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# Lawyering for Social Change: The Power of the Narrative in Domestic Violence Law Reform

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# HOFSTRA LAW REVIEW

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Lawyering for Social Change:  
The Power of the Narrative in  
Domestic Violence Law Reform

*Jane C. Murphy*

SCHOOL OF LAW



HOFSTRA UNIVERSITY

# LAWYERING FOR SOCIAL CHANGE: THE POWER OF THE NARRATIVE IN DOMESTIC VIOLENCE LAW REFORM

Jane C. Murphy\*

Legal storytelling is an engine built to hurl rocks over walls of social complacency that obscure the view out from the citadel. . . . The messages say, let us knock down the walls, and use the blocks to pave a road we can all walk together.<sup>1</sup>

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1. Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2441 (1989).

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## INTRODUCTION

The vision of law as an agent of social change is well established.<sup>2</sup> The expectation that courts and legislatures will have a creative role in improving the law is one that has, however, lost much of its power and vitality. Both the general public<sup>3</sup> and lawyers themselves<sup>4</sup> increasingly view the practice of law as an essentially commercial rather than political enterprise.<sup>5</sup> The reasons for this are many, but are rooted primarily in the current economic<sup>6</sup> and political climate<sup>7</sup>. Lack of enthusiasm for engaging in law reform efforts also stems from a growing perception that legislative or litigation victories have limited value in effecting long term, widespread social change.<sup>8</sup>

2. ROBERT E. KEETON, *VENTURING TO DO JUSTICE: REFORMING PRIVATE LAW* 11 (1969); see also BENJAMIN N. CARDOZO, *THE GROWTH OF THE LAW* (1924); ROSCOE POUND, *INTERPRETATIONS OF LEGAL HISTORY* (1923).

3. See Linda L. Castle, *Mikva: Don't Worry About Our Reputation*, A.B.A. J., Feb. 1985, at 135; Alessandra Stanley, *Selling Voters on Bush, Nemesis of Lawyers*, N.Y. TIMES, Aug. 31, 1992, at A1.

4. See James E. Brill, *The Secret of Success*, A.B.A. J., Oct. 1992, at 100 (stating that only 63% of recent law school graduates would again choose to be lawyers); Stephanie B. Goldberg, *Then and Now: 75 Years of Change*, A.B.A. J., Jan. 1990, at 56, (finding that lawyers are increasingly approaching their work as a business rather than a profession); Jon Jefferson, *But What Role for the Soul?*, A.B.A. J., Dec. 1991, at 60; Irving R. Kaufman, *Idealism vs. Reality*, NAT'L L.J., Oct. 22, 1990, at 13; Edward W. Lempinen, *Of Billables and Breakdowns*, STUDENT LAW., Dec. 1990, at 4; Saundra Torry, *Surveys Find the Law Offers Lawyers Little Time for a Life*, WASH. POST, Aug. 26, 1991, at F5.

5. A study of employment trends by the National Association for Law Placement indicates that, from 1974 to 1991, public interest and government employment have steadily declined, while employment with law firms has increased. NATIONAL ASSOCIATION FOR LAW PLACEMENT, *SELECTED CLASS OF 1991 ERSS FINDINGS* 3 (1992). Of course, these findings may be somewhat misleading; they may reflect more the realities of the job market than the career choices made by recent law graduates. See Irving R. Kaufman, *Squandering Future Talent*, NAT'L L.J., May 27, 1991, at 15; Robert B. McKay, *The Road Not Traveled: Charting the Future for Law, Law Schools and Lawyers*, A.B.A. J. Nov. 1990, at 76; *The Abandonment of Public-Interest Law*, LEGAL TIMES, Oct. 30, 1989, at 21. But see Mara Block & Hazel S. Kandall, *As Young Attorneys Reassess Careers, Interests Now Mean as Much as Income*, N.Y. L.J., Nov. 18, 1991, at 48.

6. See Peter F. Lake, *The Business of Law: Changes in the Legal-Talent Market*, A.B.A. J., Mar. 1992, at 49.

7. See, e.g., Francis T. Coleman, *New Rules for Civil Rights*, A.B.A. J., Oct. 1989, at 78.

8. See GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SO-*

One response in the face of the growing conservatism and cynicism about the law's power to effect social change is to turn to other disciplines. Stories about lawyers making mid-life career changes and "dropping out" from the practice of law are heard on an increasing basis.<sup>9</sup> Another, perhaps ultimately more promising, response to changing political and economic realities is to develop new strategies for social change within the context of the legal system. This Article explores the potential of one method of effecting social change in the context of the legal system—integrating powerful human stories in law reform efforts.

The role of the narrative or story in legal discourse has been explored and developed in legal scholarship over the last several years.<sup>10</sup> The goals of the various calls for more storytelling in the legal context vary.<sup>11</sup> They generally relate, however, to a desire to move away from exclusive reliance on abstract legal argumentation to persuade. The goals of "storytellers" are also linked to furthering an understanding of the dynamics of oppression based on race or gender, or both.<sup>12</sup>

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CIAL CHANGE? (1991) (examining empirical data on the results of judicial decisions in the areas of civil rights, abortion, womens' rights, environmental protection, and criminal procedure, concluding that courts are rarely effective producers of change); Deborah L. Rhode, *The "No-Problem" Problem: Feminist Challenges and Cultural Change*, 100 YALE L.J. 1731 (1991) (finding that despite substantial formal change in the legal status of women, significant gender inequalities still exist in all aspects of women's lives). *But see* Linda S. Greene, *Feminism, Law, and Social Change: Some Reflections on Unrealized Possibilities*, 87 NW. U. L. REV. 1260 (1993) (articulating optimism about the use of the law to achieve concrete gains in social and political empowerment of women).

9. A survey of recent law school graduates found that 47% of women were considering leaving the profession. Brill, *supra* note 4, at 100. Another survey of 207 graduates from 20 law schools from the class of 1983 found that 42% of the respondents considered leaving the practice of law. Marilyn Tucker et al., *Whatever Happened to the Class of 1983?*, 78 GEO. L.J. 153, 155-56, 185 (1989); *see also* DEBORAH L. ARRON, *RUNNING FROM THE LAW: WHY GOOD LAWYERS ARE GETTING OUT OF THE LEGAL PROFESSION* (1989); Carolyn Hughes, *To Be or Not to Be: Some Lawyers Would Rather Not*, WASH. LAW., Nov./Dec. 1990, at 44.

10. *See, e.g.*, Robert M. Cover, *The Supreme Court, 1982 Term—Forward: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983); Delgado, *supra* note 1; Robin West, *Jurisprudence as Narrative: An Aesthetic Analysis of Modern Legal Theory*, 60 N.Y.U. L. REV. 145 (1985).

11. Martha Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*, 43 VAND. L. REV. 1665, 1688 (1990) (describing the various goals of storytelling as giving "voice to suppressed perspectives[,] helping to "build a reservoir of alternative understandings through which existing practices can be criticized[,] and "enhanc[ing] the chances of persuading people to act who currently are in a position to effect change"); *see also* *Pedagogy of Narrative: A Symposium*, 40 J. LEGAL EDUC. 1 (1990) (describing the various ways storytelling has been used in the classroom to improve legal education).

12. Critical race and feminist narrative scholarship have taken a variety of forms. Some

The judicial and legislative processes have always included a narrative component.<sup>13</sup> Clinical legal scholarship has also explored the critical role of narrative in client representation, particularly in interviewing and counselling.<sup>14</sup> Recently, however, scholars seeking methods to make the law more responsive to those historically unrepresented in lawmaking have argued for a more explicit use of the narrative to highlight the human concerns in a given legal issue. Others have built upon the work of these scholars to explore the specific ways in which legal storytelling can accomplish law reform goals.<sup>15</sup> Most recently, a related body of scholarship has begun to develop which seeks to critique the value of narratives in both clarifying legal issues and persuading legal decision-makers to reform the law.<sup>16</sup> Can stories persuade legal decision-makers to act in a particular way by "creat[ing] a bridge across gaps in experience and thereby elicit empathic understanding[?]"<sup>17</sup>

This Article seeks to respond to that question. It begins with a brief examination of the impact of law reform campaigns of the last twenty-five years aimed at eliminating race and gender discrimination.

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scholars have used autobiographical accounts. See, e.g., Marie Ashe, *Zig-Zag Stitching and the Seamless Web: Thoughts on "Reproduction" and the Law*, 13 NOVA L. REV. 355 (1989); Susan Estrich, *Rape*, 95 YALE L.J. 1087 (1986). Other scholars have mixed their own accounts with the stories of others. See, e.g., Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991). Fiction has also been used to illustrate the dynamics of oppression either through the original fictional accounts of scholars, or through the literary texts of others. See, e.g., DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992) [hereinafter BELL, *FACES AT THE BOTTOM*] (original fictional account); James A. Epstein, *Rhetoric of Silence: Some Reflections on Law, Literature, and Social Violence*, 43 VAND. L. REV. 1701 (1990) (literary texts of others).

13. See, e.g., Carol Angel, *Teaching Storytelling Skills for Court*, L.A. DAILY J., Mar. 8, 1991, at 7; Sharon Creeden, *How to Use the Art of Storytelling in Litigation: Telling Your Client's Story to the Jury*, TENN. B.J., May/June 1991, at 10; Steven Lubet, *The Trial as a Persuasive Story*, 14 AM. J. TRIAL ADVOC. 77 (1990); Kathryn H. Snedaker, *Storytelling in Opening Statements: Framing the Argumentation of the Trial*, 10 AM. J. TRIAL ADVOC. 15 (1986).

14. Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991); Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 HASTINGS L.J. 861 (1992).

15. See, e.g., Lynne N. Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574 (1987); Minow, *supra* note 11.

16. Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991); Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?*, 87 MICH. L. REV. 2099 (1989).

17. Minow, *supra* note 11, at 1688.



There is general consensus that many of the law reform efforts on behalf of women and people of color have failed to produce the full measure of positive change expected from the new laws. This Article suggests that the gap between goals and results may be explained in part by the deficiencies in the legal discourse surrounding the process of achieving legal change.

This Article then examines the legal story's potential as a key element in social change strategy by exploring the specific role it has played in domestic violence law reform. Domestic violence is a particularly useful lens through which we may examine much broader questions about whether and how the law can affect social change. Issues surrounding domestic violence are critically linked to the oppression of women. Freedom and equality for women can never be achieved without freedom from violence. Domestic violence is also an issue where the legal system's failure to respond effectively seems directly linked to the inability of the predominately male decision-makers to understand the victim's need for protection. It is, therefore, an issue where legal storytelling can help create the kind of empathic understanding needed to produce meaningful reform.

A case study analyzes a series of successful domestic violence law reform campaigns in one jurisdiction over the last decade. This "history of storytelling" gives an empirical backdrop to the theories advanced in recent scholarship about the power of the narrative in eliciting empathic understanding on the part of legal decision-makers. It provides a vivid example of a successful practical application of the theoretical work of feminist and critical race scholars. Advocates' decision to place greater and greater reliance on narratives from victims to persuade decision-makers played a significant role in achieving much-needed law reform. The lessons of this law reform campaign have value and application as strategies which can work in other law reform efforts. This analysis of these law reform campaigns also clarifies the ways in which narratives persuade and function in arguments for feminist or other legal change.

## I. THE RELATIONSHIP BETWEEN LAW AND SOCIAL CHANGE

The question whether law, as it is enacted by legislatures and interpreted by courts, can effect fundamental changes in society is a complex one. An appropriate starting point in exploring the connections between law and social change is to define terms. "Social change" can be described as the phenomena of transforming current power structures that perpetuate inequalities based on class, gender,

race, ethnicity, age, or sexual orientation. "Social change lawyering" or "law reform work" refers to the efforts to change the laws which establish or perpetuate these inequalities.<sup>18</sup> Major focuses for these efforts include the workplace,<sup>19</sup> schools,<sup>20</sup> the housing market,<sup>21</sup> and the health care system.<sup>22</sup> It is accurate to say that legal norms effect and reinforce hierarchies,<sup>23</sup> but to what extent can changes in legal norms dismantle hierarchies?

Major social issues inevitably become reduced to legal questions in some form.<sup>24</sup> It is not difficult to identify significant legal victories over the last few decades that have been designed to effect major social change. Landmark legislation and litigation have resulted in statutes and decisions which have as their explicit goals eliminating inequality for women,<sup>25</sup> people of color,<sup>26</sup> gays,<sup>27</sup> and other

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18. Justice William F. Ryan, a member of the Federal Court of Appeals of Canada, described the broader purpose of law reform as "the examination of the law in the light of policy, of social objectives, of philosophy." William F. Ryan, *The Law Reform Commission of Canada: Some Impressions of a Former Member*, 25 U.N.B. L.J. 3, 4 (1976).

19. See, e.g., Vicki Schultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749 (1990).

20. See, e.g., Hon. Gerald W. Heaney, *Busing, Timetables, Goals, and Ratios: Touchstones of Equal Opportunity*, 69 MINN. L. REV. 735 (1985); Joseph E. Krakora, Note, *The Application of Title IX to School Athletic Programs*, 68 CORNELL L. REV. 222 (1983); Kimberly A. Mango, Comment, *Students Versus Professors: Combatting Sexual Harassment Under Title IX of the Education Amendments of 1972*, 23 CONN. L. REV. 355 (1991).

21. See, e.g., Florence W. Roisman, *Establishing a Right to Housing: A General Guide*, 24 CLEARINGHOUSE REV. 203 (1991) (developing a law reform strategy for securing a right to housing).

22. See, e.g., Sylvia A. Law, *Health Care and Social Change*, 19 CLEARINGHOUSE REV. 419 (1985).

23. See generally Mary Joe Frug, *Commentary: A Postmodern Feminist Legal Manifesto (An Unfinished Draft)*, 105 HARV. L. REV. 1045 (1992) (describing the ways in which legal rules construct differences and hierarchies between the sexes).

24. As Alexis de Tocqueville observed, "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." I ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 280 (Phillips Bradley ed., 1945).

25. See Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k) (1988); Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (1988); Equal Pay Act of 1963, 29 U.S.C. § 206(d) (1988); *International Union v. Johnson Controls, Inc.*, 499 U.S. 187 (1991) (female employees cannot be excluded from jobs because of gender-based fetal protection policy); *County of Washington v. Gunther*, 452 U.S. 161 (1981) (state cannot pay female jail guards less than men holding similar jobs); *Kirchberg v. Feenstra*, 450 U.S. 455 (1981) (state law giving husbands unilateral control over marital property is unconstitutional); *Frontiero v. Richardson*, 411 U.S. 677 (1973) (unconstitutional for U.S. Armed Forces to require husbands, but not wives, to prove actual dependency to qualify for spousal benefits).

26. See Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, 2000e-2 (1988); Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3606 (1988); see also *Griggs v. Duke Power*



underrepresented and oppressed people.

In recent years, the law reform victories in federal courts have diminished,<sup>28</sup> but state court litigation and federal legislative lobbying for social change continue with what appears to be notable success.<sup>29</sup> Still, a cynicism about whether this kind of lawyering effects lasting and real change is growing.<sup>30</sup> A brief look at the results of decades of law reform work in two areas of social change lawyering—improving the status of women and people of color—demonstrates that such cynicism is well-founded.

In the area of race discrimination, evidence of formal change exists. Following the Supreme Court's decision in *Brown v. Board of Education*,<sup>31</sup> the first Civil Rights Act in seventy-five years was passed.<sup>32</sup> Subsequently, the Civil Rights Act of 1964 made race discrimination in employment and education illegal.<sup>33</sup> Within eight years of its passage, over ninety percent of southern school districts were desegregated.<sup>34</sup> The Voting Rights Act of 1965,<sup>35</sup> along with its

Co., 401 U.S. 424 (1971) (holding that Title VII prohibits employment practices unrelated to job performance that operate to exclude blacks); *Brown v. Board of Educ.*, 347 U.S. 483 (1954) (outlawing segregation in the public schools); *Shelley v. Kraemer*, 334 U.S. 1 (1948) (holding that restrictive housing covenants are unenforceable).

