Identifying Offenders in Criminal Justice Research on Domestic Assault

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In this chapter, I identify sampling and measurement problems that need to be addressed if research on domestic assault from a criminal justice perspective is to take into account differences in severity and chronicity. Such differences are important to consider because they affect the appropriateness of various criminal justice system interventions. I describe ways in which some of these measurement problems can be dealt with by use of the Conflict Tactics Scales (CTS; Straus, 1979, 1990a) in conjunction with a checklist (presented in this chapter) to help identify relevant cases.

CRITERIA FOR CRIMINAL JUSTICE INTERVENTION

I have advocated involving the criminal justice system in cases of domestic assault since the mid 1970s (Straus, 1976). I also recognized, however, that incarceration is not likely to end spousal
assault any more than it ends other crime. Nevertheless, at some point in the continuum ranging from occasional slaps and shoves to beatings or even to murder, a decision must be made whether to seek criminal penalties.

The 1975 and 1985 National Family Violence Surveys found that about one third of the 8,145 couples studied experienced one or more physical assaults on a spouse in the course of the marriage (Straus & Gelles, 1990). These are lower-bound estimates. The true figure may be as high as two out of three American couples (Straus, Gelles, & Steinmetz, 1980, pp. 35-36). In most cases, however, the assaults were minor, such as slapping and plate throwing, and such incidents tended to occur relatively infrequently over the course of the marriage.

Both moral and practical considerations require condemnation of even the most minor assaults and intervention to end such behavior. However, that does not necessarily mean criminal penalties. If even half of domestic assaults came to the attention of the police, the courts would have to deal with literally millions of such incidents and would be overwhelmed. In addition, there are grounds for questioning the appropriateness of applying criminal penalties in all cases of spousal assault.

As Straus and Lincoln (1985) noted, it is not at all certain that families and society would be better off if the same standards were used to control crime within the family as well as outside the family. For one thing, in the case of the family, society has conflicting interests. In addition to the interest in maintaining a "civil" society in which citizens can live without fear of victimization, society has an interest in encouraging and protecting the family as a social institution and for the well-being of the entire family group. Consequently, there is a reluctance to take punitive actions that, however justified on other grounds, might break up a family or punish other members of the family as much as or more than the offender.

A related question about applying the same criminal justice system procedures to intrafamily crime as to strangers arises because families are different from individuals and other groups in many ways, including legal status. Crime is only one of many types of behavior for which there are different rules and expectations for the family as compared with other groups or situations. These differences are part of what makes the family a unique and important institution. For example, the family is concerned with "the
whole person," not just some specific aspect of the person. A university department chair will be concerned about things related to the faculty members' teaching and scholarship, whereas the family will be concerned not only with job performance but also with religion, politics, and friends.

Even if the same norms about assault and other crimes are applied within the family, there may be good reason for not involving the legal system in enforcing those norms. The police and the courts cannot be expected to understand the unique circumstances of each family, and they cannot be depended on to take actions that are in the best interest of the victim, the offender, or the family as a whole.

Finally, the issue of assaults by women on male partners is difficult and controversial. More than 20 investigations have shown that women carry out such assaults at about the same rate as men [summarized in Straus & Gelles, 1990] and that, in about half the cases, women are the first to physically assault (Straus, in press). If criminal penalties are to be applied to men who "only" slap their wives a few times, should they also be applied to the equally great number of women who do this?

CONFLICT TACTICS SCALES

The above discussion suggests the need for standardized methods of classifying cases of spousal assault that correspond to the legal distinctions between simple and aggravated assault. Consequently, I outline here\(^1\) ways of using the Conflict Tactics Scales (CTS; Straus, 1979, 1990a; Straus, Hamby, Boney-McCoy, & Sugerman, 1996) and a supplemental checklist to identify cases involving chronic and severe assaults for which there would be little question concerning the need for criminal penalties.

The CTS takes only a few minutes to administer, either within an interview or as a self-administered questionnaire, and is presented in the chapter appendix. It has been used in two national surveys [Straus & Gelles, 1990; Straus et al., 1980] and in more than 100 studies, including those within the criminal justice system [e.g., Dutton, 1988; Ford, 1991]. A test manual containing more than 300 references to the CTS and documentation of validity and reliability is available (Straus, 1989). The assessment needs of the criminal justice system, however, are often different. I therefore here describe ways of using the CTS to classify cases into what are
believed to be categories helpful for research on such issues as whether diversion to treatment programs is advisable and the level of surveillance that may be needed.

