out in the field may be a worthwhile exercise.

Similarly, it has been shown that paperwork requirements may be ineffective for curbing the exercise of illegitimate discretion. Considering officers can produce convincing accounts justifying their use of discretion, even when it has been exercised illegitimately, it is unclear whether officers can be held accountable through this type of mechanism. By 'covering their arse' through the production of acceptable accounts, officers who appear to be exercising discretion legitimately, may not be doing so in practice.

Conclusion

At the end of the day, in spite of its shortcomings, discretion is not only inevitable, but also desirable, since, as Meyers and Vorsanger (2003:249) point out, it promotes democratic control over policy processes, it allows policies to be tailored to individual needs, and it also serves to increase the effectiveness of policy implementation. Ultimately, we do not want 'robo-cops' – we want officers to be responsive to individual needs and concerns, and the only way we can ensure this, is to allow officers to retain their discretionary decision-making. At the same time, however, we should not downplay the fact that discretion can be, and is, sometimes abused, and that this has considerable ramifications for

the affected citizens, and the organisation as a whole. In the end, it is all about striking a necessary balance. On the one hand, it is important that frontline officers are able to continue exercising discretion, but on the other, steps need to be taken to ensure that it is being exercised appropriately, and when it is not, there must be accountability.

Recommendations

While this thesis does not propose to solve the problems inherent in the implementation of pro-arrest policies, it will hopefully contribute to our understanding of why such problems exist in the first place. Clearly this research has highlighted a number of factors that police managers may want to consider for future reference. In particular, this study stresses the need for greater involvement and consultation with frontline officers in the policy-making process. If problems of implementation are to be adequately addressed, then the implementers need to have input into the formulation of organisational policy. This would not only help identify potential problems with its practical implementation, but it may also help increase the commitment of frontline officers to implementing the policy as intended.

Although it is unclear how or if the family violence policy is evaluated, it is clear that the family violence policy needs to be constantly reviewed for effectiveness. Implementation is not a one-shot affair, but is a continuous process of negotiation between policy-makers, policy implementers, and those affected by the policy itself – the citizens. Ascertaining whether the pro-arrest policy is being effectively implemented at the street-level should be accorded high priority, particularly since there appears to be a number of problems with its practical application. Of course, any evaluation should once again ideally involve consultation with frontline officers, since this would allow management to understand why policy compliance may be difficult to achieve, and to comprehend more generally, the external pressures frontline officers face – something they may not always be aware of.

It is also evident that the family violence policy may need to be updated on a more regular basis. For example, the current family violence policy in the Canterbury District is now nearly eight years old, while the national policy is almost ten years old. By updating policy more regularly, this would allow for developments to be incorporated into the policy itself, and it would also provide an opportunity for managers to reemphasise the importance of a positive and effective police response to family violence.

Directions for future research

Although internationally there is a considerable body of research that focuses on the policing of family violence, very few studies have been conducted in New Zealand; most of what we do have here is now over ten years old, and those that are available are largely quantitative in nature. Given that the current research has a number of limitations (e.g. small number of participants, limited scope), replicating this study on a larger scale, and extending it to outside of Christchurch city itself, may be beneficial to the Canterbury Police. Ideally, this should include examining how rural and semi-rural officers respond to family violence, since this has been neglected, not only internationally, but nationally and locally as well. Similarly, research conducted in other metropolitan areas would be undoubtedly beneficial, especially given the high population density and ethnic diversity in centres such as Wellington and Auckland. Studying how the police respond to family violence in these regions would clearly be a worthwhile exercise.

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New Zealand

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'Family violence database' (1994/01), *Ten-One*, 60/12 (internal document)

'National family violence policy' (1996/2), *Ten-One*, 121/11 (internal document)

'Canterbury District operational instructions and procedures policy guidelines' 1998 (internal document)

United Kingdom

60/1990 Home Office circular on domestic violence

19/2000 Home Office circular on domestic violence

Internal documents

Number and sex of Canterbury Police officers

Legislation

Domestic Protection Act 1982

The Domestic Violence Act 1995

Crimes Act 1961

APPENDIX ONE: POL 400 Form

FAMILY VIOLENCE REPORT

Item No
01

POL 400
05/05

Complete each section by following instructions and by circling or ticking the correct box.
Use a Supplementary or Related Offence Report as required.