27. See CAL. CIV. CODE § 51.7 (West Supp. 1993); CAL. HEALTH & SAFETY CODE § 33051 (West Supp. 1993); D.C. CODE ANN. §§ 1-2501, 1-2515, 1-2520 (1992); HAW. REV. STAT. § 368-1 (Supp. 1992); KY. REV. STAT. ANN. § 304.12-013 (Michie Supp. 1992); MASS. GEN. LAWS ANN. ch. 151B, § 3, ch. 272, § 98 (West Supp. 1993); N.Y. EXEC. LAW § 296 (Consol. 1983 & Supp. 1993); WIS. STAT. §§ 101.22, 111.31 (1988 & Supp. 1993).

28. See, e.g., AMY SWAUGER & LAUREN FISHBEIN, AM. ASSOC. OF UNIV. WOMEN, *BALANCING THE FEDERAL JUDICIARY* (1988) (examining the impact of the Reagan administration's judicial appointments); Tony Mauro, *High Stakes, Low Courts*, WASH. MONTHLY, July/Aug. 1992, at 16 (examining the federal judiciary's shift to the right as a result of twelve years of Reagan/Bush appointees); see also Rachel N. Pine & Sylvia A. Law, *Envisioning a Future for Reproductive Liberty: Strategies for Making the Rights Real*, 27 HARV. C.R.-C.L. L. REV. 407, 408-13, 439-41 (1992).

29. See Civil Rights Act of 1991, 42 U.S.C. § 1981 (Supp. III 1992); Pregnancy Discrimination Act 42 U.S.C. § 2000e(k) (1988); see also Pine & Law, *supra* note 28, at 434-35.

30. ROSENBERG, *supra* note 8, at 169 (arguing that real social change occurs only when forces independent of the courts (e.g., the media and economic and demographic changes), create pressure for reform).

31. 347 U.S. 483 (1954).

32. Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634 (codified as amended in scattered sections of 28 and 42 U.S.C.).

33. Pub. L. No. 88-352, 78 Stat. 241 (1964) (codified as amended at 42 U.S.C. §§ 2000c to 2000c-9, 2000e-2 (1988)).

34. ROSENBERG, *supra* note 8, at 52.

35. Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973ff-6 (1988)).

1970 amendments,<sup>36</sup> provided direct federal action to enable blacks to vote and suspended the use of literacy tests that had been a source of racial discrimination for nearly a century.

The evidence of continuing institutional racial bias, however, is overwhelming. Since 1959, there has been virtually no change in the percentage of African-Americans living in poverty relative to the percentage of white Americans living in poverty,<sup>37</sup> and while some middle-class African-Americans prospered in the 1970s and 1980s, the black-white income gap has widened over the last fifteen years.<sup>38</sup> The rate of impoverishment for households headed by African-American women is even greater.<sup>39</sup> Further, the life expectancy of African-Americans is four years shorter than that of white Americans,<sup>40</sup> and the African-American infant mortality rate, which is substantially higher than the rate at which white infants die, continues to rise at an alarming rate.<sup>41</sup> A recent study on the status of African-American men in urban areas provides a bleak and shocking picture.<sup>42</sup> For example, the study revealed that in the Baltimore area fifty-six percent of African-American males between the ages of eighteen and thirty-five were in prison, on parole or probation, being sought on arrest warrants, or awaiting trial.<sup>43</sup>

To some, these statistics demonstrate the inability of law to effect social change because of the limited impact of judicial action.<sup>44</sup> These grim numbers lead others to conclude that the problem

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36. Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973ff-6 (1988)).

37. See U.S. BUREAU OF THE CENSUS, No. 766, STATISTICAL ABSTRACT OF THE U.S.: 1986 457 (106th ed. 1985) [hereinafter CENSUS] (in 1959 18.1% of white and 55.1% of black families lived below poverty level; this ratio was essentially unchanged in 1984).

38. Richard Bernstein, *Twenty Years After the Kerner Report: Three Societies, All Separate*, N.Y. TIMES, Feb. 29, 1988, at B8.

39. Margaret C. Simms, *Black Women Who Head Families: An Economic Struggle, in SLIPPING THROUGH THE CRACKS: THE STATUS OF BLACK WOMEN* 141 (Margaret C. Simms & Julianne Malveaux eds., 1986) (African-American families headed by women have much lower incomes than other two-parent African-American families).

40. CENSUS, *supra* note 37, at 68, No. 106.

41. See *id.* at 72, No. 112 (mortality rate of black infants was 63.8% higher than that of white infants in 1950; by 1982, it was 94.1% higher); see also *Black Infant Mortality Risks Studied*, 132 SCI. NEWS 218 (1987) (black infants twice as likely as white infants to die during their first year).

42. See NATIONAL CENTER ON INSTITUTIONS AND ALTERNATIVES, *HOBBLING A GENERATION: YOUNG AFRICAN AMERICAN MALES IN THE CRIMINAL JUSTICE SYSTEM OF AMERICA'S CITIES: BALTIMORE, MARYLAND* (1992).

43. *Id.* at 1-2.

44. ROSENBERG, *supra* note 8, at 10-21.

is not in the complexity of the institutions but in the lack of commitment to change.<sup>45</sup> The real motivation behind contemporary civil rights policies is not racial equality. Rather, "landmark" legislative and judicial actions are meant to provide symbolic victories which placate people while offering no real improvement in the condition of African-Americans.<sup>46</sup>

An examination of the much-heralded law reform victories in the area of women's rights reveals a similar picture of the dichotomy between formal rights and real change. Laws intended to remove sex-based disparities have fallen short of changing many aspects of women's lives and of eliminating biases that perpetuate inequality. Despite activity in the executive, legislative, and judicial branches of government in the 1960s and 1970s aimed at remedying women's inequality, the evidence of continuing sex discrimination is overwhelming. Women working full-time still earn sixty-four cents for every dollar earned by men,<sup>47</sup> despite major federal laws enacted in 1963<sup>48</sup> and 1964<sup>49</sup> that prohibit sex-based wage discrimination. Women still comprise only 7.4% of the federal judiciary, 7.2% of the state judiciary,<sup>50</sup> 6.9% of engineers,<sup>51</sup> 19.5% of physicians,<sup>52</sup> and

45. See BELL, *FACES AT THE BOTTOM*, *supra* note 12 (describing the failures of the civil rights movement in allegorical stories and Socratic dialogues between the author and a fictional character named Geneva Crenshaw); DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987) [hereinafter BELL, *WE ARE NOT SAVED*] (same); see also Alan D. Freeman, *Antidiscrimination Law: A Critical Review*, in *THE POLITICS OF LAW* 96 (David Kairys ed., 1982); Alan D. Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 *MINN. L. REV.* 1049 (1978).

46. As Bell has written:

Even the poorest whites, those who must live their lives only a few levels above, gain their self-esteem by gazing down on us . . . . Over time, many reach out, but most simply watch, mesmerized into maintaining their unspoken commitment to keeping us where we are, at whatever cost to them or to us.

BELL, *FACES AT THE BOTTOM*, *supra* note 12, at epigraph.

47. U.S. BUREAU OF THE CENSUS, NO. 157, *CURRENT POPULATION REPORTS, CONSUMER INCOME* (1987). But see FRANCINE BLAW & MARIANNE FERBER, *THE ECONOMICS OF WOMEN: MEN AND WORK* (1992); CLAUDIA GOLDIN, *UNDERSTANDING THE GENDER GAP: AN ECONOMIC HISTORY OF AMERICAN WOMEN* (1992); Sylvia Nasar, *Women's Progress Stalled? Just Not So*, *N.Y. TIMES*, Oct. 18, 1992, at C1 (all concluding that women made significant strides toward pay equality in all strata of the workforce during the 1980s).

48. See Equal Pay Act of 1963, 29 U.S.C. § 206(d).

49. See Civil Rights Act of 1964, 42 U.S.C. § 2000e.

50. *Report of the Commission on Women in the Profession: Part I*, 9 A.B.A. SEC. BUS. LAW. UPDATE 6, 7 (1988). For a breakdown of federal judicial appointments, see HUMAN RESOURCES DIV., ADMIN. OFFICE OF THE U.S., U.S. COURT DIRECTORY, (Spring 1993).

51. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, LABOR FORCE STATISTICS

22.2% of lawyers in the United States.<sup>53</sup> Analyzing the gap between formal equality and inequality in women's lives, Deborah Rhode has concluded that "formal rights mask[] inequality in daily experience."<sup>54</sup>

Scholars and practitioners have advanced a variety of theories to explain the gap between the goals of women's rights legislation and case law, and the aftermath. Failure to include those who will be responsible for implementation of a court order or legislative mandate in the law reform process has been identified as one problem.<sup>55</sup> The refusal of the courts and the legislature to take the initiative on such critical issues as caretaking leaves, flexible schedules, and affordable childcare is another explanation for the failure of law to affect social change in this area.<sup>56</sup> "Cultural barriers," "economic constraints," and underlying gender bias are also offered as reasons for the limited social change.<sup>57</sup>

Clearly, new strategies for using the law as a tool to end oppression of women and people of color are needed. Fundamental changes in the way we approach social change lawyering may also be needed. The focus may ultimately have to shift, from seeking formal changes in the law that eradicate gender or racial discrimination to transforming the current power structure. Within the context of this call for broad change, many scholars and practitioners are urging those in the "outgroup" to tell their stories.<sup>58</sup> In this way, legal decision-makers may act out of deeper understanding and compassion. This empathy should help them to shape more creative legal solutions and to ensure vigorous implementation of these reforms.

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DERIVED FROM THE CURRENT POPULATION SURVEY: 1948-1987 689 (1988).

52. *Id.*

53. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE U.S. 395 (111th ed. 1991).

54. Rhode, *supra* note 8, at 1768 (examining the limited impact of legislative and court battles to eliminate occupational inequality).

55. *See, e.g.,* Susan A. MacManus & Nikki R. Van Hightower, *Limits of State Constitutional Guarantees: Lessons from Efforts to Implement Domestic Violence Policies*, 49 PUB. ADMIN. REV. 269, 270 (1989) (stating that resistance to policy change in domestic violence is related to political or bureaucratic competition between executive and legislative branches).

56. *See* Rhode, *supra* note 8, at 1767-68.

57. ROSENBERG, *supra* note 8, at 214-26.

58. Richard Delgado defines the outgroups as "groups whose marginality defines the boundaries of the mainstream, whose voice and perspective—whose consciousness—has been suppressed, devalued, and abnormalized." Delgado, *supra* note 1, at 2412.

## II. TELLING STORIES: IMPROVING BOTH PROCESS AND RESULTS IN LAW REFORM CAMPAIGNS

A promising new strategy for effecting lasting social change through law reform work is to make storytelling a central component of law reform efforts. By this I mean refocusing the attention of legal decision-makers—state and federal agency executives, legislators and judges—to the human dimension of the problem before them. This strategy may take many forms, but my focus is on the impact of direct storytelling on legislatures, individual policy-makers and the courts. By not allowing the story to be told by others, this strategy forces legal decision-makers to acknowledge the pain that results from the legal system's inadequate response to human problems. It is a way to "connect" a legal decision-maker to experiences outside his own. As Toni Massaro describes it:

This storytelling theme ties in to the empathy theme in several ways. Stories tend to work directly from "experiential understanding," which the empathy writers encourage us to use. Consequently, narrative may be a particularly powerful means of facilitating empathic understanding: a concrete story comes closest to actual experience and so may evoke our empathic distress response more readily than abstract theory. Telling stories can move us to care, and hence pave the way to action.<sup>59</sup>

There is nothing new in this. The notion that the people most directly affected by court decisions or legislation should be heard in the process seems self-evident. And yet, legal decisions and lawmaking consistently occur in an atmosphere where discussion of the law's impact on people's day-to-day lives is almost non-existent. This "unhinging of the law from human experience"<sup>60</sup> is justified on the theory that law is rational and objective.<sup>61</sup> Classical legal thought views the law as a science in which legal judgments are made by applying objective rules to facts and reaching consistent and predictable results.<sup>62</sup> We are a "government of laws, not men" and adhere to a

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59. Massaro, *supra* note 16, at 2105.

60. Henderson, *supra* note 15, at 1574 (citing JOHN T. NOONAN, JR., *PERSONS AND MASKS OF THE LAW* (1976)).

61. JUDITH N. SHKLAR, *LEGALISM* 1 (1986) (defining legalism as "the ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules"). For a discussion of the introduction of classical orthodoxy into American legal education, see Thomas C. Grey, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1 (1983).

62. See Duncan Kennedy, *Toward an Historical Understanding of Legal Consciousness:*

system of "neutral" laws which are supposed to ensure fairness and impartiality in the application of the law.<sup>63</sup> Historically, therefore, legal theorists have viewed any discussion of the reality of pain and suffering that results from oppressive laws—or the absence of laws—as a corruption of the lawmaking process. Injection of such emotion, they claim, would produce chaos and irrationality in the rule of law.<sup>64</sup>

What is really happening here? Is it that the human experience is being ignored in lawmaking? Or is it that the experiences of the decisionmaker are the only experiences reflected in the "neutral" process of lawmaking? As feminist theory and feminist litigation have sought to clarify, "one's personal experience is inextricably linked with one's legal analysis."<sup>65</sup> To the extent that the legal decision-makers primarily reflect one dominant perspective—that of the white heterosexual male—the perspectives of the "others," the diverse groups making up the majority, are often undermined or undervalued. This point is well developed in recent feminist<sup>66</sup> and critical race scholarship,<sup>67</sup> and is demonstrated in the inadequacy of the law's

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*The Case of Classical Legal Thought in America, 1850-1940*, 3 RES. IN L. & SOC. 3, 8-9 (1980).

63. See *id.* at 3-9.

64. See, e.g., ROBERTO M. UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* 2, 9 (1986). Of course, the existence of rules does not preclude a humanistic response to a problem. Some rules are developed as a result of empathic understanding. One example of such a rule is the child support formula which was designed, at least in part, as a response to the overwhelming evidence of human suffering, primarily on the part of women and children, that results from discretionary child support standards. See Jane C. Murphy, *Eroding the Myth of Discretionary Justice in Family Law: The Child Support Experiment*, 70 N.C. L. REV. 209, 226-30 (1991).

65. *Lesbians, Gays and Feminists at the Bar: Translating Personal Experience into Effective Legal Argument—A Symposium*, 10 WOMEN'S RTS. L. REP. 107, 107 (1988).

66. See, e.g., Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990) (analyzing ways in which women have been ignored in developing legal rules); Diane Polan, *Toward a Theory of Law and Patriarchy*, in *THE POLITICS OF LAW* 299 (David Kairys ed., 1982) (arguing that law is essentially a male instrument and that male-normed experience dominates decisionmaking); Martha Minow, *The Supreme Court, 1986 Term—Foreword: Justice Engendered*, 101 HARV. L. REV. 10 (1987) (concluding that laws are inadequate to respond to problems of women and other groups because their perspectives were not considered in the lawmaking process).

67. See, e.g., Kimberlé W. Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1, 3 (1989) (referring to the "standard mode" of legal reasoning's "presumption of perspectivelessness" where "what is understood as objective or neutral is often the embodiment of a white middle-class world view"); Mari J. Matsuda, *Pragmatism Modified and the False Consciousness Problem*, 63 S. CAL. L. REV. 1763, 1763 n.3 (1990) (defining critical race theory as "the work of progressive legal scholars of color who are attempting to develop a jurisprudence that accounts for the role of racism in Ameri-

response to race and gender discrimination.<sup>68</sup>

What role can the narrative play in the creation and implementation of statutes, regulations, and judicial decisions that increases the potential for lasting change? Does further reliance on the narrative offer any promise of narrowing the gap between formal rights and real equality?

In discussing law reform efforts to achieve racial equality, some argue that the successes achieved so far exist only because of a conscious insistence that legal decision-makers focus on the human costs of racism. The arguments of Thurgood Marshall in *Brown v. Board of Education*<sup>69</sup> and its companion cases have been heralded as examples of the way in which narrative can be used to highlight the human dimension of the struggle to persuade for change.<sup>70</sup> Rather than relying on conventional abstract legal argumentation, Marshall forced the Supreme Court to consider the experience of segregation and the human pain it caused.<sup>71</sup> And even while despairing about the com-

can law and that works toward the elimination of racism as part of a larger goal of eliminating all forms of oppression").