The CTS has three scales: Reasoning, Verbal Aggression, and Physical Aggression or Violence. The Violence items are further subdivided into "minor" and "severe" violence (see appendix). The minor violence items are K, L, and M. The severe violence items, N through S, are believed to have a greater danger of causing an injury that needs medical treatment. I describe here a checklist that can be used in conjunction with the CTS to identify a level of violence for which criminal justice intervention is most urgently needed. This third level of violence is labeled high risk.

CRIMINAL JUSTICE'S
SYSTEM-RELEVANT MEASUREMENT

Although large areas overlap, the measurement needs of basic research and of criminal justice system researchers and practitioners tend to be different, sometimes in surprising ways. Space constraints permit discussion of only four of these.

Level of Measurement

Every course in statistics and research methods stresses the superiority of interval or ratio measurement over nominal-level measurement. This follows from the emphasis on the mean and measures of covariance because those techniques work best with interval or ratio-level measurement. Criminal justice system research, however, often needs to classify cases into groups that correspond to case-processing categories. Consequently, nominal-level measurement will usually be the most appropriate.²

Noncomparability of Criminal Justice
and Community Populations

The characteristics of a "clinical" population, in this case an apprehended offender population, often differ from the characteristics of those in the general population who manifest the same problematic behavior. Following are some examples.
The characteristics associated with abuse of the elderly among a representative sample of persons 65 years of age and older in the Boston metropolitan area studied by Pillemer and Finkelor (1988) differ in important ways from the characteristics associated with abuse cases known to the adult protective services departments of the states as reported by Steinmetz (1988). Pillemer and Finkelor found that the victims tend to be men in their 70s who are assaulted by their wives, whereas Steinmetz found that the victims tend to be older, widowed women. She suggested that the difference arises because the minor assaults of elderly women on their husbands rarely produce the type of injury that will bring a case to the attention of adult protective services.

Discrepancies have been found between alcoholics identified among the general population and alcoholism in treatment samples (Room, 1980). For example, alcoholics in the general population tend to be young, whereas alcoholics in treatment tend to be middle-aged or older.

In the case of drug abuse, 85% to 90% of cocaine users do not become addicted (Gawin, 1992), and it is likely that those who do become addicted differ from those who do not in a number of important social and psychological characteristics.

Psychologists distinguish between people suffering from major depression and those suffering from so-called subclinical depression found by epidemiological surveys of the general population.

In research on crime, data from studies of incarcerated persons may be misleading because they are analogous to studies on business using samples of businesses that have failed. The findings may not apply to the large number of persons who commit a certain type of crime and are not apprehended and incarcerated.

The discrepancy between the characteristics of survey populations and clinical populations in research on alcoholism, depression, and elder abuse illustrates what has been termed the "clinical fallacy" or "the clinician's illusion" (Cohen & Cohen, 1984). The coin has two sides, however; there is also a "researcher’s fallacy" or a "representative sample fallacy" (Straus, 1990b). That is, there is an equal hazard in generalizing from a representative sample of a community to a clinical population (an identified offender population). The findings from community samples may represent the community, but they do not represent a population of identified
offenders. They tend to be low-rate or single-instance offenders, whereas identified offender populations usually consist mainly of long-duration offenders because the probability that a case will appear in the sample is proportional to the duration of offending behavior (Cohen & Cohen, 1984). Because single-instance or low-rate offenders tend to differ from repeat offenders in many other ways, findings based on community samples may not apply to cases processed through the criminal justice system. To the extent that is correct, it is necessary to identify the differences in the characteristics of domestic assault offenders identified by these two processes; they are likely to have important implications for criminal justice system practice.

Antecedents and Consequences

It follows from the above discussion that the antecedents and consequences of violence determined in a general population sample of violent persons may not apply to apprehended violent offenders. Therefore, to extrapolate from a community sample to a criminal justice sample runs the risk of the "representative sample fallacy" noted above. Consequently, studies of nationally representative population samples, such as the National Family Violence Surveys (Straus & Gelles, 1990), may not be an appropriate guide for procedures to be used by the police and other elements of the criminal justice system. For example, findings on the perceived deterrent effect of various sanctions (Carmody & Williams, 1987) may not apply to an identified offender population.

Test Norms

Another implication of the difference between offenders identified by epidemiological surveys and apprehended offenders is that norms for tests, such as the CTS, based on community samples may not be appropriate for evaluating cases already known to be violent. In that situation, the question is not the presence or absence of violence, but how serious it is. The distribution of scores for known offenders may start about where the community case distribution ends (Straus, 1990b). Norms based on community samples may have too limited a range of scores to be useful. Thus,
the appropriate normative reference point for classifying cases may not be a large and representative sample of the population, but rather a sample of apprehended cases.

