

DOMESTIC VIOLENCE REFORM: FROM PAGE TO PRACTICE AND BACK AGAIN

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Thank you for the opportunity to celebrate the fortieth anniversary of the *N.Y.U. Review of Law & Social Change*.

The *Review* played a significant role in both my law school experience and the work I have been doing since. N.Y.U. Law was my first choice for law school because I wanted to pursue public interest law, and, with its extensive clinical program and the *Review*, N.Y.U. provided the most opportunities to do so. I continue to recommend it as *the* law school for individuals interested in this area of law.

Journals like the *Review* obviously play a significant role in the practice of public interest law. They give support to legal arguments in litigation and move policy agendas along in vital ways. They give perspective to practitioners by identifying a problem; laying out legal and non-legal responses; providing rational, critique-oriented approaches; recommending future actions; and helping to correct approaches to legal problems that may be well-intentioned but lead to counterproductive results.

The subject of the article that I wrote as a student, *The Case for Legal Remedies for Abused Women*, provides an example of how journals like ours can aid in the development of good public policy.¹ When I wrote my article, domestic violence was just being exposed as a social issue; previously, domestic violence had been shrouded in silence as a private family matter. The advocacy movement itself was also relatively new. By the mid-1970s, domestic violence was becoming a public issue as the media began writing about what was going on behind closed doors. Legislative change was also just beginning; in 1976, Pennsylvania became the first state

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1. Terry L. Fromson, *The Case for Legal Remedies for Abused Women*, 6 N.Y.U. REV. L. & SOC. CHANGE 135 (1977).

to adopt a civil law applicable outside of the marital relationship.²

The recommendations in my article were garnered from reading what little there was in print at the time and talking to many people in the field. The recommendations themselves were relatively basic: making available immediate civil protection orders, treating domestic violence like other crimes, litigating in order to hold the system responsible, and educating and providing social services for victims.

I have recently read my article for the first time in a long time, and, reflecting on it, I feel as if I am reflecting on a movement—a movement that I have participated in throughout my career. As a legal services lawyer, I represented battered women seeking protection orders and unemployment compensation. At the Women's Law Project (WLP) I now work on targeted issues, as well as broad-based advocacy, to improve systemic responses to domestic violence.

A lot has been accomplished since I wrote my article in 1977, and many of my recommendations have been incorporated into existing law and policy. Today, domestic violence is part of our public dialogue—it is frequently in the news, and information about it appears on buses and on cards in public restrooms. States have passed protection order statutes and offer various forms of relief for victims of domestic violence, including ex parte hearings and lifetime relief. State laws providing for the inclusion of gun removal in protection from abuse orders are some of the strongest gun laws in the nation. In addition, police protocols and training have been updated to include information about domestic violence. In Philadelphia, 911 gives domestic violence calls high priority, and many states keep registries for police verification of protection orders. Even if police do not observe domestic violence, they can make warrantless arrests of suspects under certain circumstances if they have probable cause. Judicial leadership has also driven reforms in the court systems of many jurisdictions. Prosecutors today have special family violence and sexual assault units, and judges are better trained. In addition, special domestic violence courts have been established.

However, challenges remain that make my original recommendations still quite relevant today. While laws on the books and existing police directives say the right thing, what they actually can accomplish depends on people in the system applying the law properly and fairly. Simply changing attitudes is a long term job, and this means that there are still problems in practice, in both the civil and the criminal systems. Police often see their job as one of referring victims to the civil court system rather than enforcing criminal laws themselves. The court system itself is

2. 35 PA. CONS. STAT. §§ 10181–10190 (1976) (current version at 23 PA. CONS. STAT. ANN. §§ 6101–6116 (2010)).

complex—women often drop their complaints or are not believed; even when women do persist, protective orders often are not issued. More fundamentally, there are still not enough resources to make families safe. We lack sufficient numbers of lawyers, advocates, and shelter beds; information on navigating the court system is hard to find; and there are long lists of those waiting for assistance.

On the technical side, systems get bogged down when perpetrators learn new ways to abuse and terrorize their victims, for example by filing criminal complaints and petitions for protection orders against victims or by using new technology such as keystroke tracking or GPS to stalk their victims. Such behavior creates situations that neither police nor judges seem capable of unwinding, and, as a result, advocates are forced to find new ways of protecting domestic violence victims.

Advocates also need to recognize new hazards that are punishing or blaming victims or placing them at risk. For example, in the early 90s, WLP learned that all insurers—life, health, disability, and property—were denying coverage to domestic violence victims, inappropriately comparing victimization to voluntary activities such as skydiving, and blaming the victim. In response, WLP, in coordination with the Pennsylvania Coalition Against Domestic Violence, led an effort to prohibit such policies. Our partnership succeeded in getting insurance laws changed in forty-three states to protect survivor access to necessary insurance.

In addition, victims who flee their batterers have historically been unable to change their names to better conceal their whereabouts because name-change laws have traditionally required publication of the name change in newspapers. Some states have now amended their name-change laws to allow courts to waive publication requirements for safety reasons, thus allowing survivors to obtain a confidential name change. In the welfare system, survivors who were placed at risk of further domestic violence from child support and work requirements now can seek a waiver of those requirements. The recognition that domestic violence follows its victims into the workplace has led to laws requiring safety accommodations for employees, and custody laws now require consideration of domestic violence and safety conditions when courts award custody and visitation. At the WLP, I have had the privilege of participating in these reforms.

We continue to evaluate the effectiveness of remedies to address domestic violence, and journal articles are an important part of our evaluative efforts. New articles, like the one published in the 2008 volume of the *Review* by Laurie Kohn,³ remind us that some of the efforts taken

3. Laurie S. Kohn, *The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim*, 32 N.Y.U. REV. L. & SOC. CHANGE 191 (2008).

have “divorced the victim” from the advocacy, thereby undermining the objective of making families safe.

This brings me back to the importance of this and similar journals to the public interest legal community. Journals make a difference in shaping both policy work and litigation. Practitioners often search journals to find new ideas, to gain an understanding of what is being done on a particular problem, or to determine whether an approach has merit. I would like to see even more connections between practitioners and journal writing—these could take the form of a dialogue between practitioners and student article writers to generate ideas for articles that would further policy changes. The *Review* should also let public interest lawyers know what you have published so that our work can benefit from your contributions. It would be great if the *Review* and other social change journals sent tables of contents to the National Legal Aid and Defender Association to be sent to its members.

When communication between journals and practitioners is absent, opportunities may be missed. Dialogue is also necessary in the social science arena. An example is from work done by WLP to address the miscoding of sex crimes in Philadelphia. In 2000, as a result of investigative journalism by the *The Philadelphia Inquirer*, the WLP learned that the Philadelphia police were misclassifying sex crimes with the result that thousands of sex assault complaints were being ignored. As a result of our advocacy, the police reviewed and reinvestigated the misclassified cases and agreed to allow the advocacy groups to review cases and provide input into improving police investigation of sex crimes in Philadelphia. During the course of our investigation, we came upon a 1979 publication reporting on a study of the Philadelphia Police Department that unveiled the misclassification of cases twenty years earlier. Communication between publications such as the *Review* and practitioners in the field can help to ensure that gross abuses such as this one are uncovered and remedied as quickly as possible.