Deciding to Prosecute: Investigating Implicit Influences in Legal Decision-making about Battered Women's Homicide Cases

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Abstract

Deciding whether to prosecute is a complex process that has undergone little scrutiny. Although this decision should be based on an analysis of legal issues, implicit influences are hypothesized to also influence decisions to prosecute. The prototypical case in which a battered woman killed her partner was used for structuring an investigation of decisions to prosecute. Sixty-four law students at a large university participated in the study where it was hypothesized that law students would choose legal elements over nonlegal (or "extralegal") elements as representative of what they would consider when making decisions to prosecute when presented with a listing of potential case elements. However, when they were assessed as to important considerations for deciding to prosecute through more indirect, open-ended strategies, it was hypothesized that the impact of extralegal, implicit factors would emerge. As expected, comparisons between ratings of the likelihood of using specific legal and extralegal factors when deciding upon prosecution produced significantly higher mean ratings for legal factors. However, spontaneous responses to an open-ended format soliciting case elements of importance for decisions to prosecute produced a high proportion of extralegal factors compared with legal factors from the participants. Two-thirds of 42 vignette pairs manipulating legal and extralegal variables also demonstrated a significant influence on the participants' likelihood to prosecute. Themes from the open-ended responses are discussed, as is the reliance upon extralegal factors when making a decision to prosecute. Implications from this study suggest the need for educating potential decision-makers as to the impact of implicit influences on their own choices beyond legalistic elements.

Table 1. *Coding categories of Legal and Extralegal variables with frequency of occurrence.*

Legal Variables (243 responses)
    <u>Self Defense Elements</u> (163 responses)
        Serious harm was imminent* (84 responses)
        Reasonableness of belief of danger* (32 responses)
        Only enough force to disable* (14 responses)
        Retreat if possible* (10 responses)
        Not the one to provoke conflict* (6 responses)
        Reciprocal amount of force to what received (2 responses)
    <u>Believability of Guilt or Innocence</u>* (80 responses)
        Cause of death
        Possible motives
        Her subsequent actions at the scene
        Her subsequent reactions to man's death
        Her claims of why killing occurred (from statement/talking with police)

Her interpretation of partner's actions at the time

Extralegal Variables (396 responses)

    <u>Credibility of battering issues</u> (211 responses)

        Evidence/documentation of physical abuse historically* (45 responses)

        Prior domestic violence calls to police* (20 responses)

        Level of seriousness of past abuse* (frequency, duration, severity, injuries) (77 responses)

        Evidence of prior protective disorders (3 responses)

        Evidence that she engaged in actions to diminish abuse or leave the relationship* (28 responses)

        Evidence of controlling/dominance in addition to physical abuse* (15 responses)

        Predictability of his violence (0 responses)

        Recency of battering and major episodes (4 responses)

        General quality of relationship reported by others* (7 responses)

        External threats by the man toward her family members/children/friends (8 responses)

    <u>Extraneous, irrelevant extralegal factors</u> (185 responses)

        *Characteristics of the woman** (129 responses)

            Mental health issues* (44 responses)

            Substance/alcohol use (10 responses)

            Reputation* (33 responses)

            Whether the woman was ever violent either generally or toward her partner* (34 responses)

            Whether she protected the children from abuse (8 responses)

            Physically disabled

        Characteristics of the man (28 responses)

            Mental health issues* (5 responses)

            Substance/alcohol use (3 responses)

            General violence by the man* (15 responses)

            Positive reputation of man (4 responses)

            Negative reputation of the man (not re: violence, e.g., affair) (1 response)

        Demographics (11 responses)

            SES (4 responses)

            Ethnicity (0 responses)

            Marital status (0 responses)

            Employment status* (4 responses)

            Age (2 responses)

            Number of children (1 response)

        External sources of pressure (11 responses)

            Community pressure (6 responses)

Media coverage (0 responses)
Man's family opinion/preference regarding prosecution* (2 responses)
Advocacy group involvement* (0 responses)
Lack of resources for woman in the past (1 response)
Legal considerations *of* the community, e.g., cost, caseload (2 responses)
Impact on children (6 responses)
Children witnessed abuse to mother in past (2 responses)
Children would be placed in foster care/parentless if prosecuted (2 responses)
Children also abused in past (2 responses)

Note. * = Legal and Extralegal variables used on SDCE scale.