**IDENTIFICATION OF HIGH-RISK VIOLENCE**

When the issue is one of identifying offenders who pose an ongoing risk of future severe assaults on a spouse, the CTS distinction between severe and minor violence is not by itself adequate to identify the extreme and often life-threatening level of violence that characterizes these men. Factor analyses of the CTS have repeatedly shown that Items R and S, both of which refer to use of weapons, form a separate factor from the other Violence items [Straus, 1979, 1990a]. Use of these two items by themselves is not adequate to identify high-risk cases, however, because although the use of a weapon is a definitive indicator, it is only one of many indicators and therefore will fail to detect many cases. Fortunately, a number of studies of extreme marital violence provide information that can be used to identify high-risk cases. These include studies of abusers murdered by their victims (Browne, 1987), partners of battered women in shelters (Giles-Sims, 1983; Okun, 1986), court-referred male offenders (Gondolf, 1988; Hamberger & Hastings, 1991; Saunders, 1992), and convicted homicide offenders (Goetting, 1989, 1991).

The ability to identify the presence of this third level of violence is important because such cases require immediate and decisive intervention. It is difficult to find an appropriate term for such extreme violence. Because a distinguishing characteristic of this level of violence is the risk of serious bodily harm or death, I identify it as high-risk violence.

**Criteria for High-Risk Violence**

As explained above, the Violence Index of the CTS is not sufficient to identify cases posing a high risk. The checklist in Table 2.1 therefore was developed to identify cases posing such a risk. The checklist is based on studies of cases of extreme violence, including studies of partners of battered women in shelters (Giles-Sims, 1983; Okun, 1986), of abusers murdered by their victims (Browne, 1987),
TABLE 2.1 Checklist for Identifying “High-Risk” Cases

<table>
<thead>
<tr>
<th>Criterion A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initiated three or more instances of violence in previous year</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Criterion B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Threatened partner with a weapon in hand or threatened to kill partner</td>
</tr>
<tr>
<td>Medical treatment needed by victim (regardless of whether it was obtained)</td>
</tr>
<tr>
<td>Physical abuse of a child</td>
</tr>
<tr>
<td>Physical abuse when a child</td>
</tr>
<tr>
<td>Severe violence between parents</td>
</tr>
<tr>
<td>Drunk five or more times in past year</td>
</tr>
<tr>
<td>Drug abuse in past year</td>
</tr>
<tr>
<td>Extreme dominance or attempts to achieve such dominance</td>
</tr>
<tr>
<td>Thinks there are some situations when it is OK for a man to hit his wife</td>
</tr>
<tr>
<td>Physically forced sex on partner</td>
</tr>
<tr>
<td>Extensive or repeated destruction of property</td>
</tr>
<tr>
<td>Threats or actual killing or injuring a pet</td>
</tr>
<tr>
<td>History of psychological problems</td>
</tr>
<tr>
<td>Assault of a nonfamily person or other violent crime</td>
</tr>
<tr>
<td>Extreme jealousy and surveillance or restriction of partner</td>
</tr>
<tr>
<td>Police involved in domestic assault incident in previous 12 months</td>
</tr>
</tbody>
</table>

**SOURCE:** Adapted from Aldarondo and Straus, 1992.

and of court-referred cases (Gondolf, 1988; Hamberger & Hastings, 1991; Saunders, 1992; Tolman & Bennett, 1990), and the Danger Assessment Checklist of Stuart and Campbell (1989). It must be emphasized that the checklist, though based on published studies of serious offenders, has not been validated by empirical research. With this caution in mind, men who meet both Criteria A and B as listed in Table 2.1 are suggested as cases that pose a high risk.

**Criterion A**

The criterion of three or more assaults during the previous 12 months was selected on the assumption that once or perhaps even twice might reflect a transient condition but that a third time would indicate an ongoing problem. The importance of chronicity was confirmed by analyses of covariance computed for the 645 violent men in the 1985 National Family Violence Survey.
These analyses indicated that chronicity of assaults accounted for more of the variance in the dependent variable than did the severity of assaults.

**Criterion B**

Criterion B is the presence of a certain number of the characteristics listed. Research is needed on whether that should be one or two of the characteristics, three of them, or possibly even four. In the absence of such research, researchers using the checklist will need to experiment with analyzing their data by using one, two, three, and four characteristics to determine which seems to be the most appropriate.