68. Another striking example of the persistent denial or devaluation of diverse human experience in legal decisionmaking is the courts' and legislatures' responses to differences in sexual orientation. Lynne Henderson describes the "phenomena of prejudice, stereotyping, blind categorization, and denial of the humanity of a group of people" that was presented by the Supreme Court's majority opinions in *Bowers v. Hardwick*, 478 U.S. 186 (1986). Henderson, *supra* note 15, at 1638-41. The case involved a challenge to the Georgia sodomy statute after Michael Hardwick was arrested for committing a felony when an officer observed him engaging in oral sex with another man in his own bedroom. Henderson notes the complete absence of any discussion of Hardwick as a person in the various court decisions, arguments, and briefs, including the arguments and briefs of Hardwick's own attorney. As a result, he "became another disembodied person onto whom fears, prejudices, and false beliefs could be projected." *Id.* at 1639. The failure in *Bowers* to eliminate the oppressiveness of the Georgia statute for homosexuals might have been avoided, Henderson concludes, had the Court been offered a narrative that emphasized the human dimension of a law that permits the state to invade a person's home and monitor his or her sexual practices for potential criminal prosecution.

69. 347 U.S. 483 (1954).

70. See RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1976); Henderson, *supra* note 15, at 1593-1609; Martha Minow, *Breaking the Law: Lawyers and Clients in Struggles for Social Change*, 52 U. PITT. L. REV. 723, 728 (1991).

71. Marshall's ability to persuade others through the use of narratives apparently continued unabated during his years on the Court. See Sandra D. O'Connor, *Thurgood Marshall: The Influence of a Raconteur*, 44 STAN. L. REV. 1217 (1992) (analyzing the impact Marshall had on her during their shared tenure on the bench). Noting the value of an account Marshall gave of racial prejudice in a death penalty case, O'Connor wrote that "his story made clear what legal briefs often obscure: the impact of legal rules on human lives." *Id.* at 1218; see also Anthony M. Kennedy, *The Voice of Thurgood Marshall*, 44 STAN. L. REV. 1221



mitment to racial equality in this country, the works of Derrick Bell and other critical race scholars demonstrate the potential of narratives to expose the failure of current civil rights policy.<sup>72</sup> Bell's chronicles, retelling past and present civil rights struggles, force the reader to rethink events and, through that rethinking, to recognize the deep gap that exists between the expressed goals of failed policies and the lives of outsiders like Bell's fictional alter ego, Geneva Crenshaw.<sup>73</sup> Richard Delgado argues persuasively that stories of outgroups can attack complacency and, as part of a civil rights strategy, provide the "promise [of] at least the possibility of success."<sup>74</sup>

In the area of women's rights, the development of the law surrounding the regulation of maternal conduct during pregnancy provides a striking example of both the problem of defining legal issues without regard for women's experiences and the potential of the narrative to inform the lawmaking process. The failure to give predominate consideration to women's experience in pregnancy forms a consistent pattern in legislation and cases dealing with the legal regulation of reproduction. The decisions in major Supreme Court cases on abortion over the last decade focus over and over again on the fetus or the physician rather than the experience of the woman before the Court or the women who will be affected by such decisions.<sup>75</sup>

The absence of language reflecting women's actual experiences in pregnancy, birth, and abortion is also notable in decisions involving new reproductive technologies. The framing of the legal issues surrounding the regulation of surrogacy contracts, for example, has been marked by language which denies the biological realities of

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(1992).

72. See *supra* notes 45-46 and accompanying text.

73. In the chronicles, Geneva Crenshaw moves from pessimism and cynicism, to a belief that at least some cracks in the foundation of racism in this country may be evident. See BELL, *FACES AT THE BOTTOM*, *supra* note 12; BELL, *WE ARE NOT SAVED*, *supra* note 45.

74. Delgado, *supra* note 1, at 2437-38.

75. See, e.g., *Maher v. Roe*, 432 U.S. 464 (1977); *Beal v. Doe*, 432 U.S. 438 (1977); *Roe v. Wade*, 410 U.S. 113 (1973). While acknowledging that *Roe*'s establishment of a right to abortion represented a victory for American women, Lynne Henderson argues that its consistent and continuing erosion since 1973 occurred, in part, because the "narrative of 'unwanted' pregnancy and its effect on women was underdeveloped when *Roe* was decided." Henderson, *supra* note 15, at 1620. Henderson also attributes much of the "rather peculiar flight from the reality of women in the abortion cases" to the fact that women in these decisions "were faceless, and indeed nameless—disembodied accumulations of medical and social data." *Id.* at 1620, 1629; see also Lucinda Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 NOTRE DAME L. REV. 886, 900-01 (1989).

pregnancy. As many commentators have noted, the term "surrogate" ignores the connections between the biological mother and her child and limits her to the role of a substitute who enters into an agreement to bear a child for another.<sup>76</sup> This polarization of the mother's and fetus's rights is reflected in decisions and statutes regulating surrogacy.<sup>77</sup>

Court decisions ordering women to undergo forced caesarean sections also provide examples of how the law is distorted as a result of the denial of women's reproductive experiences. Describing a case in which a hospital was permitted to perform a caesarean section on a terminally ill mother without her consent, Marie Ashe stated:

Certainly, the medicalization of our "reproductive" processes has significantly distanced most of us—including legislators and judges—from the immediacy of the female bodily experiences of pregnancy, birth, and abortion. That distancing has obscured the horror and fear that—ethnologists theorize—arises universally in the face of female violence and that seeks to control and regulate women's "mortal decisions" for the reason that such decisions remind us of our frailties: our dependence upon the flesh and minds of our mothers; the finitude of our bodily lives; the constant imminence of a death that may swallow us up. Is it possible to speak of experiences of abortion and other "mortal decisions" in a different discourse, outside the language of law and medicine?<sup>78</sup>

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76. See, e.g., MARTHA FIELD, *SURROGATE MOTHERHOOD* 4-5 (1988); BARBARA K. ROTHMAN, *RECREATING MOTHERHOOD: IDEOLOGY AND TECHNOLOGY IN A PATRIARCHIAL SOCIETY* 22-25 (1989).

77. *Surrogate Parenting Assocs. v. Commonwealth ex rel. Armstrong*, 704 S.W.2d 209 (Ky. 1986). But see ARIZ. REV. STAT. ANN. § 25-218 (West 1991) (prohibition on entering into, inducing, arranging, procuring, or otherwise assisting in the formation of a surrogate parenting contract; surrogate is designated the legal mother, and the surrogate's husband is designated as the legal father); FLA. STAT. ANN. § 63.212(1)(i) (West 1990) (contracts for the purchase, sale, or transfer of custody of parental rights in exchange for any valuable consideration are void and unenforceable); NEB. REV. STAT. § 25-21,200 (1989) (surrogate parenthood contracts are void and unenforceable; biological father has both rights and obligations if such a child is born); UTAH CODE ANN. § 76-7-204 (Michie 1990) (surrogacy contracts (defined as contract for profit) are prohibited and unenforceable; all persons, agents, and institutions are prohibited from facilitating such contracts; the biological mother is granted all rights and obligations for the child).

78. Ashe, *supra* note 12, at 374. In the case discussed, *In re A.C.*, 533 A.2d 611 (D.C. 1987), *reh'g granted and judgment vacated*, 539 A.2d 203 (D.C. 1988), and *on reh'g*, 573 A.2d 1235 (D.C. 1990), A.C. was diagnosed as having cancer at age 13 and had undergone aggressive treatments, including surgery, throughout her life. At age 27, after her cancer had been in remission for three years, A.C. married and became pregnant. During her 25th week of pregnancy, A.C.'s physicians discovered a carcinoma in her lung, and she was admitted to the George Washington University Hospital. Her prognosis was terminal, and her condition

In contrasting her own experiences with birth, miscarriage and abortion with those of other women, Ashe makes a powerful argument for reproductive freedom. Her moving descriptions of her experiences demonstrate the inadequacies of laws developed from a discussion of maternal versus fetal rights and framed in medical and legal terms. Medical and legal experts should not dominate the discourse on this subject. Concrete human stories add so much more to our understanding of the issues than abstract legal principles. The complex, varied stories of women provide no easy answers. In the area of reproductive choices, however, these stories illustrate with more clarity than all the Supreme Court decisions on the subject, that no regulation is probably the best solution in most instances when women are facing "mortal decisions" involving their reproductive processes. As Marie Ashe concludes:

The self-accounts of mothers and of all women—pregnant, birthing, aborting, suffering violations or growing in power—constitute utterances closer to the reality of women's experiences than does any formulation of law or of medicine. While our generalizations and extrapolations from those experiences may be in conflict, when we attend to one another we discover truths that, rising out of our natural and acculturated bodies, do not conflict. How to work those yarns into the fabric of a law that calls itself "humanist"? . . . I want a law that will let us be—women. That, recognizing the violence inherent in every regulation of female "reproduction," defines an area of non-regulation, within which we will make, each of us, our own "mortal decisions."<sup>79</sup>

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rapidly deteriorated. She was under heavy sedation when the hospital sought a declaratory order as to whether it should perform a caesarean section in an attempt to save the life of the fetus. The trial court entered an order permitting the hospital to perform the operation without obtaining A.C.'s consent, and a motion to stay that order was denied in an emergency appeal. The caesarean was performed immediately thereafter. The child died a little more than two hours after the operation, and A.C. died two days later. See *In re A.C.*, 573 A.2d at 1238-41.

79. Ashe, *supra* note 12, at 382-83; see also Finley, *supra* note 75, at 900 (arguing that the conflicting rights in the law's approach to issues of women's reproductive freedom "utterly fails to capture the meaning of the experience of pregnancy to women").

### III. THE ROLE OF THE NARRATIVE IN DOMESTIC VIOLENCE LAW REFORM

Feminist narrative scholarship has focused on a variety of issues in which traditional legal discourse—with its dominant male perspective—has proven inadequate. In the areas of workplace equity<sup>80</sup> and reproductive freedom,<sup>81</sup> narrative scholarship has been particularly effective in making abstract claims of the oppressiveness of women's lives more tangible. Because it has historically been linked to silence and inaction from the legal system, domestic violence is another area in which narrative can play a powerful role in destroying stereotypes and prompting legal change.

#### A. *The Problem and the Resistance to Change*

The staggering dimensions of the problem of domestic violence have been well-documented.<sup>82</sup> Women and children are overwhelmingly the victims.<sup>83</sup> They come from all racial, ethnic, religious, and socio-economic groups, from all age levels and educational backgrounds.<sup>84</sup> Battering by a spouse or intimate partner is the single largest cause of injury to women in the United States.<sup>85</sup> Each year over one million women seek medical treatment for injuries inflicted by their husbands, ex-husbands, or boyfriends.<sup>86</sup>

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80. See Rhode, *supra* note 8, at 1768-70 (discussing EEOC v. Sears, Roebuck & Co., 628 F. Supp. 1264 (N.D. Ill. 1986)); Patricia Williams, *The Obliging Shell: An Informal Essay on Formal Equal Opportunity*, 87 MICH. L. REV. 2128 (1989).

81. See, e.g., Ashe, *supra* note 12.

82. This Article begins by describing the problem in statistical terms. The limitations of using numbers to illuminate or describe this problem have been noted by Martha Minow, *supra* note 11, at 1684-87 (analyzing the "troubled relation" between the general—statistical evidence of domestic violence—and the particular—individual victims' stories—in the language of domestic violence policy analysis). These numbers provide a starting point, however, from which the uninitiated can gain an understanding of the breadth of the problem. This Article argues that such information has to be combined with narrative accounts, explaining the realities of the problem in a variety of contexts recognizable to a wide audience, including legal decision-makers.

83. See BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, REPORT TO THE NATION ON CRIME AND JUSTICE: THE DATA 21 (1983) (stating that 95% of domestic violence victims are women).

84. See LENORE E. WALKER, *THE BATTERED WOMAN* 18-19 (1979).

85. WOMEN'S ACTION COMMITTEE, *WAC STATS: THE FACTS ABOUT WOMEN* 55 (1993).

86. Between 1978 and 1982 an annual average of 2.1 million women were victims of domestic violence; this may be an underestimate of the problem since only 52% of incidents of abuse are actually reported to the police. See PATRICK A. LANGAN & CHRISTOPHER A. INNES, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: PREVENTING

Battering within a family very often extends to the children. In homes where domestic violence occurs, children are abused at a rate 1500% higher than the national average.<sup>87</sup>

Behind these grim statistics and expert accounts are stories of women and children who have felt the pain, degradation, terror, and despair of domestic violence. A few well-publicized accounts of domestic violence do reach the public, and seem to increase public awareness of the problem. These accounts come to us through best-selling autobiographies, like the story of a white, middle-class former teacher and wife of a prominent lawyer in the Reagan Administration, who experienced a marriage of seventeen years which included regular beatings with injuries ranging from a broken ear drum to severe permanent neck and back injuries.<sup>88</sup>

They reach us through television and magazine accounts, like the story of a twenty-three-year-old mother of two from Connecticut whose husband beat her repeatedly, culminating in a vicious attack that left her permanently paralyzed on one side.<sup>89</sup> Some accounts dominate newspapers and tabloids for extended periods of times, like the shocking story of isolation, substance abuse, beating, and neglect that killed a six-year-old child and left her battered adoptive mother in a horrifying limbo between victimization and criminal responsibility.<sup>90</sup> Some accounts reach the highest tribunals of justice, like the story of a little boy who suffered severe physical abuse at the hands

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DOMESTIC VIOLENCE AGAINST WOMEN 1, 3 (1986).

87. One Colorado study reported that 53% of husbands who battered their wives also abused their children. WALKER, *supra* note 84; *see also* Liane V. Davis and Bonnie E. Carlson, *Observations of Spouse Abuse: What Happens to the Children*, 2 J. INTERPERSONAL VIOLENCE 278 (1987). A study of children in shelters for battered women found higher rates of child abuse in families where there is wife abuse than in other families. SELECT COMM. ON CHILDREN, YOUTH, & FAMILIES, 100TH CONG., 1ST SESS., WOMEN, VIOLENCE, & THE LAW: A FACT SHEET (1987) [hereinafter WOMEN, VIOLENCE, & THE LAW: A FACT SHEET].

88. CHARLOTTE FEDDERS & LAURA ELLIOTT, *SHATTERED DREAMS* (1987).

89. *See* Patricia Brennan, "A Cry For Help": *The Victim's Own Story*, WASH. POST, Oct. 1, 1989, at Y8; *Millions Awarded Beaten Wife Who Sued Connecticut Police*, WASH. POST, June 26, 1985, at A7; Jeannie Park et al., *Thousands of Women Fearing for Their Lives, Hear a Scary Echo in Tracy Thurman's Cry for Help*, PEOPLE WKLY., Oct. 9, 1989, at 112.

90. *See* Fred Bruning, *An Unnerving Tale of Domestic Abuse*, MACLEAN'S, Feb. 27, 1989, at 9; Ken Gross, *Denying His Guilt, Joel Steinberg Tells How He Cared for the Child He Killed and the Lover He Beat*, PEOPLE WKLY., Mar. 13, 1989, at 71; Richard Lacoyo, *A Question of Responsibility: Joel Steinberg is Guilty, but are Others Also at Fault?*, TIME, Feb. 13, 1989 at 68; Michele Launder, *A Child's Death, A Mother's Torment*, PEOPLE WKLY., Aug. 27, 1990, at 66; *Outrage: The Death of an Innocent Exposes a Grim Reality: Child Abuse*, LIFE, Jan. 1988, at 121.

of his mother, herself a victim of abuse—when she failed to produce him for the authorities, the legality of her indefinite incarceration for contempt and the details of his abuse were considered by the United States Supreme Court.<sup>91</sup>

While these stories do focus public attention on the problem,<sup>92</sup> they do little to communicate the continuum of violence in the home to which large numbers of ordinary women are exposed every day, with no dramatically publicized ending for either victim or batterer.<sup>93</sup> Those of us who provide legal services to victims of domestic violence<sup>94</sup> have some perspective on the actual nature and incidence of domestic violence. We know that these isolated stories do not begin to describe the pervasiveness and scope of this national problem.

