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# Introduction: Domestic Violence and the Law Symposium

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## Symposium

### Introduction

**Michael G. Dowd**

Many of us knew of the violence in families we now describe as “domestic” before it had a name. It happened, behind closed doors, and was seen as a “family matter.” These disputes or arguments were never the subject of public discussion. We denied their existence by our silence. We believed it was none of our business. Somehow, we thought acknowledgment of the violence, more than the violence itself, would do damage. We were wrong.

Domestic violence is not new. It has been with us for more than two thousand years in western civilization, and seeded the fields of law from which our notions of justice were harvested. It is rooted in the denial of equality to women. From the beginning, the law played a major role in institutionalizing this injustice. Roman law authorized a husband to control his spouse with the use of force. Religious doctrine bound a woman to an abusive man mandating her obedience. Descending centuries of European law, domestic violence ranged from advice to husbands about limiting their violence to parts of the female anatomy that would not damage the “usefulness” of the woman, to describing women as “property.”

English law, which provides so many of our legal foundations, denied women the right to own property independent of their husband's claim or control. "Coverture" is the smooth sounding word embodying that denial of equality. Rape was an offense against the male "owner" of the victim for damage to his "property." A woman who killed her husband risked a charge of treason because her act of homicide was seen as analogous to murdering the king. The English law's "rule of thumb" decreed that man might use a "rod not thicker than his thumb" with which to discipline his wife. In that twisted world of inequality, this rule was perceived as a protection for women.

Women did not do much better in the United States. Our constitution declared that men were equal. As we moved into the twentieth century, barely three-quarters of the states had decreed wife-beating a crime. Women still could not vote or resist the most violent rape if committed by her husband. Even today, marital rape amounts to a crime in many places only when it is accompanied by physical injury. For decades, we accepted the complaint of rape by a woman only if there was evidence to corroborate her story. Alternatively, any complaint by a man for the theft of his coat was accepted, if he were found to be credible by a judge or jury. Only women and children needed to corroborate their cries for help. As we approach a new millennium, women continue to struggle for control of their bodies.

Only now, and only in reflection, are we beginning to accept these gross examples as a history of injustice and inequality to women. However, more subtle prejudices continue to flourish. Why is it that in a society where women constitute a majority of the citizens, they remain a minority in every important job in the work-place from the boardroom, to the courtroom, to the legislative chamber? Why is there not a viable candidate for president who happens to be a woman?

The answer is as simple as it is unpleasant to accept. Centuries of prejudice and injustice that created the beliefs about the inferiority of women will take years to erase. We must begin by accepting the reality of our present and past. How can we correct a problem, if we do not acknowledge its existence? We must honestly expose every inequality before we can correct it.

Law is our moral guide in the search for justice. Justice is our holy grail, the golden fleece, the treasure at the foot of life's rainbow. It is an ideal to be pursued. It is ironic that our symbol of justice is a woman blindfolded to prejudice and bias holding a scale to weigh the truth. This symbol stands atop our courthouses, is painted on the walls of our courtrooms, and is ingrained in our minds as the image of fairness. Yet, for centuries, our courthouses were closed to women seeking justice, our courtrooms locked to their efforts at participation and our minds blind to their equality. If we cannot see this insidious contradiction, we have no hope of changing it.

In this societal body of injustice, violence against women in intimate relationships is the diseased brain and heart. Our notions of fairness for women begin with the way we treat each other in our familial relationships. It is the unfairness and injustice in the living room and bedroom that poisons the schoolroom, the boardroom, the courtroom, and all other places we live our lives.

The legal profession as the trustees of justice bears a special responsibility to make change happen. We must provide women with access to the courts that can provide them protection from the betrayal of violence at the hands of the men they loved. Lawyers must be willing to represent women, guiding them through the courts toward an order of protection or a divorce. No lawyer should be allowed to provide inadequate service to a woman in need for lack of money. Our profession must embrace the magical phrase "pro bono publico," rather than run from it. It is no longer enough for only some of us to do the work.

We must hold the abusers accountable for their violence when they enter the criminal justice system. The term "domestic dispute" must never again be a code word for trivializing violence against women. It must be an honor, rather than a dead end career, for a prosecutor to serve in the bureau that handles cases involving violence against women. It should be common practice for abusers to go to prison, rather than an exception to the rule. We must train our prosecutors to be as skilled at crimes against women, as they are in crimes against property.

Our profession must seek change in the laws that deny women protection. Is the law of self-defense an extension of a

male dominated history that envisions gunfighters at the O. K. Coral, or is it a place to protect a woman who is fighting for her life? Does the "imminence" standard for action in self-defense cases fairly protect women? We go to the legislature to fight for laws to protect our incomes; should we not also be fighting for the rights of women which we historically neglected?

The social contract which led to the formation of Government, had as its fundamental driving force, the need to protect the citizen against harm. Is there a more basic harm than daily violence against women in their own homes? How can we make our streets safe if our homes remain dangerous? How can we ignore that violent children are invariably raised in violent homes? We must recognize that the voice of justice is male and, therefore, unjust in its exclusion of women. Less than twenty years ago, women asserting self-defense claims heard themselves described as "he" and "him." How could they possibly expect justice if the language of our law excluded them from using the law?