Table 2. *Univariate results of between group ratings on Legal and Extralegal variables manipulated in vignettes.*

Legal and Extralegal Variables	Univariate F	Group 1 Mean	Group 2 Mean	Group 3 Mean
Man shot in the front$_a$ vs. back$_b$	$F(1,42) = .007$ ns	4.35_a	4.32_b	-
Woman is a successful business woman$_a$ vs. homemaker$_b$	$F(1,42) = 2.177$ ns	4.10_a	-	3.50_b
Woman drinking during incident$_a$ vs. not drinking$_b$	$F(1,42) = 27.324$****	-	4.91_a	3.32_b
Woman reports her statement to police as accurate$_a$ vs. inaccurate$_b$	$F(1,42) = 15.873$****	5.00_a	3.64_b	-
No history of medical injuries$_a$ vs. history of injuries from abuse$_b$	$F(1,42) = 58.443$****	4.90_a	-	2.50_b
Woman shoots immediately after severe threat$_a$ vs. man falls asleep after severe threat and woman shoots while man sleeping$_b$	$F(1,42) = 50.609$****	-	2.57_a	4.86_b
Crime scene as described by woman$_a$ vs. woman changed crime scene$_b$	$F(1,42) = 6.767$**	3.40_a	4.27_b	-
Man's behavior unique when she shot him$_a$ vs. predictive as signaling abuse$_b$	$F(1,42) = 2.391$ ns	4.35_a	-	3.77_b
Ex-wife reports no physical abuse$_a$ vs. she reports similar battering$_b$	$F(1,42) = 10.012$**	-	4.38_a	3.14_b
Woman did not think to run out$_a$ vs. did not run due to small children$_b$	$F(1,42) = 16.798$****	3.95_a	2.50_b	-
No injuries on woman$_a$ vs. injuries found on her at the time$_b$	$F(1,42) = 35.399$****	4.90_a	-	2.59_b
Boyfriend as victim$_a$ vs. husband as victim$_b$	$F(1,42) = 3.864$*	-	3.62_a	4.32_b
Neighbors report hearing nothing$_a$ vs. hearing an argument before shooting$_b$	$F(1,42) = .245$ ns	4.60_a	4.46_b	-
Man has a mental condition$_a$ vs. man has no mental condition$_b$	$F(1,42) = 4.991$*	4.00_a	-	4.59_b
Man's family wants prosecution of woman$_a$ vs. does not want her charged$_b$	$F(1,42) = 6.816$*	-	3.67_a	2.73_b
Woman fired four shots$_a$ vs. one shot$_b$	$F(1,42) = 9.235$**	4.95_a	4.00_b	-
Woman is overweight$_a$ vs. small$_b$	$F(1,42) = 8.029$**	4.30_a	-	3.00_b
Woman has a good reputation$_a$ vs. not liked in community$_b$	$F(1,42) = 18.334$****	-	3.34_a	4.59_b