The following account, while perhaps less dramatic than the preceding stories, better represents the actual experience of many victims. The story unfolds as a mother of five seeks advice. She and her five children left their home the night before to escape a beating that began with a shove and ended with rape. She will be allowed a limited amount of time in a shelter. As she and her children seek legal protection, they are faced with problems ranging from the immediate challenge of finding alternative housing and money for basic necessities, to the long-term problem of sorting through the myriad of civil and criminal legal proceedings that will ensure their safety and settle custody and visitation arrangements that will not subject them to further abuse. The effects of violence in this family spill out to involve other family members, the classrooms to which the children will go after a night of chaos and fighting or hiding in a shelter,<sup>95</sup>

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91. *Baltimore Dep't of Social Servs. v. Bouknight*, 493 U.S. 549 (1990).

92. Interestingly, most of the stories that receive intense media attention seem to involve white victims while the public continues to perceive domestic violence as a problem of poor minorities. See, e.g., Alison Bass, *Doctors Falter on Spotting Abuse*, BOSTON GLOBE, June 22, 1992, at 15.

93. The fact that most well-publicized stories involve cases of extreme physical cruelty may limit the possibilities for empathic understanding of the problem. Such cases—with their horrifying examples of violent behavior that has accelerated to the point of being life threatening—allow viewers and listeners to distance themselves from both the batterer and the victim. See Mahoney, *supra* note 12, at 15-17; see also LINDA GORDON, *HEROES OF THEIR OWN LIVES: THE POLITICS AND HISTORY OF FAMILY VIOLENCE* 1-6 (1988).

94. The author is the Director of the Family Law Clinic at the University of Baltimore School of Law, in which approximately 28 students each year represent from 60 to 80 clients in domestic cases. At least half of these cases involve patterns of family violence.

95. Teachers whose students live in homes where violence and chaos are the norm must deal with the effects on children of long-term exposure to violence (developmental delays, depressions, disruptive and violent behavior at school), as well as the legal issues and safety

the places of employment to which both the victim and the batterer will return—unless an injury or court appearance causes an absence,<sup>96</sup> and the hospitals that provide treatment.<sup>97</sup>

Can the law provide any help?<sup>98</sup> Until very recently, the answer was probably not. Under the guise of protecting citizens from the state interference in the “private” family sphere, common law in this country permitted a husband to beat his wife, as long as the beating was not “excessive.”<sup>99</sup> In the 1870s, the women’s movement and temperance activists called for legislation to eradicate wife abuse,<sup>100</sup> and by the last quarter of the nineteenth century, a husband no longer had a “right” to beat his wife. Notwithstanding these legal changes, wife abuse continued to be justified or ignored by the police, courts, and general public.<sup>101</sup>

By 1970, a coalition of feminist shelter workers, academics, and lawyers brought wife battering to public attention once again.<sup>102</sup>

concerns of having children from violent homes in the classroom. See BOULDER COUNTY SAFEHOUSE, WE CAN’T PLAY AT MY HOUSE: CHILDREN AND FAMILY VIOLENCE, HANDBOOK FOR TEACHERS 6-8 (1990).

96. On a national level, domestic violence costs employers from three to five billion dollars annually due to worker absenteeism. In addition, employers must deal with disruption and trauma that result from homicides and injuries that occur on the job. Homicide is the leading cause of death on the job for women. See NOW LEGAL DEFENSE AND EDUCATION FUND, THE VIOLENCE AGAINST WOMEN ACT OF 1991 (S. 15/H.R. 1502): FACTS ON THE CIVIL RIGHTS PROVISION 3 (1991).

97. Thirty percent of all women seeking treatment in hospital emergency rooms are victims of battering by a husband or boyfriend. Medical costs related to domestic abuse are estimated at \$100 million a year. *Id.*

98. Martha Minow puts the question another way: “Can words stem violence? . . . Are there forms of expression that solicit humane responses and overcome restraints that hold people back from halting family violence? Finding languages to persuade judges, to empower victims, and to mobilize onlookers presents linked yet distinct difficulties.” Minow, *supra* note 11, at 1665-66. This Article asks a somewhat narrower question: can particular words—the stories of victims—help in developing an effective legal response to domestic violence?

99. See, e.g., *Bradley v. State*, 2 Miss. (1 Walker) 156, 157-58 (1824) (Supreme Court of Mississippi affirming ancient English common law by granting husband the right to chastise his wife as long as punishment was “moderate” according to generally accepted limits, such as beating with a “whip or rattan, . . . no bigger than [a] thumb”).

100. See Ellen C. Dubois & Linda Gordon, *Seeking Ecstasy on the Battlefield: Danger and Pleasure in Nineteenth-Century Feminist Sexual Thought*, in PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY 31, 42 (Carole S. Vance ed., 1984); Elizabeth Pleck, *Wife Beating in Nineteenth-Century America*, in VICTIMOLOGY 60, 60-61 (1979).

101. See ELIZABETH PLECK, DOMESTIC TYRANNY: THE MAKING OF AMERICAN SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT (1987).

102. See SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT (1982); Kathleen J. Tierney, *The Battered Women’s Movement and the Creation of Wife Beating Problem*, 29 SOC. PROBS. 207 (1982).



Much has been written about the role of the women's movement in defining the problem of domestic violence and advocating for the support and protection of its victims.<sup>103</sup> Feminist activists during the last two decades have created a movement that has both provided help and support to battered women, and worked to challenge and change political institutions that perpetuate domestic violence. This advocacy has taken the form of grass-roots efforts to develop an underground network of shelters and safe houses, and specialized units for dealing with victims of domestic violence in social service agencies, police departments, and prosecuting offices.<sup>104</sup>

Feminist scholars have illuminated the dynamics of power and gender, and have developed legal theories which reflect and value women's experiences. Feminist theory helped other scholars and practitioners to recognize that women's experience of violence in their homes and in their relationships is critical to an understanding of women's oppression. Building on the work of feminist legal theory, new laws and policies aimed at protecting victims of domestic violence have been adopted across the country over the last ten to fifteen years. The legal approaches taken to protect battered women and control family violence include: (1) creating new criminal sanctions to fit the patterns of domestic violence, (2) encouraging the enforcement of existing criminal sanctions in domestic situations, and (3) expanding civil remedies for protection from domestic violence, particularly the development of the civil protection order.

On the criminal side, studies revealed that the police were reluctant to respond to battered women's calls<sup>105</sup> and that battered women's experiences were sometimes trivialized as "non-crimes" by prosecutors and judges.<sup>106</sup> Such actions (or non-actions) were the

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103. See GORDON, *supra* note 93.

104. See, e.g., Del Martin, *The Historical Roots of Domestic Violence*, in DOMESTIC VIOLENCE: THE CHANGING CRIMINAL JUSTICE RESPONSE 16 (Eve S. Buzawa & Carl G. Buzawa eds., 1992).

105. See Sarah F. Berk & Donileen R. Loseke, "Handling" Family Violence: Situational Determinants of Police Arrest in Domestic Disturbances, 15 LAW & SOC'Y REV. 317, 319 (1981); Lee H. Bowker, *Police Services to Battered Women: Bad or Not So Bad?*, 9 CRIM. JUST. & BEHAV. 476, 477-78 (1982); see also Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problems, Forging Solutions*, 60 WASH. L. REV. 267, 299 (1985).

106. See Elizabeth A. Stanko, *Would You Believe this Woman? Prosecutorial Screening for "Credible" Witnesses and a Problem of Justice*, in JUDGE, LAWYER, VICTIM, THIEF: WOMEN, GENDER ROLES, AND CRIMINAL JUSTICE 63 (Nicole H. Rafter & Elizabeth A. Stanko eds., 1982); THE VERA INSTITUTE OF JUSTICE, *FELONY ARRESTS: THEIR PROSECUTION AND DISPOSITION IN NEW YORK CITY'S COURTS* 28 (1977).

focus of suits filed against prosecutors and police departments.<sup>107</sup> Partly because of these suits, and partly as a result of the release of important findings from the Minneapolis Domestic Violence Experiment,<sup>108</sup> a dramatic shift occurred in urban police department policies for responding to violence among family members. In 1984, ten percent of the departments surveyed said arrest was their preferred policy, but by 1986, this figure had risen to forty-three percent of the police departments.<sup>109</sup> Many of the changes were mandated by legislation, including statutes requiring police training in domestic violence,<sup>110</sup> providing for mandatory and/or warrantless arrests of batterers,<sup>111</sup> and providing for mandatory arrests for restraining order violations.<sup>112</sup> States also enacted legislation targeted at the criminal courts' handling of family violence.<sup>113</sup> This legislation included laws making marital rape a crime<sup>114</sup> and permitting the admission of battered spouse syndrome testimony in the defense of cases where women have been charged with killing or injuring their abuser.<sup>115</sup>

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107. See, e.g., *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D. Conn. 1984) (where a woman who had been viciously attacked by her estranged husband sued police on equal protection grounds; court held that both acts and omissions by police are subject to the equal protection clause).

108. See Lawrence W. Sherman & Ellen G. Cohn, *The Impact of Research on Legal Policy: The Minneapolis Domestic Violence Experiment*, 23 LAW & SOC. REV. 117, 125 (1989).

109. See Lawrence W. Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, 49 AM. SOC. REV. 261 (1984).

110. By the early 1980s, seven states mandated domestic violence training for police: Alaska, Illinois, Maine, Nebraska, Ohio, Washington, and Wisconsin; two states, Nevada and Virginia, had legislation encouraging such training. JOSEPH J. COSTA, ABUSE OF WOMEN: LEGISLATION, REPORTING, AND PREVENTION 54-55 (1983).

111. As of September 1988, there were only two states where police were not empowered to make warrantless probable cause misdemeanor arrests in family violence cases, and ten states had passed mandatory arrest legislation for family violence cases. VICTIM SERVICES AGENCY, THE LAW ENFORCEMENT RESPONSE TO FAMILY VIOLENCE: A STATE BY STATE GUIDE TO FAMILY VIOLENCE LEGISLATION 2-4 (1988).

112. As of September 1988, eight states mandated arrest for restraining order violations: Iowa, Maine, Minnesota, Nevada, North Carolina, Oregon, Washington, and Wisconsin. *Id.* at 7-8.

113. See Daisy Quarm & Martin D. Schwartz, *Domestic Violence in Criminal Court: An Examination of New Legislation in Ohio*, 4 WOMEN & POL. 29, 29-30 (1985); Daisy Quarm & Martin D. Schwartz, *Legal Reform and the Criminal Court: The Case of Domestic Violence*, 10 N. KY. L. REV. 199, 200-02 (1983).

114. See WOMEN, VIOLENCE, & THE LAW: A FACT SHEET, *supra* note 87, at 2 (stating that approximately 14 states make marital rape a crime, while nearly 36 states do not protect women from marital rape).

115. In 1991, 16 states admitted testimony of abuse as well as expert testimony on the battered spouse syndrome as a result of case law, and only two states provided for admission

On the civil side, new laws include statutes permitting or requiring that spousal abuse be considered in custody and/or visitation decisions,<sup>116</sup> and civil protection or restraining order statutes.<sup>117</sup> While criminal prosecution may ultimately be the most effective option for preventing future abuse, it is not always an effective alternative to the civil protection order. First, in most criminal cases, it will take many months before the case comes to trial or is otherwise resolved, leaving the victim unprotected during the pendency of the action. In addition, some violence in domestic relationships does not rise to the level of criminal activity for which serious prosecution will result. Because the standard of proof is higher in a criminal proceeding than in a civil proceeding, juries may not convict batterers unless there has been a significant level of violence.

Do these laws make a difference? The answer is complex. The studies are still being done. As noted, statutes and policies designed to protect victims of domestic violence were not enacted until the mid-1970s, and many have been enacted only within the last few years.<sup>118</sup>

With respect to statutes aimed at criminal prosecution of batterers, the studies generally indicate that treating domestic violence as a crime is the best deterrent available.<sup>119</sup> Thus, studies have indicated those statutes aimed at enhancing criminal prosecution—warrantless arrest, marital rape and mandatory arrest statutes—protect victims, and, to a lesser extent, deter family vio-

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of such testimony by statute. Judith Wolfer et al., *Battered Spouse Syndrome: Legal Reform*, 24 MD. B.J. 29, 29-30 (1991).

116. Ten states and the District of Columbia require that spouse abuse be considered in custody decisions: Alaska, Arizona, California, Colorado, Florida, Illinois, Kentucky, Iowa, Texas, and Washington. WOMEN, VIOLENCE, & THE LAW: A FACT SHEET, *supra* note 87, at 2.

117. All 50 states and the District of Columbia now have some form of protection order statute. PETER FINN & SARAH COLSON, U.S. DEP'T OF JUSTICE, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICES, AND ENFORCEMENT (1990) (since its publication, Delaware and Arkansas have enacted civil protection order statutes). Statutes typically provide for eviction of the abuser from the home, temporary child custody, and a prohibition against continued abuse. Some state statutes provide for monetary relief for the duration of the order. The duration of the order varies with each state and ranges from 60 days to 3 years.

118. Before 1976, only two jurisdictions, New York and the District of Columbia, had enacted restraining order legislation specifically concerning battered women. See Janice L. Grau, *Restraining Order Legislation for Battered Women*, 16 U.S.F. L. REV. 703, 704 n.5 (1982); Janice L. Grau et al., *Restraining Orders for Battered Women: Issues of Access and Efficacy*, 4 WOMEN & POL. 13, 14 (1984).

119. See Sherman & Cohn, *supra* note 108, at 118.

lence.<sup>120</sup>

Civil protection orders can also be effective. There is some evidence that this kind of civil remedy can be effective as a short-term measure to protect the victim if the statute is properly drafted.<sup>121</sup> Comprehensive statutes can provide victims with a quick, easily accessible remedy to plan for alternative housing, financial relief, and obtain counseling while pursuing more long term solutions to the problem such as divorce or relocation.

Men's violence toward women cannot, obviously, be eradicated by legal reform—the cultural and historical roots for such behavior are too deep-seated.<sup>122</sup> But the evidence is clear that the legal approaches described can be effective in offering some protection for battered women and controlling family violence. The question, then, becomes what are effective strategies in accomplishing these kinds of legal reform?

Scholars like Martha Mahoney,<sup>123</sup> Christine Littleton,<sup>124</sup> and Martha Minow<sup>125</sup> have argued for the use of narratives to transform the way the legal system regards the battering relationship. Martha Mahoney has written about her own experience with domestic violence and that of others to offer alternatives to the dominant cultural and legal characterization of battered women. She argues that the prevailing image of battered women is drawn primarily from a preoccupation by both the media and legal decision-makers with the battered women who kill.<sup>126</sup> She acknowledges that the psychological theory underlying "battered women's syndrome" accurately describes experiences common to many battered women. It is also, in a behavioral sense, a very important tool for explaining those experiences to the court in a context in which the stakes are very high. Mahoney's

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120. Sherman & Berk, *supra* note 109, at 270.

121. See, e.g., WALKER, *supra* note 84, at 210-12; Molly Chaudhuri & Kathleen Daly, *Do Restraining Orders Help? Battered Women's Experience with Male Violence and Legal Process*, in DOMESTIC VIOLENCE 227 (Eve S. Buzawa & Carl G. Buzawa eds., 1992); Grau et al., *supra* note 118, at 19-20 (this study, however, concluded that protection orders are most effective in curtailing abuse when the level of violence is not severe); Lisa G. Lerman, *A Model State Act: Remedies for Domestic Abuse*, 21 HARV. J. ON LEGIS. 61, 70 n.35 (1984).

122. See, e.g., CATHERINE MACKINNON, *FEMINISM UNMODIFIED* (1987); CAROL SMART, *FEMINISM AND THE POWER OF THE LAW* (1989).