Our law schools must see this struggle for fundamental civil rights as a core reason for their existence. Too few law schools include a range of courses in their curriculum dealing with the rights of women and their struggle for equality and justice. However, lawyers alone will not end the violence against women. This disease, that tears at the fabric of our society, infects every aspect of our lives. For too long, the idea that men were superior has existed as a truth equal to the routine of the daily rising of the sun. Men were raised to think that their privileged position was nothing more than a part of the natural order of the universe. The belief that another human is inferior in any way places us on the precipice of injustice. It is a short step towards harming another once one accepts the belief in the other's inferiority. But how do we begin to tear down the walls of injustice that took thousands of years to erect?

Perhaps the place to start is the Symposium on Domestic Violence held at Pace Law School that this volume memorializes through the words of the participants. This volume of the *Pace Law Review* reflects the fundamental truth that the symposium articulated. Every segment of society must fight domestic violence. Only a coordinated community effort will win the day. What you will find in this volume are the words of advo-

cates, government officials, prosecutors, law enforcement professionals, both civil and criminal lawyers and a special spokesperson of our collective conscience who provided the keynote address.

This symposium was not the brainchild of the law school faculty or administration. The students of the law review conceived, organized and delivered the packed hall of listeners. These students who represent the future of the legal profession turned on the light of reason and justice. They had the insight to understand that lawyers are but a cog in the societal wheel that must grind down centuries of injustice.

Ann Jones was the keynote speaker. Her books *Women Who Kill* and *Next Time, She'll be Dead* are required reading for those who seek justice for women. Ms. Jones' words eloquently express the thoughts in ways we only wish we could. She is a remarkable person who inspires as she informs. Her words will unlock the door that leads to the path we must follow.

Lisa Linsky is a woman of passion and skill. Her passion is justice and her skill makes it happen. She is an Assistant District Attorney in the Westchester District Attorney's Office. Ms. Linsky offers practical advice to the prosecutor seeking to introduce a violent history of abuse at the trial of an abuser. More than a dry recitation of the law, this work provides practical advice for the trial itself.

Victoria Lutz is the Director of the Pace University Battered Woman's Justice Center, a center dedicated to the training of lawyers in the handling of cases involving domestic violence. The center is a partnership between Pace School of Law and the State of New York and is the first of its kind at a major university in the United States. Ms. Lutz discusses the cutting edge legal issue of enforcement of out of state orders of protection.

For years, women who moved from one state to another with an order of protection, found themselves required to start a new proceeding in the state where they moved. This is because the order of protection issued in the previous state would not be recognized in the state of their new residence. The Violence Against Women Act, passed by Congress, aimed to remedy this lapse in protection by providing full faith and credit to the out of state order. Unfortunately, implementation was a problem.

Ms. Lutz developed a protocol in the process aiding a woman facing the problem of enforcing an out of state order of protection. Many in our profession do not even know the law exists. Her work is hailed as the solution to what had been a difficult and dangerous problem. It is an issue of today's law.

Ron Bravaro is a respected lawyer in Westchester County who specializes in Family Law. His article guides the lawyer in how to represent people involved in family offense proceedings. Mr. Bavaro talks to us with the expertise of an experienced lawyer committed to justice.

An important part of this volume is the article produced by Sergeant Kevin Walsh of the New York City Police Department. Mandatory arrest in domestic violence cases is new to New York State. The Family Protection and Domestic Violence Intervention Act of 1994 implemented this change. Sergeant Walsh's article candidly traces the history of police response as a mirror of societal views. He discusses its implications on the front line, as a police officer. It is crucial that we understand this new law from the prospective of those we ask to enforce it.

The work of Karla Digirolomo is well known throughout the country. Until recently, she was the Executive Director of the New York State Office for the Prevention of Domestic Violence. That office was the first state agency in the country dealing directly with the issue of domestic violence. Under Ms. Digirolomo's leadership, it became an agency that effectively advocated for change, and produced results. Presently, she nationally consults institutions and corporations concerned about domestic violence, and occasionally, she serves as an expert witness in cases relating to domestic violence. Ms. Digirolomo's article attacks the widely held myths and misperceptions about domestic violence. She provides the answers to questions such as, "Why didn't she just leave?"

The Symposium on Domestic Violence, and this volume memorializing that day, are a continuation of the commitment of the law school itself. Besides the Battered Woman's Justice Center, Pace provides a clinical program where students work with prosecutors handling domestic violence cases.

We are all on notice that the injustices of the past and present must be eliminated. The words in this volume can illuminate the future where there has only been the darkness of

prejudice and justice. We must understand that our continued silence makes us accomplices of every violent abuser who raises a hand in the night to abuse another. This volume makes it clear that there are no excuses for the abuser, and none for those who would let it happen. Our message is not complicated or difficult to understand; justice and equality are the gifts we must give to the students who gave us the symposium and this volume of the *Pace Law Review*.