It is important to note that the number of cases meeting the high-risk criteria is a small fraction of the total number, probably less than 10% of all violent couples. The appropriate role of criminal justice intervention may be quite different for the 90% of wife assaulters who do not fit into the high-risk category. Diversion to family therapy, for example, may be appropriate for that group, but for the high-risk group, family therapy may have little effect and might put the spouse at increased risk of further and more serious assaults.

**HIGH-RISK VIOLENCE AND THE DISPUTE OVER FEMINIST VERSUS FAMILY THERAPY INTERVENTION MODELS**

A major reason for differentiating cases of high-risk violence from other patterns of marital violence is the assumption that high-risk cases require a different intervention. If this is correct, it can help in dealing with the often bitter controversy between advocates of the feminist and family therapy models of appropriate interventions.

The feminist model emerged from the battered women's shelter movement. It assumes that the fundamental cause of marital violence is the patriarchal social order, including a patriarchal family structure, and that men are the offenders and women the victims. It therefore stresses empowering women, the criminal prosecution of assaultive men, and the necessity of separate programs for men and women. From this perspective, couples therapy not only is
inappropriate but also exposes women victims to further exploitation and violence.

The family therapy model assumes that a fundamental cause of marital violence is lack of interpersonal skills and a dysfunctional relationship. This cause results in an escalating pattern of frustration and anger that eventually leads to violence. The family therapy model therefore emphasizes improving interpersonal skills, including negotiating skills, and correcting dysfunctional relationships, only one of which is inequality in power.

I suggest that part of the difference between the two approaches occurs because the empirical basis of the feminist perspective is men who assaulted their partners so severely and chronically that the partner was driven to the extreme step of seeking the protection of a shelter for battered women. These men tend to have many of the characteristics in Criterion B and assault their partners an average of about 60 times per year, whereas the partners of battered women in the general population engaged in an average of about 5 assaults per year (Straus, 1990a). Consequently, the feminist image of marital violence is that of what I have called the high-risk offender.

The empirical basis of the family therapy model is the characteristics of the clientele, which rarely include violence at the high-risk level, except for a few therapists who treat court-mandated cases. In Colorado, state law prohibits couples therapy in court-mandated cases of marital violence. This legislation was passed in response to the efforts of the shelter movement. In effect, it assumes that all cases of marital violence are in the high-risk category.

Part of the controversy between family therapists and the shelter movement can be mitigated by distinguishing between high-risk violence and more "usual" types of marital violence. Therapists can diagnose and refer high-risk cases to programs designed for male batterers, and feminist activists may be able to accept the fact that the majority of cases of marital violence, including some that are severe enough to attract the attention of the police, are appropriately treated by family therapy.

The preceding discussion suggests that although the controversy over the appropriateness of family therapy intervention for marital violence is grounded in the differences in theoretical approaches and objectives, differences in the clientele of the two groups also play a role. Shelter cases and police cases tend to be at the high-risk level,
whereas such cases are rare in family therapy or community surveys. It is important that both family therapists and the criminal justice system be able to differentiate cases involving high risk so that each uses procedures suited to the level of violence and risk.

CONCLUSION

Research on domestic assaults from a criminal justice perspective requires standardized procedures for identifying relevant cases. These procedures need to provide much more information than the basic fact of whether an assault occurred. The additional information includes the chronicity of the assaultive behavior and the criminal record and other characteristics of the offender in order to identify high-risk offenders. In this chapter, I described use of the Conflict Tactics Scales and a checklist for that purpose. These assessment tools enable identification of high-risk offenders on the basis of whether the assaults are chronic and severe and the presence of other risk factors, such as alcohol or drug abuse or prior arrest or conviction for violent crime.

Research on the effectiveness of various interventions needs to distinguish between high-risk offenders and others because a given mode of intervention may work for one but not the other. It is ironic that what are here called high-risk offenders may be those for whom criminal justice sanctions have little or no deterrent effect (Sherman, 1992). Although criminal justice penalties for this group may have little specific deterrent effect, they may nonetheless be important for general deterrence. For cases that do not cross the line to the high-risk category, the cost of prosecution to society and to the victim and the offender may outweigh the benefits. Arrest without necessarily subsequent prosecution, especially if the victim is given the option of not proceeding with prosecution, can serve to empower victims (Ford, 1991); symbolizes the fact that society regards such assaults as "real" crime, not just a "family fight"; and is by itself a severe sanction (Carmody & Williams, 1987). Investigation of these issues requires assessment tools such as those described in this chapter.
APPENDIX

Clinical Setting Administration of the Conflict Tactics Scales (CTS)

The CTS is flexible and easily administered. It takes only about 5 minutes to administer, and one can do a rough scoring of the violence scale in about 2 minutes. As a result of its flexibility and brevity, the CTS can be administered to the same subjects in a variety of ways without undue burden. It can be used in questionnaire format by replacing such phrases as "I'm going to read some things that you . . ." with "Here is a list of things that you . . ."