123. See Mahoney, *supra* note 12.

124. See Christine A. Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23.

125. See Minow, *supra* note 11.

126. See Mahoney, *supra* note 12, at 34-43.

concern, however, is that this preoccupation with battered women who kill their abusers focuses on the battered woman's psychological makeup, depicting "an image of utterly dysfunctional women."<sup>127</sup> As such, it reinforces stereotypes and focuses attention on the responses of the relatively few women who kill their batterers, rather than a much more universal dynamic in domestic violence—power and control marked by violence and coercion.

This distortion of the image of victims of domestic violence has had negative effects on the efforts to make the law more responsive to the needs of battered women. Mahoney suggests a particular strategy to change both the legal and cultural definitions of domestic violence—redefining as "separation assault" the "particular assault on a woman's body and volition that seeks to block her from leaving, retaliate for her departure, or forcibly end the separation."<sup>128</sup> She illustrates the "common thread" created by this phenomena called "separation assault" through seven stories, including her own, of violence in the ordinary lives of women.

In addition to identifying legal change strategies to redefine separation, these stories do much more. Traditional legal discourse and social science literature tell us that domestic violence is at the same time both widespread and aberrant. Battering is described as "a unique and almost mysterious area of human response and behavior" and "beyond the ken of the average lay[person]."<sup>129</sup> The stories Martha Mahoney has collected help to eliminate that contradiction. Domestic violence *is* widespread, and it needs to be viewed in the context of the continuum of violence and power exerted over women in their daily lives. The stories in Mahoney's piece allow us to make connections with these women, and to understand our own experience in relation to their experiences. Even if we have not been victims of physical abuse at the hands of our intimate partners, we recognize ourselves in the stories of these women. These are women with varied backgrounds, women whose experiences defy the stereotype of the

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127. See Mahoney, *supra* note 12, at 39; see also Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN'S RTS. L. REP. 195 (1986); Lenore E. Walker, *A Response to Elizabeth M. Schneider's Describing and Changing*, 9 WOMEN'S RTS. L. REP. 223 (1986).

128. Mahoney, *supra* note 12, at 6.

129. *Id.* at 11 (citing *Sinns v. State*, 283 S.E.2d 479, 481 (Ga. 1981); *Ibn-Tamas v. United States*, 407 A.2d 626, 634 (D.C. 1979)). For social science definitions of battering that Mahoney describes as "incident focused," see ANGELA BROWNE, *WHEN BATTERED WOMEN KILL* (1987); MILDRED D. PAGEDLOW, *WOMAN-BATTERING: VICTIMS AND THEIR EXPERIENCES* 29-34 (1981); WALKER, *supra* note 84, at xv.

passive, grotesquely beaten victim. Their stories, particularly the descriptions of their commitment to their partners and their profound attachment to their children, offer some insight into the persistent question: why don't they leave?

Perhaps more importantly, the stories Mahoney has collected speak more generally to the vulnerability of *all* women to violence and oppression. As such, these stories and stories like them are an essential element of a social change strategy aimed at making legal decision-makers recognize both the existence and closeness of the problem of domestic violence. This recognition is the key to motivating decision-makers to develop solutions that better reflect the dynamics of power and control in domestic violence, and to encourage decision-makers to make a commitment to the meaningful implementation of the laws.

### B. A Case Study: Applying the Lessons of Narrative Scholarship

In many ways, Maryland provides an ideal setting in which to test strategies for social change. Its demographics reveal a typical but diverse citizenry.<sup>130</sup> Although Maryland's policies and laws may be described as progressive on social issues in some areas,<sup>131</sup> it is a state with deeply-rooted religious traditions that have contributed to a very conservative approach to state regulation in the domestic sphere.<sup>132</sup>

Although marriage is considered a civil contract between the parties and not a sacrament, the law regards it with a sanctity that is not attributed to any other kind of contract.<sup>133</sup> Maryland's highest court reaffirmed this in 1943, "on the theory that the public has a

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130. The State of Maryland is comprised of 25% urban, 57% suburban, and 18% rural areas. MARYLAND DEP'T OF ECON. & EMP. DEV., 1990-91 MARYLAND STATISTICAL ABSTRACT 26-31. Its citizens are 63.7% registered Democrats and 28.1% registered Republicans. *Id.* at 266. Its population is 48.5% men and 51.5% women, and is 71% white, 24.9% African-American, and 4.1% other races. U.S. DEP'T OF COMMERCE ECONOMIC AND STATISTICS ADMIN., U.S. BUREAU OF THE CENSUS, PUB. NO. 1990 CPH-1-22, 1990 CENSUS OF POPULATION AND HOUSING-SUMMARY POPULATION AND HOUSING STATISTICS: MARYLAND 32 (1990).

131. See generally Nancy S. Forster & Michael R. Braudes, *The Common Law of Maryland: An Important and Independent Source of Criminal Law and Procedure*, 3 MD. J. CONTEMP. LEGAL ISSUES 199 (1992) (exploring the ways in which Maryland common law confers greater rights upon criminal defendants than those provided by federal law).

132. See generally Kenneth Lasson, *Free Exercise in the Free State: Maryland's Role in the Development of First Amendment Jurisprudence*, 18 U. BALT. L. REV. 81 (1988) (providing a brief overview of the religious history of Maryland).

133. See *Fornhill v. Murray*, 1 Bland 479 (Md. 1828).

direct interest in [marriage] as an institution of transcendent importance to social welfare."<sup>134</sup> Indeed, until 1963, a marriage was not legal unless there was a religious ceremony.<sup>135</sup> Moreover, Maryland's current two-year separation requirement for a no-fault divorce is among the longest in the nation.<sup>136</sup>

Maryland is typical in the pervasiveness and extent of the domestic violence that occurs within its borders. An estimated 150,000 incidents of domestic violence occur in the state each year.<sup>137</sup> From July 1991 to July 1992, almost sixty women and children were killed by abusive partners or males in parental roles.<sup>138</sup> Maryland provided only limited legal protection to victims of domestic violence until recently.<sup>139</sup> Prior to 1980, in order to obtain civil remedies—such as a restraining order or financial relief—for protection from domestic violence, a women had to initiate what is now known as a "limited

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134. *Behr v. Behr*, 30 A.2d 750, 752 (Md. 1943).

135. *See* *Dennison v. Dennison*, 35 Md. 361, 379 (1872) (holding that "no marriage was . . . good and valid[] unless celebrated by some religious rites and ceremony"). The requirement that a religious ceremony be added to a civil contract was changed by statute in 1963, authorizing the performance of marriage ceremonies by designated court clerks. *See* MD. CODE ANN., FAM. LAW §§ 2-406 (conduct of ceremonies), 2-410 (fees).

136. *See* Timothy B. Walker, *Family Law in the Fifty States: An Overview*, 25 FAM. L.Q. 417, 439 (1992).

137. *See* Linell Smith, *New Protection Order Can Keep Abused Spouses "Safe at Home"*, BALT. SUN, May 18, 1992, at 1C. According to Maryland State Police records, in 1990 there were approximately 16,000 reported cases of spousal assault. MARYLAND BATTERED SPOUSE PROGRAM, MARYLAND UNIFORM CRIME REPORT PROGRAM, BATTERED SPOUSE REPORT 83 (1990). This figure, however, grossly underestimates the number of victims. Many domestic assaults are handled on an informal basis, resulting in incomplete or inaccurate reporting; in some cases, domestic assaults are taken directly to the court system and are never reported to a police department. *Id.* at 81. Only 10% to 50% of adult victims ever call the police, and when calls are made, only one jurisdiction out of twenty-four requires written reports. MARYLAND ALLIANCE AGAINST FAMILY VIOLENCE, BROKEN BODIES, BROKEN SPIRITS 2 (1991) [hereinafter BROKEN BODIES]. For example, Baltimore City police received over 60,000 calls for domestic violence in 1993. JANN JACKSON, HOUSE OF RUTH, 1993 BALTIMORE CITY POLICE DATA (1994).

138. Telephone Interview with Jean MacLeod, Coordinator of Community Education, Maryland Network Against Domestic Violence, Mar. 8, 1993.

139. For a brief period during the 19th century, Maryland's laws contained an explicit prohibition against "wife-beating" and prescribed a specific punishment. In 1882, in response to a series of incidents in which women were injured by their husbands, a law was passed which provided that a husband found guilty of punishing his wife with physical force would be "sentenced to be whipped not exceeding forty lashes, or imprisoned for a term not exceeding one year, or both." Act of March 30, 1882, ch. 120, 1882 MD. LAWS 120 (corporal punishment of persons found guilty of "wife-beating"). The law was applied with great fanfare in a few widely publicized cases, and was repealed in 1953. Act of April 11, 1953, ch. 411, 1953 MD. LAWS 744; *see also* George Gipe, *Wife-Beaters of the Past Sometimes Got Beaten Themselves*. BALT. SUN, March 26, 1977 at A6.



divorce."<sup>140</sup> In order to obtain a limited divorce, the victim had to obtain an agreement from her husband or prove in court that her husband committed acts amounting to cruelty, excessively vicious conduct, or desertion.<sup>141</sup> This remedy, unavailable to unmarried intimate partners,<sup>142</sup> involved substantial legal fees and much delay, from the filing of the complaint to the hearing in which the plaintiff and corroborating witness were required to appear and testify.<sup>143</sup> Although many states now permit divorce on the ground of "irreconcilable differences" or "irretrievable breakdown" or without any required separation, Maryland's no fault ground for divorce still requires a two year separation before filing.<sup>144</sup>

On the criminal side, prior to 1984, Maryland limited a victim's remedies to attempting prosecution for traditional crimes, such as assault and/or battery,<sup>145</sup> harassment,<sup>146</sup> theft,<sup>147</sup> false im-

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140. A limited divorce is equivalent to the *divorce a mensa et thoro*, which is literally translated as "a divorce from table and bed," but is more commonly referred to as "a divorce from bed and board." The divorce is limited in that, although the parties are legally separated and are in fact forbidden to live or cohabit together, there is no severance of the marital bonds. BLACK'S LAW DICTIONARY 480 (6th ed. 1990) (defining "limited divorce" as a "judicial separation of husband and wife not dissolving the marriage tie").

141. MD. CODE ANN., FAM. LAW § 7-102 (1992).

142. Unmarried intimate partners are often victims of domestic violence. General studies and empirical data obtained from Maryland district courts confirm the prevalence of domestic violence in non-marital relationships. Of the Maryland district courts surveyed in 1991, approximately 33% of petitions for protection from domestic violence were denied based either on marital status or on the fact that the parties were not living together. ADVISORY COUNCIL ON FAMILY LEGAL NEEDS OF LOW INCOME PERSONS, INCREASING ACCESS TO JUSTICE FOR MARYLAND FAMILIES 20-21 (1992) [hereinafter INCREASING ACCESS TO JUSTICE]. Approximately 72% of both police and hospital emergency reports of domestic violence occur in cases in which the victim is not currently residing with the abuser, either because the parties are divorced or separated, or because the parties have never lived together. Lerman, *supra* note 121, at 74 n.52 (citing E. STARK ET AL., U.S. DEP'T HEALTH & HUM. SERVS., WIFE ABUSE IN THE MEDICAL SETTING (1980)); see also Desiree French, *When Unwed Partners Turn to Violence*, BOSTON GLOBE, Mar. 21, 1989, at 25-26 (stating that most domestic violence calls to the Boston Police Department's Domestic Violence Assistance Unit concerned unmarried people, and that physical assaults may be more severe among these cohabiting couples than among married couples).

143. MD. CODE ANN., FAM. LAW § 7-101(b) (1992) (requiring corroborating witness to obtain divorce); MD. CODE ANN., MD. RULES, Rule S75 (Michie 1993) (requiring testimony to obtain a divorce).

144. Walker, *supra* note 136, at 439-40. In Maryland, a two year period is required where the parties did not separate by mutual consent; where the separation is voluntary the parties must live apart one year before filing. MD. CODE ANN. FAM. LAW § 7-103 (1992).

145. "Assault" is an "unlawful offer or attempt, coupled with an apparent present ability, to commit a violent injury on the person of another." 2 WEST'S MARYLAND LAW ENCYCLOPEDIA 537 (West 1960). "Battery" is a completed assault, consisting of "the unpermitted application of trauma by one person upon any part of the body of another person . . . . The

prisonment,<sup>148</sup> and child abuse.<sup>149</sup> Although widely recognized as a common component of domestic abuse,<sup>150</sup> until 1989 rape was not a crime in Maryland when the victim was married to the abuser.<sup>151</sup> In addition, criminal enforcement of the applicable crimes was inconsistent and often didn't happen—refusal to treat domestic violence as a crime persists throughout the process from arrest to prosecution.<sup>152</sup>

Although enactment of statutes to protect victims of violence began nationwide in the early 1960s through the mid-1970s,<sup>153</sup> Maryland did not begin to enact explicit legal remedies for domestic violence until 1980.

As in many other states, the groundwork for domestic violence law reform in Maryland was laid by grassroots organizations whose primary goal was to provide shelter for victims. In 1975, the Maryland Commission for Women issued a report which identified the problem of domestic violence, and modestly proposed the use of a vacant Catholic convent in Baltimore as a small, temporary shelter for abused women.<sup>154</sup> Despite the worthy intentions of the drafters of the report, the report also included a more ambitious proposal that reflected the stereotypes regarding victims of domestic violence still

mere willful placing of a hand upon or the purposeful touching of the person of another, or something intimately connected with another, is sufficient to commit the battery." RICHARD P. GILBERT ET AL., *MARYLAND TORT HANDBOOK* § 3.1 (2d ed. 1992).

146. See MD. ANN. CODE art. 27, § 121A (1992).

147. "Theft" is "[t]he taking of property without the owner's consent." BLACK'S LAW DICTIONARY 1324 (5th ed. 1979). See MD. ANN. CODE art. 27, § 340-44 (1992).

148. "False imprisonment" is the "unlawful restraint by one person of the physical liberty of another." 11 WEST'S MARYLAND LAW ENCYCLOPEDIA 75 (1961). "False imprisonment is any deprivation of the liberty of a person, without his/her consent, whether by force, threats or otherwise . . . False imprisonment may occur by means other than physical force." GILBERT ET AL., *supra* note 145, at 35; see also *Watkins v. State*, 478 A.2d 326, 336 (Md. Ct. Spec. App. 1984).

149. MD. ANN. CODE art. 27, § 35A (1992).

150. One study found that over 33% of women who appeared at shelters for battered women reported that they had been raped by their husbands. Other studies found that between 10% and 14% of married women have been raped by their husband. The statistics available probably grossly underestimate the actual incidence of marital rape given the fact that many women feel too humiliated to discuss the issue, or know that reporting the rape would be useless since rape committed in marriage does not exist as a matter of legal definition in most states. Testimony of Sharon Grosfeld Before Maryland House Judiciary Committee, Special Hearing on Rape and Sexual Offenses Prosecution (1987).

151. MD. ANN. CODE art. 27 § 464D (1992).

152. See *BROKEN BODIES*, *supra* note 137, at 6-8.

153. See *Grau et al.*, *supra* note 118, at 14.

154. Sharon Dickman, *Some Women Put Up with Abuse*, BALT. SUN, Mar. 29, 1976 at C1.

prevalent in Maryland in 1975. The proposal was to create a much larger shelter in a building used by the city's public hospital, to accommodate not only domestic violence victims, but teenage runaways and women suffering from mental illness as well.<sup>155</sup> Assumptions that were made regarding the common problems of these groups of women tended to reinforce negative stereotypes about victims of domestic violence. Funding for this proposal, however, was never obtained.

Throughout the 1970s, efforts to assist battered women were made primarily by a coalition of women's organizations whose principal goal continued to be establishing a shelter. At that time, the only emergency housing available for women was the Salvation Army for five dollars a night. Those who could not afford the Salvation Army were forced to seek shelter in public parks or bus terminals. The limited goal of a small, safe shelter was realized in 1977 when the House of Ruth was established in a three-story rowhouse in Baltimore. The shelter offered counselling and temporary shelter to approximately twenty-five women and children who were victims of domestic violence.<sup>156</sup> Funding to start and operate the shelter for its first year came entirely from private donations and volunteer staff. Although the Maryland Legislature had passed a bill in 1977 calling for the opening of a model shelter for battered spouses in a heavily populated section of Maryland, no money had been budgeted for the project.<sup>157</sup>

Throughout this period, the primary strategy for achieving legislative and other reforms was to gather statistics in order to demonstrate the existence of the problem to a skeptical public.<sup>158</sup> Female attorneys at Maryland's Legal Aid Bureau began the effort to main-

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155. *Id.* at C1-C2.