		Group 1	Group 2	Group 3
History of calls by her to police$_a$ vs. no history of calls to police$_b$	$F(1,42) = 31.362$****	2.65$_a$	4.55$_b$	-
Woman feared man still alive after shooting$_a$ vs. knowing he was dead$_b$	$F(1,42) = 5.649$*	3.95$_a$	-	3.00$_b$
Inaccurately thought bulge was gun$_a$ vs. accurately thought bulge was gun$_b$	$F(1,42) = 32.464$****	-	4.76$_a$	2.73$_b$
Woman does not have a mental disorder$_a$ vs. woman has mental disorder$_b$	$F(1,42) = 3.183$ ns	4.60$_a$	3.86$_b$	-
Uncertain why she shot four times$_a$ vs. claimed fear influenced more shots$_b$	$F(1,42) = .286$ ns	4.30$_a$	-	4.09$_b$
Advocacy group became involved in case$_a$ vs. no advocacy involvement$_b$	$F(1,42) = 8.854$**	-	3.38$_a$	4.36$_b$
Neighbor reported abuse lasting for ten years$_a$ vs. three months$_b$	$F(1,42) = .076$ ns	2.55$_a$	2.46$_b$	-
Never able to escape by running$_a$ vs. prior success but not able to this time$_b$	$F(1,42) = .208$ ns	3.95$_a$	-	4.09$_b$
Man used hands and feet to abuse vs. history of putting gun to her head$_b$	$F(1,42) = 1.336$ ns	-	3.14$_a$	2.72$_b$
Woman not diagnosed with PTSD$_a$ vs. woman diagnosed with PTSD$_b$	$F(1,42) = 35.845$****	4.45$_a$	2.55$_b$	-
Man's signal for abuse seems vague and not threatening$_a$ vs. threatening$_a$	$F(1,42) = 15.457$****	4.50$_a$	-	3.00$_b$
Calls to police on man only$_a$ vs. calls on woman as well as man$_b$	$F(1,42) = 58.058$****	-	2.71$_a$	4.77$_b$
Reputation of man as generally violent$_a$ vs. no reputation of violence$_b$	$F(1,42) = 6.587$*	3.30$_a$	4.18$_b$	-
Last major abuse incident occurred within last 2 weeks$_a$ vs. 3 years ago$_b$	$F(1,42) = 11.665$***	3.20$_a$	-	4.41$_b$
No statements by woman of fearing man$_a$ vs. spontaneous statement of fear$_b$	$F(1,42) = 2.795$ ns	-	4.52$_a$	4.00$_b$
Woman rumored to be having affair$_a$ vs. woman thought to be faithful$_b$	$F(1,42) = 15.776$****	4.95$_a$	3.77$_b$	-
Woman with African American name$_a$ vs. Caucasian name$_b$	$F(1,42) = .939$ ns	4.40$_a$	-	4.09$_b$
Woman was vague but claimed self-defense$_a$ vs. claimed as accident$_b$	$F(1,42) = 7.384$**	-	3.57$_a$	4.55$_b$
Historically, physical abuse plus verbal threats to kill$_a$ vs. physical abuse only$_b$	$F(1,42) =.508$ ns	3.35$_a$	3.59$_b$	-
Following incident, woman was hysterical$_a$ vs. woman was calm and quiet$_b$	$F(1,42) = 31.641$****	2.95$_a$	-	4.82$_b$
Woman with inconsistent blue collar work history$_a$ vs. successful business owner$_b$	$F(1,42) = .433$ ns	-	4.05$_a$	4.23$_b$
Delay in calling 911 after shooting$_a$ vs. immediately calling 911$_b$	$F(1,42) = 26.485$****	4.80$_a$	3.14$_b$	-
Man's family claimed she threatened to kill him once$_a$ vs. no threats known$_b$	$F(1,42) = .812$ ns	5.00$_a$	-	4.73$_b$
Woman was able to clearly delineate what caused fear$_a$ vs. unable to clearly delineate cause of fear$_b$	$F(1,42) = 21.047$****	-	3.43$_a$	4.82$_b$

Group 1 and 2 MANOVA: $F(14,27) = 6.407$, $p = .0001$. Group 1 and 3 MANOVA: $F(14, 27) = 11.459$, $p = .0001$. Group 2 and 3 MANOVA: $F(14,28) = 28$, $p = .0001$.

Note: Subscripts $_a$ and $_b$ indicate which group mean corresponds with which version of the manipulated variable.

Significance is indicated as follows: ****$p \geq .0001$; ***$p \geq .001$; **$p \geq .01$; *$p \geq .05$; ns = not significant.

Mean ratings based on the following response categories: 1 = Definitely NOT prosecute, 2 = Probably NOT prosecute, 3 = Slightly think NOT prosecute, 4 = Slightly think SHOULD prosecute, 5 = Probably SHOULD prosecute, 6 = Definitely SHOULD prosecute.