OFFENCE		Offence Code	Day of Week									
			M	T	W	T	F	S	S			
REPORTED BY		Victim <input type="checkbox"/> Family Member <input type="checkbox"/> Neighbour <input type="checkbox"/> Other <input type="checkbox"/>	On / From									
OFFENCE LOCATION TOWN / SUBURB / RURAL AREA		Address in Full (Not PO Box or R.D. No)		Day		Month		Year		Time		
		Scene Type		To		Reported		Police Attended		Weapon		
		Scene Station										
		Sector Code										
Victim / Complainant			Address in Full									
DOB			ETHN			ROLE			GENDER			
PRN			NIA ID			BE CS HM PM UN US ST			Phone (H) (W)			
RELATIONSHIP BETWEEN VICTIM & OFFENDER			<input type="checkbox"/> Married / Partner <input type="checkbox"/> Child / Parent <input type="checkbox"/> Separated / Divorced <input type="checkbox"/> Previous Relationship <input type="checkbox"/> Other Family Member <input type="checkbox"/> Other			Demeanour			<input type="checkbox"/> Co-operative <input type="checkbox"/> Unco-operative <input type="checkbox"/> Not Present			
Alleged Offender / Other Party			Address in Full									
DOB			ETHN			ROLE			GENDER			
PRN			NIA ID			BE CS HM PM UN US ST			Phone (H) (W)			
Demeanour			Co-operative			Unco-operative			Not Present			
Witness / Subject or Third Party			Address in Full									
DOB			ETHN			ROLE			GENDER			
PRN			NIA ID			BE CS HM PM UN US ST			Phone (H) (W)			
Demeanour			Co-operative			Unco-operative			Not Present			
PROTECTION ORDERS			Existing <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/>			Breached <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/>						
CAUSE OF INCIDENT			AS STATED BY PRINCIPAL PARTIES									
<input type="checkbox"/> Access / Custody Dispute <input type="checkbox"/> Court Order <input type="checkbox"/> Physical Violence <input type="checkbox"/> Threats / Verbal Abuse <input type="checkbox"/> Other												
FACTORS PRESENT			Alcohol			Drugs			NUMBERS OF PERSONS			
Victim			NO		YES		NO		YES		Total Numbers	incl victim/offender
Offender			NO		YES		NO		YES		Age Groups (specify numbers)	0-4
Violence to:			NONE		THREATENED		USED		FIREARMS PRESENT		5-9	10-16
Person			NONE		THREATENED		USED		NO		17-64	65+
Property			NONE		THREATENED		USED		YES		REMOVED	
PHYSICAL INJURY TO VICTIM			<input type="checkbox"/> Not Applicable <input type="checkbox"/> None			<input type="checkbox"/> Minor Bruising <input type="checkbox"/> Serious Bruising			<input type="checkbox"/> Cuts <input type="checkbox"/> Medical Assistance <input type="checkbox"/> Hospital <input type="checkbox"/> Death			
INITIAL SUPPORT PROVIDED TO VICTIM			<input type="checkbox"/> Women's Refuge <input type="checkbox"/> Victim Support <input type="checkbox"/> Other									
TEXT			(Use Supplementary, if required)			ACTION TAKEN			<input type="checkbox"/> Arrest <input type="checkbox"/> No Further Action <input type="checkbox"/> Other Police Action Reported <input type="checkbox"/> Insufficient Evidence			
To - Det/Sen/Sgt/Const			Where Stationed			Signature			Date			
Reporting Member's QID						(Reporting Member)			OFFENDER STATS			
Forwarding Minute			Code of Station/Branch			Signature			Date			
Forward to						Age			DOB			
CARD EVENT No.			DOCLOC CASE No.			Model App			Not Cleared			
						Sang All						

CARBONLESS PAPER USE BALLPOINT PEN PRESS FIRMLY

COPY TO: FAMILY VIOLENCE COORDINATOR

APPENDIX TWO: SEMI-STRUCTURED INTERVIEW SCHEDULES

Management interviews

1. What training are officers given in regards to domestic violence/
2. Does this training also include information about other forms of domestic violence other than male domestic violence?
3. Does New Zealand have a pro-arrest or a mandatory arrest policy?
4. Is it important to arrest domestic violence offenders?
5. Do you think there is an assumption that mainly men commit domestic violence?
6. Do you think this assumption is carried through in policy?
7. Do you think the current policy adequately addresses female on male domestic violence?
8. What happens if both parties have been abusing each other?
9. Do you encourage/support dual arrest?
10. Do you think a woman abusing a man is usually less serious than a man abusing a woman?
11. How great a problem is female domestic violence?
12. Do you think there should be a female assaults male charge?

Frontline officer interviews

1. Is it important to arrest domestic violence offenders?
2. Do you think there is an assumption that the male is usually the offender?
3. Do you think women are capable of committing domestic violence against their partners?
4. What happens if both parties have been physically abusing each other?
5. Would you ever arrest both parties?
6. Do you think a woman physically abusing a man is less serious than a man physically abusing a woman?
7. Do you think female domestic violence is a problem?
8. Have you ever arrested a woman for domestic violence?
9. Do you think there should be separate female assaults male charge? If no, do you think we should get rid of the male assaults female charge?
10. Do you think men might underreport being victims of domestic violence? Why?
11. What do you think of the family violence policy