156. The House of Ruth, modeled on an organization with the same name in Washington, D.C., takes its name from the biblical story depicting the intense loyalty of Ruth for her mother-in-law Naomi. See Andrea Pawlyna, *A Refuge for Beaten Women*, BALT. SUN, Jan. 1, 1978, "Trend" sec., at 1.

157. See MD. CODE ANN., FAM. LAW § 4-515 (1992).

158. Pauline Menes, a Maryland legislator who would sponsor major reform in this area, noted at the time: "Much needs to be done in dealing with the battered spouse, but without a knowledgeable base (of statistics), every step along the way would be impossible to achieve." Dickman, *supra* note 154, at C2. Menes believed that statistics would better define the issue and bolster legislation that would protect the spouse in certain situations. *Id.* It was not until late 1978 that the state finally provided financial support specifically for services to battered women in the form of a Department of Human Resources \$50,000 grant. *House of Ruth Awarded \$50,000 State Grant*, BALT. EVENING SUN, Aug. 21, 1978, at C1.

tain these statistics, helping to raise public consciousness about the issue. In 1978, the Maryland Legislature finally took a modest step to document the problem by directing the state police to conduct a survey to document the number of domestic assaults reported to the police.<sup>159</sup>

The inadequacy of focusing on statistics alone as a social change strategy is demonstrated by the findings of this early survey in Maryland. First, it reported that there were approximately 13,500 assaults against Maryland women by their domestic partners,<sup>160</sup> a number we now know grossly understates the statewide incidence of domestic assaults.<sup>161</sup> The survey also reported that 11.2% of the victims were men,<sup>162</sup> a figure that substantially overestimates the numbers of male victims of domestic violence.<sup>163</sup> The survey also found that most of the assaults occurred while couples were living together.<sup>164</sup> In fact, subsequent data collected in both Maryland<sup>165</sup> and national<sup>166</sup> studies demonstrate that women are at greatest risk when they first separate from their abusers. The survey also found that most victims were white, and were between twenty-five and twenty-nine years of age.<sup>167</sup> Again, these figures distort the reality of domestic violence victims who transcend all racial and age groups.<sup>168</sup>

In 1980, the Maryland General Assembly passed legislation to provide for a civil protection order for domestic violence victims.<sup>169</sup> The coverage of the statute, however, was restricted to married individuals, and limited the duration of relief under the statute to fifteen days. The hearings and lobbying surrounding the narrow reform focused on victims' stories in only the most indirect way.<sup>170</sup> Advo-

159. H.J. Res. 78 (1976).

160. Judith Valente, *Domestic Violence Surveyed . . .*, WASH. POST, Feb. 27, 1979, at C1.

161. See *supra* note 137 and accompanying text.

162. Valente, *supra* note 160, at C1.

163. See *supra* note 83 and accompanying text.

164. Valente, *supra* note 160, at C1.

165. INCREASING ACCESS TO JUSTICE, *supra* note 142, at 20-21 (citing studies in three Maryland jurisdictions showing that approximately 23% to 33% of victims seeking civil remedies and 79% those seeking criminal remedies for injuries sustained from former or current husbands or boyfriends were not living with their abusers).

166. See CYNTHIA GILLESPIE, *JUSTIFIABLE HOMICIDE 160-62* (1989); ANN JONES, *WOMEN WHO KILL 298-99* (1980).

167. Valente, *supra* note 160, at C1.

168. See WALKER, *supra* note 84 and accompanying text.

169. Protection from Domestic Violence Act, Md. H.B. 1945 (1980).

170. See List of Speakers and Interested Parties Before House Judiciary Committee on

cates felt that "anecdotes" about victims' lives would not be well-received by legislators.<sup>171</sup> Legislators who considered the legislation at the time relied more on their own experience and that of "trusted colleagues."<sup>172</sup>

Relatively minor amendments were made to the bill<sup>173</sup> but it remained among the most narrow protection order statutes of the 49 statutes surveyed by the National Institute of Justice in 1988.<sup>174</sup> The only other reform that occurred during this period was that Maryland expressly authorized police to make warrantless arrests of batterers, but only where the battery had been committed against a spouse or another individual with whom the batterer resides.<sup>175</sup>

In early 1989, Maryland began a shift—from being among the worst states in the nation in the level of legal protection provided to victims of abuse to becoming a state that has begun to deal with the problem of domestic violence in both a comprehensive and innovative fashion.

### 1. The Gender Bias Report: Storytelling Through Public Testimony

In 1989, Maryland's Special Joint Committee on Gender Bias in the Courts (the "Committee"), a joint effort of the judiciary and bar of Maryland, issued the "Report on Gender Bias" finding that "gender bias exists in the courts of Maryland, and it affects decision-making as well as participants."<sup>176</sup> In conducting its investigation, the Report

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H.B. 1945 (1980).

171. Telephone Interview with Judith Wolfer, Former Legal Director of the House of Ruth Domestic Violence Legal Clinic and member of the Public Justice Center Domestic Violence Task Force (Aug. 25, 1992).

172. Interview with the Honorable J. Joseph Curran, Jr., Attorney General of Maryland, in Balt., Md. (Sept. 27 1992) (notes on file with the author).

173. See MD. CODE ANN., FAM. LAW § 4-501 to -510 (1984) (as amended 1987 & 1991).

174. FINN & COLSON, *supra* note 117, at 16-17.

175. MD. CODE ANN. art. 27, § 594B (1987 & Supp. 1991).

176. MARYLAND SPECIAL JOINT COMMITTEE, REPORT ON GENDER BIAS IN THE COURTS (1989) [hereinafter REPORT ON GENDER BIAS], reprinted in Maryland Special Joint Committee, *Report of the Special Joint Committee on Gender Bias in the Courts*, 20 U. BALT. L. REV. 1, 6 (1990). In recent years many other states and state court systems have studied gender bias in the judicial system and made similar findings. See, e.g., NEW YORK TASK FORCE ON WOMEN IN THE COURTS, UNIFIED CT. SYS. ST. N.Y., REPORT OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURT (1986), reprinted in *New York Task Force on Women in the Courts, Unified Ct. Sys. St. N.Y., Report of the New York Task Force on Women in the Court*, 15 FORDHAM URB. L.J. 8 (1986-87); SUPREME JUDICIAL COURT OF MASSACHUSETTS, GENDER BIAS STUDY OF THE COURT SYSTEM IN MASSACHUSETTS (1989);

on Gender Bias relied on surveys of judges, lawyers, and court personnel. But what makes the report so persuasive and powerful a tool for social change are the stories the Committee heard and reported about gender bias, particularly as it relates to victims of domestic violence. As the report describes it:

The most compelling and moving testimony which [the Committee] received during its hearings throughout the State concerned domestic violence. Victims, friends of victims, and advocates for victims repeatedly impressed the Committee members with the severity and pervasiveness of the problem of domestic violence and the critical need to find and enforce effective remedies.<sup>177</sup>

One story described a victim's attempt to get help after her husband had threatened her for a year. She described to the Committee her reaction to a judge's refusal to believe her story:

The thing that has never left my mind from that point to now is what the judge said to me. He took a few minutes to decide on the matter and he looked at me and he said, "I don't believe anything that you're saying." He said, "The reason I don't believe it is because I don't believe that anything like this could happen to me. If I was you and someone had threatened me with a gun, there is no way that I would continue to stay with them. There is no way that I could take that kind of abuse from them. Therefore, since I would not let that happen to me, I can't believe that it happened to you." I have just never forgotten those words . . . . When I left the courtroom that day, I felt very defeated, very defenseless, and very powerless and very hopeless, because not only had I gone through an experience which I found to be very overwhelming, very trying and almost cost me my life, but to sit up in court and make myself open up and recount all my feelings and fear and then have it thrown back in my face as being totally untrue just because this big man would not allow anyone to do this to him, placed me in a state of shock which probably hasn't left me yet.<sup>178</sup>

This testimony—and similar testimony from other victims—played a significant role in persuading members of the Com-

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MINNESOTA SUPREME COURT TASK FORCE FOR GENDER FAIRNESS IN THE COURTS, THE FINAL REPORT OF THE MINNESOTA SUPREME COURT TASK FORCE FOR GENDER FAIRNESS IN THE COURTS (1989), reprinted in Minnesota Supreme Court Task Force for Gender Fairness in the Courts, *Minnesota Supreme Court Task Force for Gender Fairness in the Courts: Final Report*, 15 WM. MITCHELL L. REV. 825 (1989).

177. REPORT ON GENDER BIAS, *supra* note 176, at 10.

178. *Id.* at 11-12.

mittee to recommend significant reform in the legal system's response to domestic violence in Maryland.<sup>179</sup> In fact, in any number of contexts, this story does more to inform the reader or listener about the impact of gender bias on victims of domestic violence than abstract legal arguments, statistics, or the extensive research findings in social science literature. I have seen its power, both in my efforts to prepare law school clinical students to represent victims of domestic violence and in my efforts to persuade judges and lawmakers about the need to educate and improve domestic violence laws.<sup>180</sup>

## 2. Stories from Prison: The Clemency Petition and *A Plea for Justice*

Another development involving the creative use of stories to accomplish law reform on domestic violence issues began shortly after the issuance of the Report on Gender Bias. In early 1989, a coalition of domestic violence advocates in Maryland, seeking to promote systemic reforms to benefit victims of domestic violence, began to explore new social change strategies for law reform in the area.<sup>181</sup> The primary focus of the work of the coalition was to improve the plight of domestic violence victims who had killed their batterers, and who faced unique legal barriers in their criminal trials.

Prior to 1991, in Maryland, a woman being tried for killing her batterer was often unable to tell her story at trial.<sup>182</sup> Trial judges, relying on the traditional common law of self defense, refused to hear testimony about domestic violence and battered spouse syndrome, finding that if the woman was the first aggressor, evidence of her

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179. Interview with Professor Karen Czapanskiy, Associate Professor at the University of Maryland School of Law and Reporter of the Special Joint Committee on Gender Bias in the Courts, in Washington, D.C. (October 2, 1992).

180. The author was project director for the Attorney General's Advisory Council on Family Legal Needs of Low Income Persons, a state-wide task force composed of legislators, judges, practicing lawyers, and litigants which issued a report recommending, among other things, dramatic reform in the state's civil remedies for victims of domestic violence. See INCREASING ACCESS TO JUSTICE, *supra* note 142, at 19-30. In addition, the author served as consultant to the Special Ad Hoc Committee to Implement the 1992 Domestic Violence Law, a committee appointed by the Chief Judge, Court of Appeals of Maryland, to assist in education and preparation of forms to implement Maryland's amended civil protection order statute.

181. The coalition included the Domestic Violence Task Force from the Public Justice Center (a Maryland non-profit corporation organized to engage in law reform efforts to protect and expand the legal rights of the underrepresented), the House of Ruth, Inc. (Maryland's oldest and most comprehensive domestic violence program), and faculty and students from the University of Maryland School of Law's clinical programs.

182. See Wolfer et al., *supra* note 115, at 31.



state of mind was irrelevant.<sup>183</sup> Demoralized, victimized women were viewed as aggressors because they typically killed after a beating was over.

This rigid adherence to the traditional common law of self defense prevented women from telling the stories of their abuse and prevented experts from testifying about the condition known as "battered spouse syndrome." Battered spouse syndrome is a complex condition in which victims are controlled through systemic violence and are rendered psychologically incapable of escape.<sup>184</sup> Both the victim's testimony about the abuse she experienced and expert testimony on battered spouse syndrome would help the finder of fact understand why a woman might use lethal force against her batterer at a time when he was vulnerable. When women take the desperate step of killing their abusers, they generally do so during a lull between violent episodes. The testimony about the syndrome's effects from both the victim and the expert witness can help a jury understand why a woman might have believed she was in imminent danger, or why she did not leave an abusive relationship.

In order to remedy the inequities of the law, the coalition sought to bring the stories of women who had killed their batterers to the attention of legal decision-makers. The broader goals were to (1) educate the legal community about the dynamics of domestic violence, (2) change existing law in Maryland which excluded evidence of domestic violence and expert testimony on the battered spouse syndrome so that future defendants would be able to tell their stories at trial, and (3) ameliorate the harsh results of existing law by obtaining the early release of certain incarcerated battered women who were unable to tell their stories of abuse and who did not have the benefit of expert testimony on domestic violence at their trials.<sup>185</sup>

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183. See, e.g., *Friend v. State*, No. 483 (Md. Ct. Spec. App. filed Dec. 12, 1988) (excluding "battered wife syndrome" testimony based upon the court's preliminary finding, without the benefit of expert testimony of evidence concerning prior abuse, that the woman was the first aggressor); *Kriscumas v. State*, No. 1072 (Md. Ct. Spec. App. filed July 9, 1987) (same).

184. See BROWNE, *supra* note 129, at 177.

185. See Wolfer et al., *supra* note 115, at 30. Martha Mahoney has criticized the distorted cultural images of victims of domestic violence. See generally Mahoney, *supra* note 12. In light of this critique, the focus on the plight of battered women who kill may be seen as a strategic choice that could have a negative impact on creating legal remedies for the vast majority of victims of domestic violence who do not fight back. This chronicle of Maryland's experience, however, demonstrates that the storytelling strategy in this law reform campaign had a positive impact on other areas of domestic violence law reform.

Prior efforts to accomplish these goals through litigation<sup>186</sup> and legislation<sup>187</sup> had failed. Creative new strategies were needed. The coalition shifted the focus to storytelling—having victims who had killed or attempted to kill their abusers tell the grim stories of their lives with their abusers—in a variety of ways, to a number of audiences. These stories were told in three principle ways: on videotape, during one-on-one meetings, and in written or live testimony. First, the Domestic Violence Task Force arranged for the financing and production of a videotape, *A Plea for Justice*. The objective of the videotape was to have victims tell their stories to a wide audience, thereby

[creating] an intellectual and emotional understanding of the battered woman's syndrome which will lead to action in many sectors . . . . [The] long range objectives include showing the videotape to legislators, Parole Commissioners, the Governor, battered women's advocates, battered women, batterers and the general public . . . . Our specific measurable objectives include getting domestic violence legislation passed and securing parole release for certain inmates at [the Maryland Correctional Institution for Women]. We further intend to screen the videotape at programs for battered women and batterers around the state and around the nation. We will also seek television broadcast of the videotape for exposure to the general public. Our objective in terms of battered women, batterers and the general public is to create an understanding of the battered woman's syndrome which will help people break the cycle of violence before it results in the tragedy of death.<sup>188</sup>

In May 1990, the thirty-minute videotape, one of the first of its kind, was completed and premiered to a large audience in Baltimore.<sup>189</sup> Representatives from the coalition interviewed thirty women

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186. See *supra* note 183.

187. Legislation regarding the admissibility of battered spouse syndrome testimony had been introduced before Maryland's General Assembly in every legislative session since 1988. Although in 1990 several bills on the subject received much attention and publicity following their initial introduction, none of the bills got out of committee. See Wolfer et al., *supra* note 115, at 29.

188. PUBLIC JUSTICE CENTER DOMESTIC VIOLENCE TASK FORCE, GRANT PROPOSAL TO THE ABELL FOUNDATION (excerpts on file with author) [hereinafter GRANT PROPOSAL], quoted in PUBLIC JUSTICE CENTER DOMESTIC VIOLENCE TASK FORCE, FACTS AND FINDINGS: AN UPDATE ON RESULTS ACHIEVED BY THE PUBLIC JUSTICE CENTER DOMESTIC VIOLENCE TASK FORCE'S VIDEOTAPE "A PLEA FOR JUSTICE" (1991) [hereinafter FACTS AND FINDINGS].