FORMS

Form RC (Table 2.2) is a version of Form R for clinical use. The format has been modified in two minor ways to facilitate hand scoring: (a) It uses 0 to 25 as the response categories instead of 0 to 6, and (b) there are places in the right margin to enter the chronicity scores and to enter the sum of the items for each scale. There is now a revised version—the CTS2 (Straus et al., 1996).

REFERENT PERIOD

The CTS most often has been used to obtain information on violence in the previous 12 months. However, it is not restricted to
<table>
<thead>
<tr>
<th>How the argument was settled</th>
<th>Score:</th>
</tr>
</thead>
<tbody>
<tr>
<td>You^b</td>
<td>Spouse^b</td>
</tr>
<tr>
<td>A. Discussed an issue calmly</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>B. Got information to back up your/his/her side of things</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>C. Brought in, or tried to bring in, someone to help settle things</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>D. Insulted or swore at him/her/you</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>E. Sulked or refused to talk about an issue</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>F. Stomped out of the room or house or yard</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>G. Grieved</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>H. Did or said something to spite him/her/you</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>I. Threatened to hit or throw something at him/her/you</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>J. Threw or smashed or hit or kicked something</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>K. Threw something at him/her/you</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>L. Pushed, grabbed, or shoved him/her/you</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>M. Slapped him/her/you</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>N. Kicked, bit, or hit him/her/you with a fist</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>O. Hit or tried to hit him/her/you with something</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>P. Beat him/her/you up</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>Q. Choked him/her/you</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>R. Threatened him/her/you with a knife or gun</td>
<td>1 2 4 8 15 25 0</td>
</tr>
<tr>
<td>S. Used a knife or fired a gun</td>
<td>1 2 4 8 15 25 0</td>
</tr>
</tbody>
</table>

NOTE: a. Each item is asked first of the respondent and then of the spouse. See note 3 in the Notes section. b. Scoring is as follows: 1 = once, 2 = twice, 4 = 3-5 times, 8 = 6-10 times, 15 = 11-20 times, 25 = more than 20 times, and 0 = never. c. If "never" is listed for both, the researcher should ask "Has it ever happened?" (scored 1 = yes, 0 = no).
this or any other period. The subjects may be asked to report on the
previous month, the first year of the relationship, the year when
violence first occurred (if it did not occur during the first year), the
middle year, and for the previous 12 months, previous 6 months,
and so on. Because of its brevity, the CTS can be given at the
beginning of a session and scored immediately. This ease makes it
practical to administer the CTS to assess change in violence at
several points. When used in this way, it is important to administer
the entire CTS, not just the Violence Scale, because the Reasoning
and Verbal Aggression Scales provide an opportunity for subjects to
show they have made a variety of changes and therefore may be less
defensive in responding to the violence items.

OTHER FAMILY ROLES

By changing the instructions from “your partner” to “your fa-
ther,” “your mother,” a specific child, and so on, the CTS can also
provide information on violence by and toward [a] the parents of
the subject to obtain data on whether the subject was physically
abused and [b] the subject’s children to obtain data on use of
physical punishment and physical abuse of children and violence
by children toward their parents and their siblings (see the CTS
manual).

MODE OF ADMINISTRATION

The CTS has been used successfully in different formats with
little difference in the results, including face-to-face interview,
telephone interview, and self-administered questionnaire.

NOTES

1. In this section, I can only summarize the most salient characteristics of the
CTS. Further information is in the CTS manual. Substantial parts of this manual are
also in Straus and Gelles (1990, chaps. 3-8 and Appendix B).
2. This can often involve use of interval-, ratio-, or ordinal-level test scores as a
step in the process of classification, as in the use of “clinical cutting points” to classify
a case as above or below a “clinical threshold.”
3. Because of space restrictions, an exact duplicate of the Couple Form RC could not be printed here. The main thing left out was the researcher’s introduction to the form: “No matter how well a couple gets along, there are times when they disagree, get annoyed with the other person, or just have spats or fights because they’re in a bad mood or tired or for some other reason. They also use many different ways of trying to settle their differences. I’m going to read some things that you and your [spouse/partner] might do when you have an argument. I would like you to tell me how many times, [once, twice, 3-5 times, 6-10 times, 11-20 times, or more than 20 times] in the past 12 months you:”

REFERENCES