189. Laura Lippman, *Battered Women Hoping for Chance at a New Defense*, BALTIMORE EVENING SUN, May 14, 1990, at C1. *A Plea for Justice* is an outstanding example of "electronic narrative." For an interesting discussion of the potential of this form of narrative, see

who had killed or attempted to kill their abusers and were serving time at Maryland's only women's prison, the Maryland Correctional Institution for Women (the "MCIW").<sup>190</sup> From these interviews, the stories of four Baltimore women—serving sentences ranging from fifteen years to life for killing their partners—were selected to feature in the film. With the exception of the narrator, a battered woman herself, and brief statements from psychologist Lenore Walker and former Attorney General Benjamin Civiletti, the voices in the film are those of the women telling their stories.

The stories were classic examples of domestic violence. All of the women were products of abusive homes, and all had initially sought a haven within their relationships. The batterers began as "intense" and "passionate" partners. Later, this passion turned to violence and isolation, making the women totally dependent upon their abusers. The details of the stories vary, yet paint a horrifying picture of lives that led these women to believe that killing their abusers was their only chance to live.

A former policewoman described the rape and other violence that she couldn't testify about during her trial, which ended with a conviction and sentence of fifteen years for killing her husband:

It started out first with the verbal threats. Started out with a lot of the pushing and shoving me. And um, it just kept on progressing to, after the shoving and all, to the bear hugs, he would give me a bear hug. Because if I didn't want to listen to him, he would squeeze me so tight and he would just make me listen. And after the bear hugs it would start with the open hand slapping. I said, you know you are hitting me. I guess I didn't consider, at first, his bear hugs and pushing and shoving *hitting*—and he would say he wasn't hitting me either, 'cause he didn't lay his hands on me.

He would hit me with anything. He would bite me all over. Pick up things and throw them at me and hit me with them. But I never went to the hospital for anything. It was too embarrassing. I was so determined that this was going to work if I would just stop and just make him happier. Change phone numbers, or even move, or act the way he wanted me to act.

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John Batt, *Law, Science and Narrative: Reflections on Brain Science, Electronic Media, Story, and Law Learning*, 40 J. LEGAL EDUC. 19, 40-46 (1990).

190. See Interview with Judith Wolfer, former Legal Director of the House of Ruth Domestic Violence Legal Clinic and member of the Public Justice Center Domestic Violence Task Force, in Baltimore, Md. (Aug. 31, 1992).

Sure, many people say why don't you just leave. But they don't understand. It's a sickness really. Being in that type of situation sometimes you are damned if you do leave because he's going to come after you. That's a fact. And if you stay, you know what you're going to put up with. So, sometimes, it's like I know what's going to happen to me, so when I leave, I don't know what he's going to do to me. Really. So I'm always looking behind my back. Many times my husband told me, if you leave me, you're going to look behind your back. You better watch out. And I believed him because I knew what he could do.

Many times I thought I would die. Many times I didn't want to live anymore because of what was going on. I said, God, this will never end. I thought it wouldn't. Many times I said, if he don't kill me, I'm sure I'll kill myself, 'cause it was that painful. I know I want to live. No, I don't want to die. I don't want to have anybody beat on me or threaten my life.

I know I'm worth much, much more than I thought I was. I know I'm a good person and I got a lot to give and all this didn't have to happen to me. It doesn't have to happen to anybody else, either, because if I'm alive I'm going to tell somebody that they don't have to go through what I went through. They don't have to die and they don't have to be incarcerated, either.<sup>191</sup>

A second woman described her feelings of isolation, and the rejection of a family that "closed [her] way out":

Soon after we started dating I had noticed that he was kind of possessive and he was very jealous. But I didn't really count it as out of the ordinary; it kind of flattered me to be honest. I kind of thought, well, he loves me this much that he cares, he don't want me speaking to this one or he don't want me going there without him. And I kind of thought that was really kind of nice, so I must have been something really special.

There was something about him that frightened me because he was getting more and more abusive and he got more and more demanding and he kept isolating me and isolating me. I couldn't talk to my family, I couldn't talk to my friends. Wherever I went, I had to be by his side. If we travelled in the car, I had to look at the floorboards, I couldn't look out the window.

But then things started getting real bad, because he started becoming very sexually abusive. Louis was a very rough sexual

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191. Mytokia Friend, in *A PLEA FOR JUSTICE* (Public Justice Center, Domestic Violence Task Force 1990); see also Thomas W. Waldron and Laura Lippman, *Pardons for Battered Women Considered*, *BALT. SUN*, Jan. 11, 1991, at D1.

man. He was kind of into kinky things. He liked people to cut him and things like that. I couldn't do those things.

I was eight months pregnant when I called her. And I said, Mom, I got to get out of here. There is something wrong in this house, and I can't take it anymore. I can't take him beating me. I can't take him kicking me. I can't take him throwing me up against the wall. I can't take him slapping me. I can't take him accusing me. The mental abuse was unreal. And I cannot do the things he wants me to do because some of them, Mom, are so outrageous that I can't stay and I need to get out. I need to come home. And she said, I'm sorry, but what you need to do is you need to work it out. It's not that way. You need to stay there and work it out. And that's what made me determined to stay there and work it out. I stayed and I tried all the harder. Whatever he said from then on, I did without question. I didn't care anymore. Whatever he wanted, I did it, trying to make it work because my mother had shut that door. She didn't realize at the time what she had done, I don't think. But she had closed my way out.

So he went and got the gun. He loaded the service revolver and I was on my knees begging him for life and for a long time he was taunting me. And I told him I just, I couldn't do this. I, you know, of all the things, I didn't want to die. I really didn't want to die. The kids needed me, and we had a brand new baby. And this wasn't right. It had gone too far again and he finally agreed with me and I took the weapon down to the floor. I don't know how long. I don't know how long I begged him. But whatever happened, he put it down on the floor and went upstairs.

I didn't feel my hand pull the trigger. I don't remember shooting him. All I remember was handing him the weapon and him grabbing it and I remember it going off. Well, as soon as that happened, I grabbed him and he said Joy, I love you, and when he did, I put him on the floor. When I put him on the floor, I know this sounds nuts, I went into an automatic response. I did CPR, mouth to mouth resuscitation. Then I ran downstairs and I came back up. I was all hyped up, and I was hysterical. I didn't know what to do. Because at first I thought he was gone. Then my mind kept saying it will be all right, he's all right, there's nothing wrong. Get a doctor, do something. So then, after a little while, I thought—this was all happening very quickly—I thought, well, if he's not going to live, you don't wanna live. And I picked up the weapon and I turned it on myself. And something said, you got two children that you have to take care of and this is going to be OK.<sup>192</sup>

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192. Joyce Danna, *in* A PLEA FOR JUSTICE (Public Justice Center, Domestic Violence

One woman, who began a sentence of life imprisonment in 1979 for killing her batterer and was granted early parole release in 1991, described the escalating violence that led to the moment she decided she wanted to live free from the abuse:

And he had popped the question to me and said, look, you don't have to work; I make enough money to take care of me and you both. Just quit your job. That's every girl's dream. I'm 19 years old and somebody's telling me I don't have to work and he going to take care of me. I was like, girl, my boyfriend told me I don't have to work, he's going to take care of me so I don't have to go to work nowhere. I didn't know he was in the process of putting me in his own little prison, my own little world. I agreed. I quit my job. And I stayed home. And I never had any friends. With him keeping me within my apartment, one bedroom, one kitchen, and one dining room and den hooked together, I was really restricted to what I could do, where I could go, who I could see, who could come and see me and I was like within my own prison within my own home.

I would never go to the hospital. I would stay in my house since I was home all the time anyway. I would just doctor on myself, heal myself. He beat me up so bad and blackened both my eyes at once, but I knew he loved me and I loved him and whatever came with loving him was all right with me.

I just didn't like to have sex in the daytime. I'd rather for it to be dark. He came home around 12:30 or 1:00 and said come on, I want some sex. I said I ain't giving you nothing, get out of my face. So he, in so many ways, he took it, you know. So and when I was in the bed, everything—the sheet, the pillow and everything else was on the bed. But, when I woke up, the only thing was on the bed was the piece of sheet that I laid on because everything else was off the bed. That's how violently he was screwing me. And when I woke up and looked around, I didn't see him. But I got up, the pillow was on the floor. There was nothing on the bed but just a little piece of sheet I was laying on. The rest of it was on the floor next to the bed on my side. And when I woke up I heard the chains on the door that you open up to go out the door. I heard him going out the door and I jumped up and said, "Randy." He said, "I thought I killed you." He said "I slapped you, I twisted you, I banged you up and everything. I thought I killed you." And I stood up in the middle of the floor buck naked and I said, "So you

were going to leave me here for dead?" He had knocked me out unconscious and he was going out the door and he just thought I was dead. But I came through.

And on the night that I stabbed my boyfriend, his friend was sitting in the chair at the kitchen table and watching as I slid down the refrigerator with him choking and beating me and lightning and flashing was going through my head . . . and his friend was watching. I didn't care if he was going to kill me. At first I didn't care. Because you know I felt like I didn't deserve to live. That's how little I felt of myself. That's how low I thought of myself. I had nothing. I felt like I wasn't going to leave nothing behind. I didn't have any kids. I didn't come from a loving family, so it didn't matter. But right in mid-stream, as he was beating me and as I was sliding down my refrigerator, something inside me was like I wanna live. You know, I have something to live for. Something is out there for me and I'm going to get it. And I'm not gonna die, and I'm not gonna let him kill me in here with his friend watching. I meant that.

I don't recall stabbing him no twenty-two times with no scissors. But he is just as responsible for where he is as I am for where I am. I didn't do no more to him then he was trying to do to me, cause if I would not have protected myself against him, he was going to kill me.

All I was trying to do was survive, and why can't the people who make the decisions see that?<sup>193</sup>

The final story reveals a similar pattern of isolation, and illustrates the role that protecting children has in both the decision to stay and, ultimately, to reject the violence:

Our relationship started out real fine and there was no jealousy whatsoever. We did everything together. I got pregnant with our daughter Jamie. Thirteen months later our son was born, and that's when it started. When Steven was born.

He was just really jealous. I could not have no friends in the house. I didn't socialize with any of the neighbors, except for maybe one or two, and even then I had to wait until he wasn't home.

He was choking me and I hollered for my daughter and I said, "Jamie, call the police." And he put her down on the bed and started choking her. And that day I promised to myself that I would never try to do anything to make him do anything like that again.

My daughter—both my children were there. And my daughter

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193. Gale A. Hawkins, in *A PLEA FOR JUSTICE* (Public Justice Center, Domestic Violence Task Force 1990).

said that I loaded the gun, and it will be five years this September, and I still don't remember loading that gun. It hurts because I try to remember, and then he was shot six times in the back and both of my children seen it.

In my heart, I was protecting me and my children from abuse, and the law system is saying to me I can't do that.<sup>194</sup>

The targeted audience for the film included: the Governor of Maryland, who could grant clemency or recommend parole to the Parole Commission; the Parole Commission; the Maryland Legislature, which in 1990 had rejected a bill that would have required the admission of battered spouse syndrome testimony, and would consider another version of the bill in 1991; the Maryland Congressional Delegation; and the general public.

The Governor of Maryland, William Donald Schaefer, was one of the first legal decisionmakers targeted. During his sixteen years as Mayor of the City of Baltimore<sup>195</sup> and his first four-year term as Governor, Schaefer had never actively supported legislation or policies designed to improve the plight of domestic violence victims. The Governor viewed the film with key members of his staff.<sup>196</sup> Moved by what he saw, he asked to meet with the women in the film. He met with those women and others for over two hours at the MCIW, and he listened to their stories. When Governor Schaefer emerged from that meeting, he told reporters how the experience had changed his understanding of the plight of battered women:

You read a newspaper: "Mary Jones shot her husband." When you see Mary Jones and understand how she got there, it is a little different . . . . [The women told] stories of a lack of self-esteem, abuse, hoping things get better, things don't get better, and finally a point where the women break.<sup>197</sup>

Later, testifying before a congressional subcommittee that was considering legislation intended to strengthen training for judges who deal with domestic violence and to encourage the enactment of state laws

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194. Carolyn S. Wallace, in *A PLEA FOR JUSTICE* (Public Justice Center, Domestic Violence Task Force 1990).

195. Governor Schaefer served as Mayor of Baltimore from 1971 through 1987, and was elected Governor of Maryland in November of 1987.

196. Wolfer, *supra* note 190; Telephone Interview with Kathy Shulman, Executive Director, Public Justice Center (Oct. 2, 1992).

197. Howard Schneider, *Meeting Battered Women Face to Face*, WASH. POST, Jan. 15, 1991, at B7.



allowing the introduction of testimony of abuse and battered spouse syndrome, Schaefer commented:

I never focused on the issue of domestic violence until two years ago. I had no interest in it at all and I started off unsympathetic. After hearing the women's stories I decided they should be given a chance to say how they were treated.<sup>198</sup>

The third and final piece of the storytelling campaign was the filing in January, 1991, of a 300-page petition seeking clemency on behalf of twelve inmates at the MCIW who were serving sentences from fifteen years to life for killing or attempting to kill their abusers. The petition, entitled *Twice Imprisoned*, described the components of battered spouse syndrome, analyzed the law in Maryland and around the country with regard to the admissibility and use of this testimony, and described the clemency options available to the Governor. At the heart of the petition, however, are the stories of the four women featured in the videotape, and the stories of eight other women as well. The stories, called *Inmate Profiles*, included a careful review of the development of domestic violence in each relationship, a discussion of the specific circumstances surrounding the crime, a review of the woman's institutional record and achievements, a commentary on her family and educational background, and a brief summary of the woman's plans if released. Most, if not all, of this information was not before the court at trial or at sentencing, nor was it in the inmates' institutional parole files.

As a result of the storytelling in all of its forms, in February, 1991, the Governor signed executive orders commuting the sentences of eight women convicted of killing or attempting to kill their abusers. Although the women became eligible for immediate release, they would be subject to supervised probation for the balance of their sentences. In announcing this decision, the governor's press secretary noted that the governor had met with several of the women and was "very impressed by the circumstances that led to their imprisonment," and "sympathize[d] with the difficulty they have had in the courts trying to explain their circumstances that led to the crime . . . ."<sup>199</sup> It was a historic and dramatic conclusion to the first phase of a suc-

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198. *Battered Women's Testimony, 1992: Hearings on H.R. 1252/53 Before the Subcomm. on Intellectual Property and Judicial Administration of the House Comm. on the Judiciary, 102d Cong., 2d Sess. (1992)* (statement of Governor William Donald Schaefer).

199. Thomas Waldron, *8 Women Who Killed to Go Free: Schaefer Grants Clemency to Killers of Abusive Spouses or Lovers*, BALT. SUN, Feb. 19, 1991, at A1.

successful campaign in which storytelling had played a central role.<sup>200</sup>

### 3. Stories to the Legislature: The Victim's Role in Making New Laws

A similar "three-part" storytelling campaign—screenings of the film, face-to-face meetings, and public testimony from victims—was directed to the Maryland Legislature in 1991 as part of a strategy for gaining passage of a statute that would permit the introduction of battered spouse syndrome testimony. Screenings of *A Plea For Justice* were arranged for the legislature by the Public Justice Center, working with members of the congressional delegation and local jurisdictions' commissions for women. Many of the legislators who attended the screenings reported that they and their colleagues were moved by the film.<sup>201</sup> A number of legislators who chose not to attend the screenings saw the film later, when reform advocates used portable playback machines to screen the film for individual legislators.<sup>202</sup> Even if legislators did not see the film, members of their staffs did and communicated their support for the legislation. In addition, numerous screenings at localities throughout the state and on television focused public attention on the specific domestic violence issues facing the Maryland General Assembly. Groups like the Junior League, and individual constituents, communicated their outrage and concern to their legislators after viewing the film.<sup>203</sup>

Face-to-face meetings also played a role in advocacy around the battered spouse syndrome legislation. Women who had suffered years of abuse either met with legislators in one-to-one meetings or testified before legislative committees.<sup>204</sup> Their stories emphasized the unfairness that results when victims are silenced at their trials, and helped

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200. With this action, Schaefer became the second Governor in U.S. history to commute the sentences of women based on a belief that the women were suffering from battered spouse syndrome, and that their crimes were triggered by reported abuse at the hands of their husbands or boyfriends. A year earlier, Governor Richard F. Celeste of Ohio freed 25 women who had been victims of domestic violence and had killed or attempted to kill their abusers. Isabel Wilkerson, *Clemency Granted to 25 Women Convicted for Assault or Murder*, N.Y. TIMES, Dec. 22, 1990, § 1 at 1.

201. See Interview with F. Vernon Boozer, Member of the Maryland State Senate, in Baltimore, Md. (Sept. 29, 1992); Interview with Delegate Kenneth C. Montague, Jr., Member of the Maryland House of Delegates, in Baltimore, Md. (October 2, 1992).

202. See FACTS AND FINDINGS, *supra* note 188.

203. Wolfer et al., *supra* note 115.

204. See, e.g., *Hearings on H.B. 49 Before the House Judiciary Comm.*, 401st Sess. (1991) (testimony of Margery Ann Rich and T. Annette Johnson).

move legislators to act where they had previously been unwilling.<sup>205</sup>

The result of these efforts was that the 1991 Maryland General Assembly finally passed the Battered Spouse Syndrome Bill, which took effect on July 1, 1991. Under this legislation, criminal defendants who are on trial for assaulting, killing, or attempting to kill their abusive partners may introduce evidence of a history of battering, as well as expert testimony concerning battered spouse syndrome. Thus, the legislation finally offers battered women or men accused of killing their abusers an opportunity for fair trials in which they can tell their stories.

In 1992, building on the success of the clemency/battered spouse syndrome testimony campaign, advocates in Maryland shifted the focus of law reform efforts to Maryland's civil protection order statute.<sup>206</sup> This statute was considered the worst in the nation, in both the scope of individuals covered and the kind of relief it provided for victims.<sup>207</sup> The statute's protection did not extend to unmarried cohabitants unless they had a child together.<sup>208</sup> Victims, both married and unmarried, had to be living with their abusers at the time of the abuse in order to be covered under the statute.<sup>209</sup> The statute permitted the court to order the abuser out of the family home for up to thirty days.<sup>210</sup> This thirty-day limitation imposed on the "vacate" order stood in sharp contrast to the three years permitted in California, and was well below the one year permitted, on average, in the majority of the remaining states.<sup>211</sup> Finally, the statute made no provision for ordering short-term financial relief for the victim and any children of the parties involved.

As they developed a strategy for obtaining passage of a statute that would remedy these failings, advocates of domestic violence reform believed the battle would be a relatively easy one.<sup>212</sup> The prior year's success in dealing with battered spouse syndrome issues had increased public awareness and political support for domestic vio-

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205. See Boozer, *supra* note 201.

206. MD. CODE ANN., FAM. LAW §§ 4-501 to -510 (1991).

207. See, e.g., *Domestic Violence Protection Order, 1992: Hearings on S. 282 Before the Judicial Proceedings Committee of the Maryland State Senate*, 404th Sess. (1992) (testimony of Bonnie A. Kirkland, Deputy Legislative Officer, Office of the Governor) (audio tapes available from author).

208. MD. CODE ANN., FAM. LAW § 4-501(e) (1991).

209. *Id.*

210. MD. CODE ANN., FAM. LAW § 4-506(e)(1) (1991).

211. FINN & COLSON, *supra* note 117, at 16-17.

212. See generally Wolfer, *supra* note 190.

lence issues generally.<sup>213</sup> The Governor was a principal sponsor of the legislation, the Attorney General had been at the head of a task force which recommended the changes,<sup>214</sup> and a wide range of national and statewide groups had been calling for similar changes in recent reports.<sup>215</sup> Finally, the fact that Maryland had the most narrow protection order statute in the country seemed to secure sentiment for change.

At the first legislative hearing, representatives from the Governor's office, the Attorney General, and other advocates for reform testified in support of the bill.<sup>216</sup> They described how the proposed bill's expansion of coverage to include unmarried cohabitants, a one year vacate order, and financial relief would provide meaningful short-term protection for victims of domestic violence. Their testimony focused on Maryland's relative position nationally in this area, as well as empirical data about the numbers of individuals left unprotected by the existing statute.<sup>217</sup> This testimony was received, for the most part, with polite silence. But by the end of the hearing, reform advocates sensed that they would not achieve their objective as easily as they had originally anticipated.

The first sign of trouble appeared when Robert Sweeney, the Chief Judge of the Maryland District Court, testified before the committee. Although testifying in support of the new protection order bill, his testimony actually reflected strong opposition and resistance to change:

Mr. Chairman, I am appearing here at the request of Chief Judge Murphy . . . . I am appearing here in support of the bill, with some

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213. See, e.g., *No Court Refuge for Battered Women*, BALT. SUN, Jan. 24, 1992, at 6A; Parris N. Glendening, *Violence—The Answer is Us*, WASH. POST, Jan. 26, 1992, at C8.

214. See INCREASING ACCESS TO JUSTICE, *supra* note 142, at 3, 52.

215. See, e.g., NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *FAMILY VIOLENCE: IMPROVING COURT PRACTICE* (1990); MARYLAND NETWORK AGAINST DOMESTIC VIOLENCE, *LEGISLATIVE AGENDA* (1992); REPORT ON GENDER BIAS, *supra* note 176, at 30; BROKEN BODIES, *supra* note 137, at 45.

216. See *Domestic Violence Protection Order, 1992: Hearings on S. 282 Before the Judicial Proceedings Committee of the Maryland State Senate*, 404th Sess. (1992) (audio tapes available from author).

217. See, e.g., *Domestic Violence Protection Order, 1992: Hearings on S. 282 Before the Judicial Proceedings Committee of the Maryland State Senate*, 404th Sess. (1992) (testimony of Bonnie A. Kirkland, Deputy Legislative Officer, Office of the Governor) (audio tapes available from author); *Domestic Violence Protection Order, 1992: Hearings on S. 282 Before the Judicial Proceedings Committee of the Maryland State Senate*, 404th Sess. (1992) (testimony of the Honorable J. Joseph Curran, Jr., Attorney General of Maryland) (audio tapes available from author).

reservations. Our committee of seventeen judges considered this bill in substantial detail and, after considering all major provisions of the bill, would like to share with you some concerns that they had . . . .

There are certain types of relief that are sought in this bill that do not lend themselves to a district court proceeding. One of these is a utilization of this act to award monetary relief.

Ten years ago, the average district court judge in Maryland tried 3,600 cases in one year. Last year, district court judges tried 5,500 in a year. To add to that caseload the burdens and the responsibility of making support payments that could last, not just for 30 days, not just for a year, but to last until changed by some further court order, is a substantial responsibility. I suggest to you that it cannot be done in three to five minutes.<sup>218</sup>

Committee members appeared more attentive to the concerns expressed about the potential burden on the courts than they had been to the advocates' legal argument for a more comprehensive and effective statute.<sup>219</sup> In addition, a couple of widely-reported exchanges between senior legislators and witnesses revealed that certain legislators showed a complete lack of empathy for the victims the legislation sought to protect, and little understanding of their plight.<sup>220</sup> The Chair of the Committee questioned the Attorney General on an aspect of the bill he found troubling:

Let's say someone goes down to the corner bar, picks up some girl, keeps her for two or three days, then beats her up. Can she have him thrown out of his own house?<sup>221</sup>

Even more disturbing was the question another legislator put to the Attorney General:

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218. *Domestic Violence Protection Order, 1992: Hearings on S.282 Before the Judicial Proceedings Committee of the Maryland State Senate*, 404th Sess. (1992) (testimony of Robert Sweeney, Maryland District Court Judge).

219. Wolfer, *supra* note 171.

220. *Forget Those Dinosaurs—Let's Try to Name a State Neanderthal*, BALT. SUN, Feb. 3, 1992, at 2B.

221. *Id.*; see also *Domestic Violence Protection Order, 1992: Hearings on S. 282 Before the Judicial Proceedings Committee of the Maryland State Senate*, 404th Sess. (1992) (remarks of Walter Baker, Member of the Maryland State Senate). It is interesting to note that Baker was one of the most outspoken critics of Governor Schaefer's decision to commute the sentences of eight abused women who had been convicted of killing their abusers. See Fern Shen & Howard Schneider, *Freedom in a Divided World: Eight Maryland Women Who Killed Mates to Be Released Amid Debate Over Their Deeds*, WASH. POST, Feb. 21, 1991, at B1; see also *supra* notes 195-200 and accompanying text.

We have fifteen witnesses here testifying on a domestic violence matter. My question to you, the chief law man for the state of Maryland, is why can't we have the same kind of effort about a serious problem—we got the whole room full—to try to make our streets safe" I mean, where are our priorities? Cleaning domestic matters up or cleaning up and making our streets safe? I'm serious . . . . We have the most criminal nation of all the developed nations, and yet I don't see anybody trying to go ahead and offer a solution.<sup>222</sup>

Although the Attorney General attempted to educate that legislator about the established link between violence in the home and crime in the streets, it became clear to reform advocates that a more effective method of communicating the urgent need for the legislation had to be developed. In planning follow-up meetings with legislators and public hearings before the House committee, reform advocates again turned to storytelling as a critical part of the advocacy effort.

When the bill reached the House committee, the "line-up" of witnesses changed. As had been the case at the first legislative hearing, representatives from the Governor's office, the Attorney General, and other advocates for reform testified in support of the bill. But in addition to this testimony, the committee then heard the testimony of women who had been victimized by domestic violence. Three women who had been severely injured as a result of inadequacies in the existing law told their stories to the legislature, and described the pain and anguish they had suffered.

A Baltimore woman, identified only as "Susan," told the committee that she had obtained a thirty-day court order that required her abusive husband to stay away from their home. Susan testified that her husband stalked her during this period, and when the order expired he cornered her at a laundromat, where he set her on fire. He was sentenced to 30 years in prison. She was permanently disfigured. Susan said, "I got the protection order like I was supposed to, but it didn't help me . . . . Please change the law."<sup>223</sup>

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222. *Domestic Violence Protection Order, 1992: Hearings on S. 282 Before the Judicial Proceedings Committee of the Maryland State Senate*, 404th Sess. (1992) (remarks of Frederick C. Malkus, Member of the Maryland State Senate).

223. *Domestic Violence Protection Order, 1992: Hearings on H.463 Before the Judiciary Committee of the Maryland General Assembly*, 404th Sess. (1992) (anonymous testimony of "Susan," a victim of domestic violence); see Retha Hill, *Victims Urge More Protection Under Md. Domestic Violence Laws*, Wash. Post, Feb. 25, 1992, at C5.

Another Baltimore woman, "Darlene," testified that she had petitioned the court three times over a three-month period to keep her husband away from her. When the first thirty-day order expired, her husband returned home and broke her jaw. Her request for a second protection order was denied because her husband was not living with her at that time. Darlene told the committee that he again returned home, "sexually violated me, ripped my hair out, kicked me, beat me and urinated on me." Her third request for a protection order was granted. The order was in effect at the time of her testimony but she told the committee it would expire soon.<sup>224</sup>

The third victim, "Sarah," testifying before a hushed hearing room, described the details of the "separation assault" she experienced when she tried to leave her abusive husband. Sarah testified that her estranged husband stalked and abused her for months after she left him. On one occasion, she said, he abducted her from a friend's house, took her to a secluded area, put a rope around her neck, and threatened to drag her from the back of his truck until she died. Another time, she testified, he taped her mouth shut and threatened her with a razor blade.

Sarah was a classic victim of domestic violence suffering physical and mental abuse at the hands of her husband for trying to separate from him. Under the existing law, however, Sarah was not eligible for a protective order. This was based solely on the fact that she did not live with her husband at the time of the abuse. The criminal justice system eventually caught up with him, and he was convicted of battery.<sup>225</sup>

The testimony of the victims was followed by that of the Chief Judge of the District Court, who provided testimony that paralleled the testimony he had provided to the Senate committee.<sup>226</sup> Its impact, however, was significantly blunted by the powerful stories that preceded it. Increased paperwork for judges and clerks did not seem nearly as overwhelming an obstacle as it had in the previous hearing

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224. *Domestic Violence Protection Order, 1992: Hearings on H.463 Before the Judiciary Committee of the Maryland General Assembly, 404th Sess. (1992)* (anonymous testimony of "Darlene," a victim of domestic violence).

225. *Domestic Violence Protection Order, 1992: Hearings on H.463 Before the Judiciary Committee of the Maryland General Assembly, 404th Sess. (1992)* (anonymous testimony of "Sarah," a victim of domestic violence).

226. *Domestic Violence Protection Order, 1992: Hearings on H.463 Before the Judiciary Committee of the Maryland General Assembly, 404th Sess. (1992)* (testimony of Robert F. Sweeney, chief judge of the Maryland District Court).

in comparison to the dramatic and life-threatening injuries suffered by the victims as a result of an inadequate law.

The dynamics of lobbying for successful passage of a bill are complex, and the role of the public hearings limited. But according to many of those involved in the campaign to reform Maryland's civil protection order, the victim's testimony played a significant role.<sup>227</sup> In addition to limiting the immediate impact of the judicial testimony regarding the burdens that would be placed on the judicial system, the victims' testimony resulted in greater media attention for the hearings and the proposed bill.<sup>228</sup> The increased media attention was followed by increased pressure from constituents urging their legislators to support the bill. Although there was some compromise on the length of the duration of the vacate order and the financial relief provisions, the campaign to improve Maryland's protection order statute ultimately succeeded. On May 5, 1992, Maryland entered the "modern age" of legal protection for victims of domestic violence when Governor Schaefer signed the new protection order into law.<sup>229</sup> With the enactment of this new law, Maryland made significant progress, creating a remedy that is finally responsive to the needs of domestic violence victims—broad enough in its coverage to protect those who need it and comprehensive enough in its remedies to provide a "safe place" for those who are at their most vulnerable.<sup>230</sup>

### CONCLUSION

The relationship between law and social change is complex. There is evidence, however, that law can have a significant impact on redressing social problems when the historically unrepresented have a voice in the lawmaking process. Legal storytelling—stories told to legal decisionmakers about the pain that results from inadequate

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227. See Boozer, *supra* note 201; Grosfeld, *supra* note 150; Montague, *supra* note 201; Wolfer, *supra* note 190.

228. See, e.g., Hill, *supra* note 223, at C5.

229. MD. CODE ANN., FAM. LAW § 4-506 to -515 (1991 & Supp. 1992). See Judith Wolfer & Jane C. Murphy, *Domestic Violence Law Poses Challenges for the Courts*, MD. FAM. L. MONTHLY, June 1992, at 3.

230. The unusual degree of institutional and political support for this new law was highlighted by the fact that, shortly after its passage, the Chief Judge of Maryland established a Special Ad Hoc Committee of judges and expert consultants to oversee the implementation of the new protection order statute. This was the first time in anyone's memory such a committee had been established to assist in implementing *any* legislation. See Letter from Robert C. Murphy, Chief Judge, Court of Appeals of Maryland, to Maryland District and Circuit Court Judges and Clerks (Sept. 22, 1992).



laws—must be an integral part of law reform work. Critical race and feminist legal scholars have begun to change the nature of legal discourse by developing the narrative as a legitimate and powerful form of scholarship. Scholars and practitioners must build upon this work to integrate storytelling into lawmaking to help ensure lasting and meaningful social change.

The experience of those seeking to reform domestic violence laws demonstrates the power of the narrative as a key element of social change strategy. Direct storytelling by domestic violence victims hurt by the inadequacy of the legal system was a powerful tool in reversing Maryland's historical pattern of denial and silence in the face of widespread family violence.

Ultimately, this is a story about domestic violence victims and their advocates, who forced decision-makers to listen after decades of inattention to the problem. They listened, not only to the experts, and not only to the statistical and fiscal impact testimony—they listened to the stories of the women and children who have been devastated by the legal system's historical tolerance of violence in the home. The lessons learned during this campaign to reform domestic violence laws should serve as a challenge to both scholars and practitioners—a challenge to recognize the essential role that storytelling can play in law reform, and to develop the use of storytelling as a critical tool in future campaigns to make the law a vital instrument of social change.